

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: D3814/2024

In the matter between:

ANGLO WEALTH SHARIAH (PTY) LTD **APPLICANT**

and

**THE TRUSTEES FOR THE TIME BEING OF THE
MOHAMED NAZEEM ALI TRUST IT 3[...]** **FIRST RESPONDENT**

**THE TRUSTEES FOR THE TIME BEING OF THE
SIKANDER CASSIM TRUST IT 3[...]** **SECOND RESPONDENT**

**THE TRUSTEES FOR THE TIME BEING OF THE
ISMAIL GOOLAM MOHAMED KOLIA TRUST
IT 3[...]** **THIRD RESPONDENT**

MOHAMED NAZEEM ALI **FOURTH RESPONDENT**

SIKANDER CASSIM **FIFTH RESPONDENT**

ISMAIL GOOLAM MOHAMED KOLIA **SIXTH RESPONDENT**

ORDER

UPON the Motion of Counsel for the Applicant and upon reading the NOTICE OF MOTION and the other documents filed of record and after hearing the argument of counsel,

IT IS ORDERED

1. The Applicant's non-compliance with the Rules of this Honourable Court is condoned and it is directed that this Application be heard as one of urgency in terms of Rule 6(12).
2. The Special and General Notarial Bond (the Notarial Bond), namely, Annexure "FA2" to the Founding Affidavit read, with Annexure "RA2" to the Replying Affidavit is perfected.
3. The Applicant, as a Secured Creditor, is authorised to take physical possession of the assets covered therein.
4. The Respondents are directed to forthwith disclose to the Applicant's Attorneys of Record, the precise current whereabouts of the assets reflected therein.
5. The Respondents are directed to forthwith disclose to the Applicant's Attorneys of Record, the information sought in Annexure "FA14.2" to the Founding Affidavit and to provide the Applicant with the documentation of Records in support thereof.
6. The Costs of this Application are to be paid by the Respondents jointly and severally, the one paying, the others to be absolved, on the Attorney and Client scale.

REASONS FOR JUDGMENT

DAVIS AJ

Introduction

[1] On 24 May 2024 I granted an order which was contained in Part A of the applicant's notice of motion. The application was heard on an urgent basis on the afternoon of 23 May 2024. The application was opposed by the respondents.

[2] The applicant approached this court, on motion on an urgent basis, seeking an order that the applicant be authorized to perfect its security in terms of the special and general notarial bond, B[...] attached as annexure "FA1" to the founding affidavit.

Parties

[3] The applicant is Anglo Wealth Shariah (Pty) Ltd, a company duly registered and incorporated with limited liability in accordance with the company laws of the Republic of South Africa, having its registered address at Suite 10, [...] R[...] Circle, Ridgeside, Umhlanga, KwaZulu-Natal. The applicant is further a registered credit provider as contemplated in the National Credit Act.¹

[4] The applicant is represented by Mr *Norwitz* who also signed the certificate of urgency. The respondents are represented by Ms *Moodley*.

[5] I cite the respondents as they were cited in the original papers filed. The first respondent is comprised of the Trustees for the Time Being of the Mohamed Nazeem Ali Trust no. 3 [...], a trust duly registered as such in accordance with the trust laws of the Republic of South Africa. The chosen *domicilium* of all of the respondents is, Shop [...], R[...] P [...], 6[...] P[...] Boulevard, Umhlanga Ridge, KwaZulu-Natal.

[6] The second respondent is comprised of the Trustees for the Time Being of the Sikander Cassim Trust no. 3 [...], a trust duly registered as such in accordance with the trust laws of the Republic of South Africa.

¹ National Credit Act 34 of 2005.

[7] The third respondent is comprised of the Trustees for the Time Being of the Ismail Goolam Mohamed Kolia Trust no. 3[...], a trust duly registered as such in accordance with the trust laws of the Republic of South Africa.

[8] The fourth respondent is Mohamed Nazeem Ali, an adult businessman carrying on business within the jurisdiction of this court at Shop [...], R[...] P[...], 6[...] P[...] Boulevard, Umhlanga Ridge, KwaZulu Natal.

