

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no. 5630/2021

In the matter between:

SANDILE JOHANNES TSOPO

Applicant

and

MAGISTRATE J N G NHLAPO N.O.

1st Respondent

BUILDMAT (PTY) LTD

2nd Respondent

MATJHABENG LOCAL MUNICIPALITY

3rd Respondent

SHERIFF VIRGINIA

4th Respondent

CORAM: **VAN RHYN, AJ**

HEARD ON: **2 DECEMBER 2021**

DELIVERED: **15 DECEMBER 2021**

[1] This application was brought on an extremely urgent basis on 2 December 2021. After hearing arguments on behalf of the applicant, I made the following

order:

1. The application is struck from the roll for lack of urgency.
- [2] This is my written reasons for the order granted on 2 December 2021.
- [3] The applicant, Mr S J Tsopo is a businessman from Virginia, Free State Province. The purpose of the application is to obtain the following relief:
- "1. That the application be heard as an urgent application on an *ex parte* basis in accordance with rule 6(12) of the Uniform Rules of Court and that the applicant's failure to comply with the rules relating to forms and service be condoned.
 2. That a rule *nisi* is issued calling upon the respondents to show cause on Thursday the 3rd day of February 2022 why an order should not be made in the following terms:
 - 2.1 Staying the execution of the court order granted by the Magistrate Virginia under Case Number: 918/2019 on the 15th the day of November 2021, pending the final determination of the application for review.
 3. Pending the return day, the 4th respondent is interdicted from executing the court order in the above subparagraph 2.1"
- [4] The facts presented by the applicant are the following:
- 4.1 The second respondent ("Buildmat") was the applicant in proceedings under case number 918/2019 in the Magistrates Court held at Virginia. Buildmat, as the owner of a property situated in Virginia launched an application for the eviction of the applicant and all persons or entities occupying the property through him.
 - 4.2 The applicant opposed the application on the basis that he and Buildmat entered into a verbal agreement to purchase the property. Due to the applicant's incarceration, he refused to sign a lease agreement entered into between Buildmat and his late wife. The court *a quo* held that the applicant was in unlawful occupation of the property.

- 4.3 The applicant argued that his occupation of the property was not unlawful and that he should not be evicted. He did not pay any rental and did not attend to the municipal expenses in relation to the property.
- 4.4 The court *a quo* was satisfied that Buildmat is the owner of the property and granted the eviction order against the applicant on 23 February, 2021.
- 4.5 The applicant was granted 40 days from date of service of the order to evacuate property.
- 4.6 The Sheriff was furthermore authorised to remove the applicant from the property in the event of him failing to comply with the order granted by the court *a quo*.
- 4.7 The applicant avers that it appears as if Buildmat subsequently experienced difficulties in enforcing the judgment which culminated in the Sheriff requesting Buildmat to seek an amendment of the eviction order.
- 4.8 On 15 November 2021 the court order was amended to enable the Sheriff to execute the order.
- [5] The urgent application is brought by the applicant on the basis that the Magistrate, cited as the first respondent, was *functus officio* after handing down the judgment on 23 February 2021 and that any amendment of the order is therefore highly irregular.
- [6] The applicant was not given notice of an application for the variation of the order granted on 23 February 2021 and therefore brought an application for review pertaining to the variation/amendment of the order granted on 15 November 2021.
- [7] The order granted on 23 February 2021 authorised the eviction of the applicant and all persons occupying under the applicant to vacate the property described as: Erf 14 George Young Street, Joel Park, Virginia, Free State, for within 40 calendar days from date of service of the order upon him. In terms of the court order, each party is ordered to pay his own costs of the application.

