

SOUTH AFRICA / JUDGMENT

Maluleka and Another v Minister of Communication and Digital Technologies and Others (2025-008898)

[2025] ZAGPPHC 149 (7 February 2025)

[2025] ZAGPPHC 149

COURT

North Gauteng High Court, Pretoria

BEFORE

Yende

CASE / FILE NUMBER

2025-008898

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No. 2025-008898

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

DATE 07 February 2025

SIGNATURE

In the matter between:

NYUMANI NOBRIDE MALULEKA AND ANOTHER VHEMBE FM NPO And MINISTER OF COMMUNICATION AND DIGITAL TECHNOLOGIES AND FIVE OTHERS ICASA MATHOBO THENDO PERCYVEN MATHOBO VHAHANGWELE SHUMANI PORTIA NDOU MATODZI ROBERT MPHEPHU Summary: Urgent Application -Uniform Rule of Court 6(12) -Applicants should set forth explicitly the reasons why the matter should be treated urgent-self -created / subjective perceived urgency does not entitle the applicants to urgent relief- application struck from the roll for lack of urgency. The Sanctity of the Urgent Court has to be preserved for matters that are deservingly, lest the Urgent Court would the flooded with matters that are undeserving, self-created /subjective orientated urgency.

JUDGMENT- EX TEMPORE

YENDE AJ

- [1] The Court continues to give its ex-tempore judgment in this matter.
- [2] Summary. An application is brought in terms of Rule of Court, Rule 6(1), the applicant should set forth explicitly the reasons why the matter is urgent. Self-created urgency does not entitle the applicants to urgent relief. Application struck from the roll for lack of urgency. The Sanctity of the Urgent Court has to be preserved for matters that are deservingly, lest the Urgent Court would be flooded with matters that are undeserving self-created therefore subjectively orientated urgency.
- [3] This Court has consistently refused urgent applications in cases where the urgency relied-upon was subjective urgency, clearly self-created. Consistency is important in this context, as it informs the public and legal practitioners that

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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.

- [4] 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 "There 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".
- [5] 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.
- [6] In *Vumatel (Pty) Ltd v Majra and others*[2] the Court in the context of restraints of trade said the following about urgency:

"I accept that restraints of trade have an inherent quality of urgency. The position comes from the following dictum in Mozart Ice Cream Classic Franchise (Pty) Ltd v Davidoff and another where the court held: 'I accept that breaches of restraint of trade have an inherent quality of urgency.'"

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- [7] The Court in *Vumatel* however added the following[3]:

"... An urgent restraint of trade application is still nothing else but an urgent application, just like any other urgent application where final relief is sought. The ordinary requirements applicable to such urgent applications must still find application. The fact that one is dealing with a restraint of trade is not some kind of license that in itself establishes urgency, to the exclusion of all other considerations."

- [8] In summary, the requirements for an urgent application in general are:

- (a) the applicant has to set out explicitly the circumstances which renders the matter urgent with full and proper particularity;
- (b) reasons must be stated why he/she (believes that he/she substantial redress at the hearing in due course;
- (c) where final relief is sought the court must even be more circumspect to determine whether urgency has been established;

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- (d) the urgency must not be self-created; [my emphasis is should never be a subjectively perceived urgency].
 - (e) respondent's prejudice as a result of abridgement of prescribed time limits and an early hearing is relevant; and
 - (f) more immediate reaction by an applicant by instituting litigation points favourably to urgency[4].
- [9] No litigation was pursued by the applicants on discovering that the respondent Will not extend the licence. In casu, the applicant was made aware as early as on the 19th of August 2024, he did nothing. His response also has a tendency of dilatory tactics. They only responded to Icasa- second respondent's

letter, only on the 29th of September 2024. Indeed, when one looks at these two correspondences it is clear that there was some dragging of, on, of feet by the applicant. There is no urgency in spite of the fact that they were informed that their licence was going to expire on the 31st January 2025. The applicant did nothing at all only to wake up on the 30th of January 2025 to attempt to bring this application on urgency on a basis of a clearly, purely self-created urgency.

- [10] Urgent Court should not be abused, the sanctity of urgent court has to be preserved for matters that are deservedly urgent, lest the urgent court would be

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flooded with matters that are so undeservedly, self-created, and subjective orientated urgency like in this particular matter.

- [11] It is this Court's view that the applicant has failed to convince the Court that the Court should bend backwards and admit same to urgency in terms of Rule 6(12). As a consequence, and for the reasons that were made before this Court and submissions advanced by both the applicant's counsel together with the respondent's counsel, I am not convinced that the applicant has overcome the threshold prescribed in Rule 6(12) and I am of the firm view that the application ought to be struck from the roll for lack of urgency.
- [12] The application therefore falls to be struck from the roll and the costs should follow the suit.

Order

I then make the following order: -

- (1) The applicant's urgent application be and is hereby struck from the roll for lack of urgency.
- (2) The applicant shall pay the respondent's costs or wasted cost for the urgent application which was unsuccessfully launched on the 31st of January 2025, including the costs of today, same to be tendered on scale C.

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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 7 February 2025.

Appearances:

Advocate for Applicant(s): Peter Mudimeli Instructed by: Tshitangano Attorneys Advocate for Respondent(s): Kennedy Tsatsawane SC Instructed by: HM Chauke Attorneys Inc Heard: 7 February 2025 Delivered: 7 February 2025

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

[2]

[2018] 39 ILJ 2771 (LC) at para 4.

[3] At para 5; see also Ecolab (Pty) Ltd v Thoabala and another [2017] 38 ILJ 2741 (LC) at para 20.

[4] Association of Mineworkers and Construction Union and others v Northam Platinum and another [2016] 37 ILJ 2840 (LC) at paras 20-26, and the authorities cited in it; Select PPE (Pty) Ltd v Ryan Holmes and Universal Safety Products (Pty) Ltd, unreported judgment, Labour Court, Case No 115703-2024.

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