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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE No: 1775/2025

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED: Yes

DATE: 25/04/2025

SIGNATURE:

In the matter between:

POLOKWANE LOCAL MUNICIPALITY

APPLICANT

AND

SAND HAWKS (PTY) LTD

1ST RESPONDENT

NETWORTH PROPERTIES (PTY) LTD

2ND RESPONDENT

65 TWIN PROPERTY2 (PTY)LTD

3RD RESPONDENT

MINISTER OF POLICE

4TH RESPONDENT

Delivered : 25 April 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **25 April 2025 at 10:00 am.**

Date heard : 26 March 2025

Coram : MASHIFANE AJ

JUDGMENT

Introduction.

1. This is an application for reconsideration in terms of Rule 6 (12) (c) of the Uniform Rules of Court brought by the first respondent in respect of an order granted *ex parte* on 19th of February 2025 by Mathabathe AJ in terms of which a rule nisi was issued and the return day set on the 13 of May 2025. The application is opposed by the applicant, the second and third respondent. For the purposes of this judgment the parties will be referred to as in the main application.

Background

2. Before dealing with the issues before me I find it expedient to deal first with the historical background of the matter. During January 2007 the applicant and the first respondent entered into a written lease agreement in terms of which the first respondent leased property known as Undivided Portion of the Remainder of the farm Krugersburg 993 LS owned by the applicant. Upon expiry of the first fixed term the parties continue with the lease agreement on month-to-month basis.

3. On 29 November 2017, after a being declared a successful bidder the second respondent and the applicant entered into a notarial lease agreement in respect of the same property. The second respondent then entered into sub lease agreement

with the third respondent and were operations scheduled to commence on the 1st of October 2024.

4. On the 28th of August 2023 the applicant gave the first respondent one month termination notice. The first respondent replied to the termination notice and requested a grace period of twelve months ending 14 September 2024 and same was acceptable to the applicant. Instead of vacating the premises as per its own undertaking, on the 27th of September 2024 first respondent issued summons against the applicant alleging a lien over the property and that it will not vacate the premises until fully compensated in the amount of R708400.00. It is evident from the particulars of claim that the alleged lien was because of alleged improvements by the first respondent which by their nature it could be safely inferred that they were incurred shortly after the commencement of the lease agreement.

5. On the 11th and 12th of February 2025 the third respondent sent armed security guards arrived at the leased property to stop the operation or business and further to remove the first respondent and its equipment from the property. This conduct caused the first respondent to urgently and successfully approaching the High Court for spoliation order. On the 18th of February 2024 Makoti AJ delivered his judgment in favour of the first respondent.

Ex parte application

6. A day following the date of the judgment referred to above, the applicant (third respondent before Makoti AJ) approached the court on urgent basis and the order in its favour was granted *ex parte* as follows:

1. "A rule nisi is granted returnable on the **13 May 2025 at 10h00** in the morning or so soon thereafter as the matter may be heard, calling upon the First Respondent to show cause, if any, as to why a final order should not be granted in the following terms:

1.1 The First Respondent or any third party, agent or persons associated with First Respondent from the property of the Applicant are evicted from the property known portion/Erf 6[...] East ridge Ext3;

1.2 The officials of the Applicant are hereby authorised to implement this court order and execute the eviction by themselves, alternatively with the assistance of the SAPS in so far as may be necessary;

1.3 The First Respondent is ordered to pay the cost of this application including of Counsel;

1.4 This order will operate as an interim interdict having an immediate effect, pending the return date for this application;

1.5 The fourth respondent is hereby directed to take notice of this order and act in accordance and within the scope of the law of the land to uphold the laws of the Republic of South Africa.

2. The First respondents is hereby interdicted and restrained from using the property known as Portion/Erf6[...], East Ridge Ext 3 in contravention with the provisions of the Polokwane Integrated Land Use Scheme, 2022 for stockpiling purposes pending finalisation of this application on its return date.

3. This order comes into effect immediately and will operate as an interim order of this court until the return date of the application.

4. The first Respondent may anticipate the rule nisi with notice of 48 hours to the Applicant'.

7. The first respondent promptly and urgently approached the court with an application for reconsideration however the 27th of February 2025 Diamond AJ removed the application from the urgent roll. This matter came before me because of the directive from the Judge President granting a permission that it be placed on special allocation roll.

Reconsideration application.

8. The first respondent vehemently argued that its application is governed by the Rule 6 (12) (c). The counsel for the first respondent insisted that the only procedure to be followed is as provided for in rule 6 (12) (c) and was granted an opportunity to argue the respondent's case under the subrule. The first respondent's argument is basically that based on the founding affidavit the applicant failed to set out the case for the relief sought and for the matter to be heard on *ex parte* basis.

9. The ruling that the first respondent may proceed to argue the case based solely on the applicant's case did not preclude other parties from raising points of law. It was only to say when arguing the merits they were limited to the applicant's founding papers and for that reason all other parties were allowed to argue their points of law. This court is obliged to consider first the point of law raised and it is only if their point(s) of law are dismissed that the court will be permitted to proceed as per request of the first respondent.