- [8] On 15 November 2021 the court order dated 23 for February 2021 was amended to read that in light of the lockdown Level 1 Regulations the applicant and any other occupiers are ordered to vacate the property by no later than 12h00 on 30 November 2021 failing which the Sheriff is authorised to remove the said occupiers from the premises. The court order was further amended that the respondents, which now includes the Matjhabeng Local Municipality, (cited as the second respondent in the court *a quo*), to pay the costs of the application.
- [9] The first issue to consider is whether the applicant has made a case for urgency. The approach to adopt when dealing with an urgent application is governed by the provisions of rule 6(12) of the Uniform Rules of Court. The court has discretionary power to dispense with the forms and service provided for in the rules and dispose of the matter at such time and place in such manner and in accordance with such procedure as he deems fit.
- [10] Rule 6 (12) further provides that an applicant in his or her founding affidavit:
 "... shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course."
- In dealing with the requirements of rule 6 (12) the court in **East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others**,¹ held that:
- "[6] The import thereof is that the procedure set out in rule 6(12) is not there 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 heard as an urgent application is underpinned by the issue of absence of substantial redress in an 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."
- [11] Whether a matter is urgent depends on the relief sought seen in context with the facts of the case. The application was brought on an *ex parte* basis. Service

¹ (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

of the application was not effected on any of the four respondents. The applicant did not provide any reason why service had not been effected. The applicant does not reveal when the review application was lodged nor when he received notice of the amendment of the court order. An applicant who cannot convince the court of the rationality and the necessity for the timeline devised by him or her, should expect his or her application to be struck from the roll with costs.

- [12] With regards to urgency, the applicant contends as follows: "This matter is extremely urgent as the relief that I seek cannot be obtained effectively in proceedings heard in the ordinary course. I have filed an application for review. The Sheriff however insists that they will proceed with the execution of the court order unless interdicted by the Honourable Court. I have approached the Honourable Court as soon as I became aware of the position of the Sheriff, which is today."
- [13] The amendment to the court order relates to the lockdown restrictions due to the Covid -19 pandemic and the time within which the applicant had to vacate the property. The time period was obviously extended to 30 November 2021. The applicant did not explain why he did not comply with the order granted on 23 February 2021. The applicant did not lodge an appeal against the judgement delivered on 23 February 2021. The facts indicate that the urgency of which the applicant complains was self- created² in that he did not vacate the property but waited until the Sheriff knocked at his door to execute the order granted by the court *a quo*. The applicant fails to address the period from 23 February 2021 when the eviction order was granted.
- [14] The applicant's grievances that he has now been mulched with a cost order can be addressed at a hearing in due course. I fail to see the nexus between the amendment of the court order and the alleged urgency. The applicant was evicted from the property in terms of the order granted on 23 February 2021 and the amendment does not alter the fact that he has to evacuate the property.

² Lindeque and others v Hirsch and Others, *In Re Prepaid 24 (PTY) Limited* (2019/8846) ZAGPJHC (3 May 2019).

The allegation that the amendment to the court order renders the application to be urgent does not hold water.

[15] As a result, I am not convinced that the relief sought by the applicant necessitates this court's urgent attention.

ORDER.

[16] In the result it is ordered that:

1. The application is struck from the roll for lack of urgency.



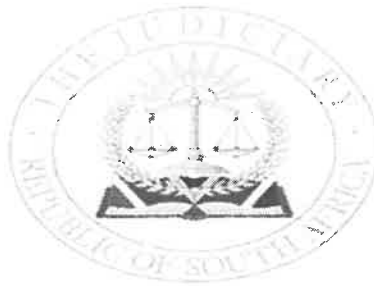
VAN RHYN, A J

On behalf of the Applicant:

Instructed by:

MR. M DLABANTU

MOTAUNG ATTORNEYS



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[9] The first issue to consider is whether the applicant has made a case for urgency. The approach to adopt when dealing with an urgent application is governed by the provisions of rule 6(12) of the Uniform Rules of Court. The court has discretionary power to dispense with the forms and service provided for in the rules and dispose of the matter at such time and place in such manner and in accordance with such procedure as he deems fit.

[10] Rule 6 (12) further provides that an applicant in his or her founding affidavit:
 "... shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course."

In dealing with the requirements of rule 6 (12) the court in **East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others**,¹ held that:

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On behalf of the Applicant:

Instructed by:

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