

SOUTH AFRICA / JUDGMENT

Khan v Khan (Ex tempore) (021816/2025) [2025] ZAGPPHC 256 (24 February 2025)

[2025] ZAGPPHC 256

COURT

North Gauteng High Court, Pretoria

BEFORE

Yende

CASE / FILE NUMBER

021816/2025

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No. 021816/2025

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: NO

DATE 17 March 2025

SIGNATURE

SIRHAN KHAN

Applicant

and

AADILA OSMAN KHAN

Respondent

Summary: -Applicant seek condonation, on-compliance with the normal Rules of Court with regard to service, form and time -periods as contemplated in Rule 6(12). Uniform Rule 6(12) - Matter is urgent if applicant will not be able to obtain “substantial redress at a hearing in due course” without at least some urgent relief- Applicants should set forth explicitly the reasons why the matter should be treated urgent. -Application is struck off for lack of urgency.

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JUDGMENT- EX TEMPORE

YENDE AJ

- [1] The Court proceed to deliver its ex-tempore judgment in this matter.
- [2] This application is brought in terms of urgency, Uniform Rule 6 (12).
- [3] The applicant should set forth explicitly the reasons why the matter is urgent. This Court has consistently refused to hear urgent applications in cases where urgency relied upon was subjective urgency, clearly self-created.
- [4] Consistency is important in this context, as it informs the public and the legal practitioners that the rules of court and practice

directives can only be ignored at a litigant's peril. Legal certainty is one of the cornerstones of a legal system based on the rule of law.

- [5] The test for urgency was eloquently formulated in *East Rock Trading (PTY) Ltd and Another v Eagle Valley Granite and Another's*[1] where Justice Notshe AJ held that "The import thereof is that the procedure set out in Rule 6(12) is not for taking. An applicant

has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course the question of whether a matter is sufficiently urgent to be enrolled and has to be heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course".

- [6] In other words, urgency must be considered together with the issue of whether there will be substantial redress at a later hearing if the matter is not heard on an urgent basis.

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- [7] Generally, in summary the requirements for an urgent application are:

1. The applicant had to set out explicitly the circumstances which render the matter urgent with full and proper particularity;
2. The reasons must be stated why he or she believes that he will not get substantial redress at the hearing in due course;

3. When final relief is sought, the Court must even be circumspect to determine whether urgency has been established;

4. The urgency must not be self-created;
5. It should never be a subjective perceived urgency.
6. Moreso immediate reaction by applicants by instituting legal action points to the favourability of urgency.

- [8] It is this court submission that having heard the counsel for the applicant in this matter, the court is satisfied that the applicant has failed to reach the threshold set out in Rule 6 (12).
- [9] This urgency is self-created and does not entitle the applicant to any urgent relief. For these reasons and submissions advanced by the applicant, I am not convinced that the applicant has overcome the threshold prescribed in Rule 6(12) that says “A matter is urgent if the applicant will not be able to obtain substantial redress at a hearing in due course without at least some urgent relief“. I am of the view that this application ought to be struck off from the roll for lack of urgency.
- [10] As a consequence thereof, this application is struck off from the roll and I make this order.

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Order

- [11] The application is struck off from the roll for lack of urgency and in light of the circumstances of this application I make no order as to cost.

J YENDE

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

This judgment was prepared by YENDE AJ. It is handed down electronically by circulation to the parties/their legal representatives by e-mail and uploaded on Caselines electronic platform and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed 24 February 2025.

Appearances:

for Applicant: Sumenthren Poobalan Pilay Instructed by: SP Attorneys Incorporated Waterford Place, 27 Autumn Street Rivonia, Sandton. Heard: 24 February 2025 Delivered: 24 February 2025

- [1] (11/33767) [2011] ZAGPJHC 196 at par 6.

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