

SOUTH AFRICA / JUDGMENT

Maxopani and Another v Semathu (3004/2025) [2025] ZANWHC 86 (16 May 2025) [2025] ZANWHC 86

COURT

North West High Court, Mafikeng

BEFORE

Khan AJ

CASE / FILE NUMBER

3004/2025

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IN

**THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG****Case****No: 3004/2025****Reportable: NO****Circulate to Judges: NO****Circulate to Magistrates:**

NO

Circulate to Regional
Magistrates: NO**In the matter between:**GENTLE
MAXOPANI
First Applicant
MAXOPANI HOLDINGS t/a
PYRAMID
GROUP FUNERALS
Second Applicant
(Registration number:
2013/216040/07)
and
JULIA
SEMATHU
Respondent

JUDGEMENT

KHAN AJ

- [1] The First and Second Applicants' ("the Applicants'") by way of urgent application, launched an application for interdictory relief which was enrolled and heard by me on Friday, 9 May 2025. The Applicants' seek to interdict and restrain the Respondent from making and/or posting defamatory statements, remarks and articles about the Applicants' and to remove all defamatory social media posts relating to the Applicants'. The Application is opposed by the Respondent who submits that the application is not urgent and is in fact an abuse of process.
- [2] Rule 6(12) of the uniform rules of Court regulates urgent applications and provides:-
- (a) In urgent applications the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as it deems fit.
 - (b) In every affidavit filed in support of any application under paragraph
 - (a) of this subrule, the applicant shall set forth explicitly the circumstances which it is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.
- [3] "Writing about the purpose of rule 6(12), Norman Manoim said:

'The judicial system, not unlike the private individual, does not take kindly to people who push to the front of the queue. The doctrine of urgency was developed and encapsulated in the rules of court in order to allow those for whom the wait in the queue would not be worth it unless they push in front, to do just that without attracting dirty looks from those behind them.'

The practice and procedure of urgent applications was considered in detail in *Luna Meubel Vervaardigers (Edms) Bpk v Makin & another (t/a Makin Furniture Manufacturers)*, where Coetzee J stated,

'Practitioners should carefully analyse the facts of each case to determine, for the purposes of setting the case down for hearing, whether a greater or lesser degree of relaxation of the Rules and of the ordinary practice of the Court is required. The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith. Mere lip service to the requirements of Rule 6(12)(b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down.'

In *I L & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd & another; Aroma Inn (Pty) Ltd v Hypermarket (Pty) Ltd & another*, 4 Fagan J stated: 'It is clear from the requirements set out in Rules 27 and 6(12) that the Court's power to abridge the times prescribed and to accelerate the

hearing of the matters should be exercised with judicial discretion and upon sufficient and satisfactory grounds being shown by the applicants. The major considerations normally and in these two applications are three in number, viz the prejudice that applicants might suffer by having to wait for a hearing in the ordinary course; the prejudice that other litigants might suffer if the applications were given preference; and the prejudice that respondents might suffer by the abridgment of the prescribed times and an early hearing.'

Later in the judgment, the learned judge, with reference to prejudice to other litigants in general, held that the issue boiled down to whether the harm alleged by an applicant in an urgent application was the kind of harm that justified 'the disruption of the roll and the resultant prejudice to other members of the litigating public' whose matters would take longer to be heard. [1]

- [4] Whether an Applicant has succeeded in satisfying the requirements for urgency must be determined by the contents of the Founding Affidavit[2]. In *East Rock Trading 7 (Pty) Limited and Another v Eagle Valley Granite (Pty) Limited*[3] and Others, the Court held: -

"The import thereof is that the procedure set out in Rule 6(12) is not there for the 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 heard as an urgent application is underpinned by the issue of absence of substantial redress in the application in due course. The rules allow the court to come to the assistance of a litigant because if the latter, were to wait for the normal course laid down by the rules, it will not obtain substantial redress."

- [5] The Applicants' deal with urgency at paragraphs 23 to 26 of the Founding Affidavit indicating that:-

5.1 The matter is semi urgent and the Applicants' will not obtain substantial redress at a hearing in due course as it is evident from both the conduct of the Respondent that the Respondent will continue to make regular defamatory post about the Applicants' which will severely prejudice and damage the Applicants' reputation and esteem within the community which would have a detrimental effect on the First Applicant's business.