[9] The fifth respondent is Sikander Cassim, an adult businessman carrying on business within the jurisdiction of this court at Shop [...], R[...] P[...], 6[...] P[...] Boulevard, Umhlanga Ridge, KwaZulu Natal.

[10] The sixth respondent is, Ismail Goolam Mohamed Kolia, an adult businessman carrying on business within the jurisdiction of this court at Shop [...], R[...] P[...], 6[...] P[...] Boulevard, Umhlanga Ridge, KwaZulu Natal.

[11] The respondents are cited as contracting parties and/or sureties and co-principal debtors in relation to a partnership, trading as Shadows Retailing Clothing within the area of this jurisdiction at Shop [...] R[...] P[...], 6[...] P[...] Boulevard, Umhlanga Ridge KwaZulu Natal.

Points in limine

[12] The respondents raised two points in limine, the first was urgency and the second was that the respondents were incorrectly cited. I deal with the citing of the parties first.

[13] The respondents object to the citing of the trustees by the term 'The Trustees for the time being of the trust.' In addition, they aver that the trusts are imprecisely cited, it is not the Mohamed Nazeem Ali trust but the Mohamed Nazeem Alli trust. Similarly, it is the Kolia trust and not the Kotia trust, it follows that the citing's of Alli and Kolia is at all times incorrect. The argument, particularly in light of the failure to cite all the trustees is that it renders the application defective.

[14] Ms *Moodley* did not persist with the argument as spelling mistakes and typographical errors are usually of little importance and can be corrected. There is no prejudice to the respondents in the citing of the trusts in the manner that the applicant did. As counsel do the applicants argued, trustees of a trust change, the registration number of the trusts are correct and I fail to see how the trusts and the trustees can be prejudiced. It is in my view of no moment.

[15] As McCall J in *BOE Bank Ltd (Formerly NBS Boland Bank Ltd) v Trustees, Knox Property Trust*² held as follows;

‘It may well be that it would have been more correct to describe the principal debtor as the named Trustees, in their capacity as Trustees of the Trust or as the Trustees for the time being of the Trust. Certainly, as appears from *Rosner’s* case (*supra*), where there is litigation against a trust, the trustees in their representative capacity and not the trust, as such, ought to be cited. That however, is not the end of the matter because it is clear that, notwithstanding the requirement of the provisions of section 6 of Act 50 of 1956 that the identity of the creditor, the surety and the principal debtor must be capable of ascertainment by reference to the provisions of the Deed of Trust, extrinsic evidence, other than the evidence of the parties as to their negotiations and consensus may be led in order to identify one of those parties.’

[16] The point in limine must accordingly fail. I now deal with the second point in limine.

Urgency

[17] A litigant that approaches the court for relief on an urgent basis must comply with Uniform rule 6(12)(b). The rule reads:

‘In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances which is averred

² *BOE Bank Ltd (Formerly NBS Boland Bank Ltd) v Trustees, Knox Property Trust* [1999] 1 All SA 425 (D) at 436. See also *Shoprite Checkers (Pty) Ltd v Trustees for The Time Being of The 3 Broten Trust* [2023] ZAGPJHC 130 para 18.

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.’

[18] Two requirements are to be met before urgency can properly be founded: firstly, the urgency should not be self-created³ and secondly, the applicant must provide reasons why substantial relief cannot be achieved in due course.⁴ ‘The importance of these provisions is that the procedure set out in rule 6(12) is not there for the mere taking.’⁵

[19] Notshe AJ in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*⁶ stated:

‘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.’

[20] As stated by Maumela J in *Kibo Property Services (Pty)⁷ Ltd*, “ the import of this is that the test for urgency begins and ends with whether the Applicant can obtain substantial redress in due course. It means that a matter will be urgent if the Applicant can demonstrate, with facts, that it requires immediate assistance from the court, and that if that application is not heard earlier than it would be in due course,

³ *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* 2004 (2) SA 81 (SE) paras 23, 33-34.

⁴ *Rokwil Civils (Pty) Ltd and Others v Le Sueur N.O and Others* [2020] ZAKZDHC 61 paras 16-19.

⁵ *In re: Several matters on the urgent court roll* 2013 (1) SA 549 (GSJ) para 7.