Points in limine

10. The applicant, second and third respondent raise preliminary points of law. The applicant's first point in limine was that of lack of urgency and its second point in limine is like that of first and second respondent. They all argued that the first respondent followed a wrong procedure in that the due to nature of main application this matter is govern by provisions of rule 6(8).

11. The applicant argued that this application is not urgent as the first respondent does not even attempt to explain to the court what harm or prejudice will ensue if the matter was to be heard on the return day.

12. After the first respondent's application was removed from the urgent roll the first respondent approached the office of the Judge President of this division with a request for a preferential date hearing of the reconsideration application and same was granted. This matter was brought before me on preferential allocation at the

discretion and prerogative of the Judge President. In my opinion once the matter is removed from urgent roll the urgency is lost, and it should thereafter be dealt with in the normal cause of proceedings which includes preferential hearing. It is my finding that allocation of a matter on a preferential roll has no connection with urgency save to say the party asking for preferential date is given preference to be heard instead of waiting in the queue. I therefore find that submission that the application lacks urgency is misplaced and the applicant's point in limine is subject to fail.

13. It was argued on behalf of the applicant and both second and third respondent that the order was sought and granted *ex parte* and the appropriate rule would be Rule 6 (8) in terms of which the first respondent was required to anticipate the return day with a 24-hour notice.

14. Paragraph 1 of the order of Mathabathe AJ reads: *"A rule nisi is granted returnable on 13 May 2025 at 10h00 in the morning or so soon thereafter as the matter may be heard, calling upon the First Respondent to show cause, if any, as to why a final order should not be granted in the following terms:"*

15. Paragraph 4 of the order reads: *"The first Respondent may anticipate the rule nisi with notice of 48 hours to the Applicant."*

16. Rule 6 (8) provides as follows:

"Any person against whom an order is granted ex parte may anticipate the return day upon delivery of not less than twenty-four hours' notice".

The use of the phrase "may anticipate the return day" denotes that the rule refers to instances where a rule nisi was granted. The rule is distinguishable from rule 6 (12) (c) in which instance the order granted should be final in its nature.

17. In order to understand the circumstances under which Rule 6 (12) (c) becomes applicable the rule should not be read in isolation of Rule 6 (12) (a) and (b) which reads:

(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*

(c) *A person against whom an order was granted in such person's absence in an urgent application may by notice set down the matter for reconsideration of the order. [My emphasis].*

18. The use of the word dispose in paragraph (a) means that the matter may be finally settled or dealt with by the court. Paragraph (b) in my opinion stresses further that the disposition referred to in (a) is a final decision. It is only when a final order was granted in accordance with paragraph (a) and (b) that person against who such an order was granted in his or her absence may apply for reconsideration under Rule 6 (12) (c).

19. Rule 6(8) allows a party against whom a rule *nisi* was granted to anticipate the return day within 24 hours' notice and that is what the first respondent should have done. It is not open to the respondent, or a party affected by the order to choose which subrule to employ but the nature of the order itself.

20. In **CLAASSENS v ZENECA SA (EDMS)BEPERK 1996(1) SA 627 OPD**

Hattingh J and Wessels AJ held at 630 C that the term *ex parte* referred to court proceedings against a person who has not been given notice thereof. This is exactly the case in this matter.

21. In the matter before me there are two points which renders rule 6 (12) (c) to be inapplicable. The application was not served on the first respondent before the order was granted and the order granted was interim calling on the first respondent to show cause why the order should not be made final.

Referral to LPC

22. It was argued on behalf of the first respondent that this court should make an order referring the conduct of the legal representatives of the applicant to Legal Practice Council and the Limpopo Society of Advocates. I'm not persuaded that the applicant's legal representatives committed any gross misconduct deserving an order from this court directing LPC or any other regulatory body to conduct investigations against anyone. The applicant approached the Court *ex parte* with a prayer for a rule nisi to be issued and the court being satisfied granted the order as prayed for.

Conclusion

23. In the opinion of this court the first respondent did not only follow the wrong procedure but carefully choose the procedure that favours its desired results. In the absence of rule 6 (8) as an alternative the application stands to be dismissed. I have carefully considered the litigation history between the parties and I do not see a reason why cost should not follow the order. The facts of this case are not complex and do not require employment of two counsels per party. I have also considered the third respondent's supporting affidavit and the annexures thereto. I do not think certain documents filed by the third respondent were necessary for the purpose of this application and must be excluded from taxation. The third respondent attached bundles such as a tender document, market study and environmental impact study. The first respondent should not be unjustly penalized or burden with unnecessary costs.

Order

In the circumstances I make the following order:

- a. The application for reconsideration by the first respondent is dismissed.
- b. The first respondent is ordered to pay the cost of this application on party and party scale.
- c. Pages 318 to 970 are to be excluded from taxation.

R.S MASHIFANE, AJ
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

Counsel for the applicant	: VT Moya
Instructed by	: Kgatla Incorporated
Counsel for the first respondent	: L Van Gass
Instructed by	: Kampherbeek, Twine & Pogrund Attorneys
Counsel for the second respondent	: H.F Marx
Instructed by	: Jaco Oberholzer Attorneys
Counsel for the third respondent	: M.S Monene
Instructed by	: Mphela Motimela Attorneys