5.2 That there is a common law duty upon the Applicants' to limit the extent of any damages incurred and this application on a semi urgent basis is the only manner in which such damages can be mitigated.

5.3 Should this application for an interdict be instituted in the normal course it would take up to 6 months or more to be finalised which would defeat the purpose of this application and finally that the Respondent has been given the opportunity to refrain from making defamatory publications but has elected to continue.

- [6] The Applicants refer to various Facebook posts posted by the Respondent in support for their contention that the matter is urgent, more particularly the Facebook post, dated the 17 April 2025 wherein the Respondent indicates that she will, “every week post videos of everything you have done. I will have testimonies of people that you have harassed and bullied”.
- [7] It appears at some point before the 24 April 2025, the Maxopani Family issued an official statement, advising the Respondent to seek justice and to desist from referring to the family business. On the 24 April 2025, the Applicants’ Attorneys of record, Du Plessis and Van Der Westhuizen Inc Attorneys addressed a letter to the Respondent calling on her to refrain from publishing any further defamatory statements or comments regarding the First Applicant.
- [8] What appears evident from the annexures to the Founding Affidavit, is that most posts were made by the Respondent on Facebook on the 17 and 18 April 2025, some of the Annexures are undated and simply indicate that the post was made “5d” and “6d”. In argument, the Applicants’ were unable to clarify the exact dates of these posts.
- [9] It is not evident from the Annexures to the Founding Affidavit that the Respondent made any further posts subsequent to receipt of the letter from Du Plessis and Van Der Westhuizen Inc Attorneys, despite the Respondent indicating that she would continue to do so.
- [10] As evidence that the Respondent continues to defame the Applicants’, the Applicants referred to their Replying Affidavit in argument and placed reliance on Annexures “RA1” and “RA2. Annexure “RA1” is a Facebook post by a person named Gupta PapaRemo Ntswe, (“Ntswe”) dated 30 April 2024, which states,
- “ they allegedly took Julia to Mahikeng High Court she apparently received court interdic, hence her silence... Bathwamodimo go leswe kakwa!! Setopo seya kafa le kafa.”*
- [11] The Respondent subsequently responded to the message of Ntswe stating “let me help you Malome Gupta PapaRemo Ntswe since you are so misinformed or sent to send wrong information about me.....”
- [12] As stated above, the Applicants place reliance on Annexures “RA1” and “RA2” as evidence of the Respondent’s continued harassment. The Applicants’ must make out their case in the Founding Affidavit and not rely on evidence obtained subsequent to filing the Founding Affidavit to bolster their argument on urgency.
- [13] It is apparent that Annexures “RA1” and “RA2 are not similar to the posts made by the Respondent previously and was not initiated by her, same appears to be a reply to Ntswe. In addition, unlike previous posts, neither the First nor the Second Applicant are referenced or copied in by the Respondent.
- [14] The post by Ntswe in fact refers to the Respondent’s silence and belies the assertion that the Respondent continued and will continue with her posts unless this matter is heard urgently.

- [15] This Court is not convinced that the matter is urgent or that the Applicants' will not be afforded substantial redress at a hearing in due course. There is no basis to justify why the Applicants' should be allowed to jump the queue ahead of other litigants.
- [16] Various points in limine were raised by the Applicants' pertaining to the commissioning of the Respondents Answering Affidavit, the Court does not believe that this needs to be considered in a determination of urgency and is in fact a symptom of the truncated time periods under which the Respondent had to operate.

ORDER

Consequently, the following order is made:

- (i) The Application is struck from the roll;
- (ii) The Applicants' are to pay the wasted costs of this Application, on Scale A.

KHAN JL

Acting Judge of the High Court

Northwest Division, Mafikeng

Heard: 9 May 2025

Judgment:

16 May 2025 Applicant's Counsel: Adv B Riley Instructed by: CJP Oelofse Attorneys Respondent's Counsel: Advocate T J Makgate Instructed by: Leketi Attorneys

[1] Mlezana and Others v South African Civic Organisation (3208/18)

[2018] ZAECGHC 114 912 November 2018, (Plasket J at paragraphs 5 to 8).

[2] IL & B Marcow Caterers v Greatermans SA 1981 (4) SA 108 (C) AT 111A

[3] (11/33767) [2011] ZAGPJHC 196 (23 September 2011) at paragraph 6

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Prepared on 9 October 2026 · Esheria