⁶ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 para 6.

⁷ *Kibo property services (Oty) Ltd and others v Purported board of Directors, Amberfield* (45733/2021) ZAGPHC 700 (25 October 2021)

any order that may later be granted will by then no longer be capable of providing the legal protection required.’⁸

[21] First, De Wit,⁹ in his article discussing *East Rock Trading*, with regards to the harm the applicant may suffer where the matter is not dealt with on an urgent basis, wrote as follows:¹⁰

‘Harm does not found urgency. Rather, harm is a mere precondition to urgency. Where no harm has, is, or will be suffered, no application may be brought, since there would be no reason for a court to hear the matter. However, where harm is present, an application to address the harm will not necessarily be urgent. It will only be urgent if the applicant cannot obtain redress for that harm in due course. Thus: harm is an antecedent for urgency, but urgency is not a consequence of harm.’

[22] Secondly, Strydom J in *Roets N.O. v SB Guarantee Company (RF) (Pty) Ltd and Others*¹¹ regarding the explanation that the applicant must furnish as to why the matter is not urgent and cannot be brought be in the ordinary course, held:¹²

‘In my view, urgency which is self-created in a sense that an applicant sits on its laurels or take its time to bring an urgent application can on its own lead to a decision that a matter is struck off the roll. It would of course depend on the explanation provided but if the explanation is lacking and does not cover the full period from when it was realised, or should have been realised, that urgent relief should be obtained. If this criteria to strike a matter from the roll is not available to a court, a court would be compelled to deal with an urgent application where for instance nothing was forthcoming for weeks or months and a day or two before an event was going to take place a party who wants to stay that event can approach a court and argue that if an order is not immediately granted such party would not obtain substantial redress in due course. If this is the approach to be adopted by a

⁸ *Kibo Property Services (Pty) Ltd and Others v Purported Board of Directors Amberfield Manor Hoa NPC and Others* [2021] ZAGPPHC 700 para 21.

⁹ V de Wit ‘The correct approach to determining urgency’ (2021) 21(2) *Without Prejudice* 12.

¹⁰ *Ibid* at 13.

¹¹ *Roets N.O. and Another v SB Guarantee Company (RF) (Pty) Ltd and Others* [2022] ZAGPJHC 754.

¹² *Ibid* para 26.

court there exist no reason why any explanation for the delay should be provided at all. An applicant only have to show that should interim relief not be granted it will suffer irreparable harm.'

Submissions opposing urgency

[23] One of the bases for the respondents opposition is that the application is not urgent. The respondents however do not meaningfully engage with the grounds upon which the applicant seeks to find urgency. There is an averment that the applicant was aware of the 'supposed difficulties' of the respondents' business since October 2023 when the respondents were in breach of the contract, and the delay so it is suggested, is self-created.

[24] The application is opposed on the basis that the original agreements between the parties was founded on the basis that the parties would comply with Shariah law and that the subsequent contracts contain interest charges that are prohibited. This would effectively mean that a finding by this court that the subsequent contracts, settlement agreements, acknowledgement of debt, and finally the notarial bond entered into by the respondents is of no force and effect due to a failure to comply with Shariah law.

[25] The respondents belatedly deny any indebtedness to the applicant and instead aver that the respondents are actually in credit with the applicant. They further deny dissipating assets.

Submissions in support of urgency

[26] The circumstances allegedly giving rise to urgency upon which the applicant relies are, as suggested by counsel, multifarious. The respondents are in breach of their contractual obligations to the applicant and are currently indebted to the applicant in the amount R10 965 168.23.

[27] The respondents are depleting stock secured by the special notarial bond and using the proceeds to pay other unsecured or concurrent creditors. They are hiring and/or dissipating the assets covered by the notarial bond by failing to provide

updated bank statements, stock sheets, debtor and creditor analyses, proof of insurance and other financial information.

[28] The respondents are not maintaining the assets covered by the notarial bond, nor are they insuring the assets covered by the bond. They are failing to pay rentals in full now, in addition employees are being short-paid. Similarly, suppliers are not been paid up to date.

