

SOUTH AFRICA / JUDGMENT

Matthys v Minister of Defence and Military Veterans (Ex tempore) (2025-019481)

[2025] ZAGPPHC 269 (26 February 2025)

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COURT

North Gauteng High Court, Pretoria

BEFORE

Yende

CASE / FILE NUMBER

2025-019481

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No. 2025-019481

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

DATE 13 March 2025

SIGNATURE

In the matter between:

ANDREW MATTHYS

First Applicant

and

MINISTER OF DEFENCE AND MILITARY VETERANS First Respondent

Summary: -Applicants seek condonation, non-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 for urgent relief granted.

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JUDGMENT- EX TEMPORE

YENDE AJ

- [1] Firstly, the court would like to record its displeasure and reiterate its displeasure in the manner in which the respondent has conducted its case, more so this urgent application which was launched before this court.
- [2] At the inception of these proceedings it became apparent that the respondent had not complied with the directives of this court.

However, the court gave the counsel for the respondent an opportunity to address the court as to the non-compliance thereof which it did. Counsel for the applicant was also given an opportunity to address the non-compliance.

- [3] Having heard both, counsels the court found that it would be in the interest of justice to hear this matter in light of the fact that although caselines was locked as per the courts supplementary directive the respondent was able to reply to the applicant's

founding affidavit and similarly the applicant was able to reply to the respondent's answering affidavit and at the hearing of this urgent application both parties seemed ready to proceed with the urgent application. The court in the interest of justice condoned the non-compliance with the court supplementary directive Thus, the matter proceeded with quiet ease though the parties seemed averse to one another.

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- [4] Points in limine were raised, the court heard same and counsel for the applicant was given an opportunity also to reply to the points in limine that were raised by the respondent counsel. The court considered the points in limine raised and justifiably dismissed same for reasons that would be mentioned later on this ex- tempore judgment
- [5] In this urgent application the applicant seeks relief, either final or interim, to the effect that he and his co-employees may not be forced to move into a dangerous building that was severely damaged by fire, has not been restored into a proper, conducive and habitable human structure. The said building has not been used since 2013, that is what is alleged in the founding affidavit.

[6] It appears that on 3rd February 2025 the applicant received a verbal instruction, an order, that their office would be relocated to the Bester Building, situated at SA ARMY Headquarters compound 981, Dequar Road, Salvokop, Pretoria. The said building has no basic human amenities such as electricity, water and sanitation (there are no functional toilets in the building) it is a dilapidated building similar to buildings in a war-torn zone. This information is clearly displayed on documents that were uploaded on caselines.

[7] The SANDF(MILITARY) is aware that the said building is not fit for purpose and accordingly not habitable by humans and a health hazard to human being. As recent as on 3 February 2025 a report was received about this building and the report concludes to the effect that:

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“9 All hazards identified in this report and displayed in photos are regarded as non-compliance with the Occupational Health and Safety Act, 58 of 1993,

10 The SO2 OHS SA Army Support Formation hereby recommends that all the above-listed hazards that may pose a risk to the occupants must be attended to before occupants can occupy the building”.

[8] To this day of the hearing of this application it seems to appear that nothing has been done to restore the said building and to make same to be compliant with the occupation Health and Safety Act 58 of

1993. In fact, from the photos attached as annexures to the applicant’s founding affidavit, the building is not by any world standards suitable for human habitation let alone the SA Military personnel whom one should be regarded as the shield and pride of any nation world over.

[9] The applicant contends the occupation of this building in its current lamentable state violates his and other fellow co- worker’s constitutional right to human dignity, right to life, privacy, a healthy working environment that is not harmful to human health and well-being. These rights are enshrined in the Constitution of the Republic of SA Act 108 of 1996.

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[10] There is however, to mention that there are other buildings that are occupied, the court does not know on what basis were those buildings occupied when no report has been obtained from the independent engineer to give a comprehensive report to the effect that the said building is conducive for human habitation in contrast to the gloss pictures handed in late to the court that depicts the certain portions of the building to be good looking.

[11] The court, as it sits here does not know which part of the building is habitable, which part of the building is not habitable.

[12] Now I turn to make a ruling with regard to the urgency of this application.

Urgency

[13] 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”.

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

[13.2] In the matter of *Mogalakwena Municipality v Provincial Executive Council and others*[2] Justice Tuchten held at paragraphs 64 as follows:

“It seems to me that when urgency is in issue the primary investigation should be to determine whether the applicant will be afforded

substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent”.

[14] It is the court’s strong convictions that in a country like ours, South Africa where the Constitution is the supreme law of the land which enjoys the Bill of Rights, fundamental basic human rights that are enriched in the Constitution that applications involving deprivations of human life, human liberties, threats to human health and well-being, the loss of one’s shelter or some other basic human essentials of daily life. In this regard I think of water, sanitation, electricity, destruction of property, including financial deprivation, in all probabilities enjoys urgency.

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[15] No rightful thinking Army Ministry could ever allow his/her Military personnel and/or Army support formation personnel to risk and compromise their lives, well-being, and occupy such a dilapidated, vandalized, non-compliance with Health and Safety Act unless he/she wants them to perish.

[16] Based on our courts stare decisis, precedence mentioned supra I am convinced that the applicant in casu have met the threshold as required in Rule 6(12) and that it is abundantly clear that the situation the applicant and his co-workers find themselves in is dire and is not about whether they could not be able to obtain “substantial redress at a hearing in due course”.

[17] Therefore, on a conspectus of all the evidence set out herein and for all the reasons and submissions advanced by the applicant together with the respondent's counsel, this court is convinced that the applicant has overcome the threshold prescribed in Rule 6(12) (b).

[18] As the consequent I make following order:

Order:

1. That this matter is treated as one of urgency and that for the reasons mentioned supra condonation is granted for the non-compliance with the normal Rules of Court with regard to service, form and time-periods as contemplated in Rule 6(12).

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2. The following interim relief is granted, pending the finalization of investigations by the Department of Labour and/or any internal appeal processes in

relation thereto, and/or any possible subsequent Court proceedings in terms of the Occupational Health and Safety Act, 85 of 1993 and/or Court proceedings to review and set aside the instructions to move into the relevant building:

2.2. The First to Fifth Respondents are interdicted from requiring that the Applicant, or any other employee work to from the Bester Building, situated at 9[...] D[...] Road, Salvokop, Pretoria;

3. That the First to Fifth Respondents are ordered to pay the cost of this application on an attorney and client scale, jointly and severally, the one to pay the other/s to be absolved.

J YENDE

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

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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 26 February 2025.

Appearances:

Advocate for Applicant: JGC Hamman Instructed by: Griesel van Zanten Inc Advocate for Respondent(s): B Monyeki Instructed by: State Attorney Pretoria Heard: 26 February 2025
Delivered: 26 February 2025

[1] (11/33767)

[2011] ZAGPJHC 196 at par 6.

[2] 2016

(4) SA 99 (GP).

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