[29] As it currently stands the business is struggling to meet its obligations and the respondents are obtaining credit from other financial institutions and servicing that debt without servicing the debt due to the applicant

[31] The applicant's submission is that the prospects of obtaining substantial redress in the ordinary course are now close to nil. On the contrary it submits that the harm and prejudice being suffered by the applicant is increasing with each passing day.

[32] The applicant believes that it is a matter of time before someone applies for the sequestration and/or liquidation of the Shadows Retail Company. If that happens it will be too late for the applicant to perfect the general component of the notarial bond in which event the applicant will not be a secured creditor.

[33] Moreover it would only be prudent for the applicant, should it wish to sequester or liquidate the respondents it would want to do so as a secured creditor in terms of both the special and general components of the notarial bond. As a litigator takes a long time to get on the court roll and the applicant believes that by the time it gets to court on the opposed roll, other than on urgent basis, his security would in all probability be illusory.

[34] In order to protect its exposure to the respondents the applicant sought to register the notarial bond in February of 2024. Two letters of demand were sent to the respondents on 18 and 27 March 2024 relating to short payments of monies due to the applicant and the need to provide financial documentation, including sales reports and stock consignment reports. Repeated requests for compliance were not

responded to. The respondents are well in arrears at this point with the bank statements convincingly showing a business incapable of meeting its obligations.

[35] At one juncture, the fourth respondent acknowledged indebtedness to the applicant in excess of R10 million, however later the respondents averred that they are in credit with the applicant. When the applicant states it will accept this amount as an interim payment it is not forthcoming. There is no bona fide dispute on the papers, the respondents are clearly indebted to the applicant in an amount in excess of R10 million.

Evaluation

[36] The respondents' argument that the urgency is self-created is contrived. Where the first breach may have been in 2023, the applicant as a diligent creditor took steps to protect his exposure. He did not act in an over-hasty manner, he instead took steps that both secures credit and gave the retailer an opportunity to trade out of their problems.

[37] The notarial bond was necessary for the applicant to protect its investments and was entered into by all the parties with full awareness of why the applicant had insisted that the notarial bond be registered. The applicant maintains that the stock it supplies to the respondents is its largest tangible security. Each day that passes that the respondents are selling the stock, but not effecting payment of what is due, is diminishing the applicant's security.

[38] I am satisfied that the matter is manifestly urgent. The applicant's non-compliance with the rules is hereby condoned.

[39] The manner in which the respondents have dealt with the applicant, if allowed to continue, it was argued, will result with the almost inevitable closure of the store and prejudice to the applicant's interest.

[40] The respondents are of the view that the applicant's concerns are not legitimate because it failed to act soon upon the notice of breach. In my view, a sustained commercial loss would require that the matter be disposed of on a

truncated basis. The applicant would not be afforded substantial redress at a hearing in due course. I am satisfied that the applicant acted conscientiously and promptly in bringing this application. All the necessary affidavits, albeit on suitably abridged time periods, were filed and the issues fully ventilated through argument. I can conceive of no prejudice.

[41] The respondents have raised the issue of the charging of interest and more generally that the agreements entered into was on the basis of Shariah law and that mediation and/or arbitration was required and agreed to. Whereas the initial contract was a 'Murabaha' agreement on the papers I am not convinced that this is the case but with the view I take of the matter it is not necessary to go into detail.

[42] This argument has been superseded and novated by the settlement agreements and acknowledgment of debt. They specifically exclude the need to refer the matter for mediation. The notarial bond that the applicant notarised similarly makes no mention of mediation or arbitration.

[43] These agreements all speak for themselves, they are contracts undertaken by willing commercial enterprises. Their meaning is in plain sight, if there was any agreement to retain the original 'Murabaha' arrangement then there should be some extrinsic evidence to suggest this, but there is none.

[44] The Supreme Court of Appeal (SCA) recently once again reminded us in *ABSA v Rosenberg and Another*¹³ reiterated the principles to be applied in interpreting written documents, but it would be useful for present purposes to rehearse them. The approach to the interpretation of documents, is to give consideration:¹⁴

'... to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of these facts. The

¹³ *ABSA Bank Limited v Rosenberg and Another* [2024] ZASCA 58.

¹⁴ *Ibid* para 27.

process is objective and not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results, or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The “*inevitable point of departure in the language of the document itself*”, *read in context and having regard to the purpose of the provision and the background to the preparation and production of the document*. (Emphasis added.)¹⁵

[45] The SCA went on to state:¹⁶

‘Two years earlier, and in the course of construing a pension fund rule, Lewis JA noted that:

“The principle that a provision in a contract must be interpreted not only in the context of the contract as a whole, but also to give it a commercially sensible meaning, is now clear. It is the principle upon which *Bekker NO* [*Bekker NO v Total South Africa (Pty) Ltd* 1990(3) SA 159 (T) at 170G0H] was decided, and, more recently, *Masstores (Pty) Ltd v Murray & Roberts (Pty) Ltd* [*Masstores (Pty) Ltd v Murray & Roberts (Pty) Ltd* [2008] ZASCA 94; 2008 (6) SA 654 (SCA)] was based on the same logic. The principle requires a court to construe a contract in context – within the factual matrix in which the parties operated. In this regard see *KPMG Chartered Accountants v Securefin* [*KPMG Chartered Accountants v Securefin* [2009] ZASCA 7; 2009 (4) SA 399 (SCA) ([2009] All SA 523) para 39].”¹⁷

[46] This is apposite to the case in hand the applicant acting with due diligence sought to manage his risk and exposure to the respondent. The respondents were

¹⁵ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) (*Endumeni*) para 18.

¹⁶ *ABSA Bank Limited v Rosenberg* para 30.

¹⁷ See *Ekurhuleni Metropolitan Municipality v Germiston Municipality Retirement Fund* [2009] ZASCA 154; 2010 (2) SA 498 (SCA); [2010] 2 All SA 195 (SCA) para 13.

agreeable to take these steps, which resulted in the other agreements falling away and being replaced by settlement agreements and an acknowledgment of debt and finally the notarial bond sought to be perfected. Shariah law, in my view, as seen in the documents supplied and in particular the notarial bond conclusively show, has been novated by subsequent agreements.

[47] The applicant simply wished to secure its position by registering a notarial bond, (either special or general) over its movable property in favour of its creditors as security for the payment of the amount owed. For a creditor, its security rights become important when a debtor is struggling financially and falls behind with its payment obligations. Furthermore, it is crucial for a creditor that its security right – and the preference that flows from it – is upheld when this business goes insolvent.

[48] As Brits and Koekemoer said, “The registration alone of a general bond over movable property does not grant the creditor a limited real right enforceable against third parties. Instead, the security under this bond must be perfected by placing the creditor in lawful possession of the movable property.”¹⁸

[49] ‘The security right will become a limited real right – and thus be enforceable against third parties – only if the security is perfected via delivery of the movable property to the creditor. A pledge without delivery (a non-possessory pledge) is valid *inter partes* but does not grant the creditor a real right enforceable against third parties.’¹⁹

[50] ‘Perfection is premised on a clause in the bond (a "perfection clause") that entitles the creditor to receive possession of the movables when certain conditions are met – typically when the debtor defaults or otherwise exhibits certain other factors that place the creditor's rights at risk. When a creditor invokes this right to take possession, the debtor may voluntarily decide to hand over the property to the creditor. However, if no voluntary delivery is forthcoming, the creditor must apply for a court order to perfect the bond, which is essentially a request for specific

¹⁸ R Brits and MM Koekemoer ‘Perfecting a General Notarial Bond: You Can’t Have your Cake and Eat It! *ABSA Bank Limited v Go on Supermarket (Pty) Limited (The Spar Group Limited intervening)* (9442/2022) [2022] ZAGPJHC 173 (24 March 2022)’ (2023) 26 *PER* 1 at 2.

¹⁹ *Ibid* at 3.

performance of the contractual promise made in the perfection clause. Such an order will then entitle the creditor to have the property attached and upon such attachment the creditor will have a security right in the form of a pledge enforceable against third parties.²⁰

[51] These bonds override contractual arrangements between parties. In *Contract Forwarding (Pty) Ltd v Chesterfin (Pty) Ltd and Others*²¹ Harms JA trenchantly stated:²²

‘...I cannot see how a Court, in the exercise of its discretion, can refuse an order to an applicant who has a right to possession of a pledged article to take possession. The principles relating to the limited discretion to refuse specific performance apply only where the creditor has another remedy, such as a claim for damages, at its disposal. A claim for damages cannot replace a claim for real security. In the absence of a conflict with the Bill of Rights or a rule to the contrary, a Court may not under the guise of the exercise of a discretion have regard to what is fair and equitable in that particular Court's view and so dispossess someone of a substantive right.’ (Footnote omitted.)

[52] In *Juglal NO and Another v Shoprite Checkers (Pty) Ltd t/a OK Franchise Division*²³ Heher JA held;²⁴

‘While the taking over of a business as a going concern to secure a debt is a fairly drastic step which can, if abused, inflict hardship on a debtor, the context of the contractual powers in the bond under consideration renders the provision and exercise of the power commercially intelligible and combines adequate protection of the (largely perishable) security with realisation of it in a manner calculated to achieve a realistic price (which would certainly be a lesser prospect were the creditor tied to a forced sale). Moreover, as counsel for the respondent pointed out, in exercising the discretionary powers inherent in operating and selling the business

²⁰ Ibid at 6.

²¹ *Contract Forwarding (Pty) Ltd v Chesterfin (Pty) Ltd and Others* 2003 (2) SA 253 (SCA).

²² Ibid para 10.

²³ *Juglal NO and Another v Shoprite Checkers (Pty) Ltd t/a OK Franchise Division* 2004 (5) SA 248 (SCA).

²⁴ Ibid para 26.

and the assets the respondent is obliged to act reasonably and to exercise reasonable judgment (*arbitrio boni viri*): *NBS Boland Bank Ltd v One Berg River Drive CC and Others*; *Deeb and Another v ABSA Bank Ltd*; *Friedman v Standard Bank of SA Ltd* 1999 (4) SA 928 (SCA) ([1999] 4 B All SA 183) at 937A - F (SA).'

[53] All the applicant wishes to do is to take control of the assets in order to perfect its notarial bond. It has conclusively shown that it must be entitled to do so.

[54] The reason the applicant registered a notarial bond is obvious, It did so in order to enable it to secure its position in the event of the respondents falling into financial difficulty or distress and breaching the agreements or the bond. The bond is enforceable at the behest of the applicant provided it is executable in accordance with its terms. An event leading to executability came to pass because there is no evidence to controvert that the respondents failed to pay amounts due to the applicant promptly or in some instances at all. In so doing the respondents breached the agreements, and the applicant must be allowed to perfect the bond.

[55] As alluded to earlier, despite the belated attempt by the respondents there is no dispute of fact in both the breach of obligations by the respondents and in respect of the quantum of the debt which exceeds R10 million.

Costs

[56] What remains is the question of costs. The applicant has been successful in the application and costs should follow the cause. Provision is made in the notarial bond agreement that costs will be on the attorney client scale which in the circumstances would be an appropriate order.

Order

[57] Accordingly, I granted the following order:

1. The Applicant's non-compliance with the Rules of this Honourable Court is condoned and it is directed that this Application be heard as one of urgency in terms of Rule 6(12).

2. The Special and General Notarial Bond (the Notarial Bond), namely, Annexure “FA2” to the Founding Affidavit read, with Annexure “RA2” to the Replying Affidavit is perfected.
3. The Applicant, as a Secured Creditor, is authorised to take physical possession of the assets covered therein.
4. The Respondents are directed to forthwith disclose to the Applicant’s Attorneys of Record, the precise current whereabouts of the assets reflected therein.
5. The Respondents are directed to forthwith disclose to the Applicant’s Attorneys of Record, the information sought in Annexure “FA14.2” to the Founding Affidavit and to provide the Applicant with the documentation of Records in support thereof.
6. The Costs of this Application are to be paid by the Respondents jointly and severally, the one paying, the others to be absolved, on the Attorney and Client scale.

DAVIS AJ

CASE INFORMATION

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Date of Hearing : 23 May 2024
Date of Order : 24 May 2024
Date of Reasons : 5 June 2024