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**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH WEST DIVISION, MAHIKENG)**

Case No: 1060/25

Reportable: **NO**

Circulate to Judges: **NO**

Circulate to Magistrates: **NO**

Circulate to Regional Magistrates: **NO**

In the matter between:

M[...] K[...] A[...]

First Applicant

KEAMOSETHO (PTY) LTD

Second Applicant

and

M[...] S[...] S[...]

Respondent

JUDGMENT

TITUS, AJ

Introduction

[1] This is an urgent application to suspend the operation of an interim protection order granted by the Mmabatho Magistrates Court, in terms of the Domestic Violence Act 116 of 1998, on 21 February 2025 ('the interim protection order').

[2] The interim protection order directs the applicants, amongst other things, to return the Toyota Rush motor vehicle ('the Toyota motor vehicle'), bearing registration number K[...], registered to the respondent to him pending the return day of the domestic violence proceedings. The applicants contend that they cannot wait till then hence this application.

The Parties

[3] The first applicant is a self-employed adult female physiotherapist who earns approximately R120 000.00 (one hundred and twenty thousand rand) gross per month. The second applicant is a private company of which the first applicant is the sole director. It is in the business of transporting students.

[4] The respondent is an adult male educator who earns R34 000.00 (thirty four thousand rands) net per month.

[5] The respondent opposes the application and he has raised four points *in limine*. In argument, the principal submissions by respondent's counsel were however two-fold. First, that the application is not urgent and, second, that the applicants find themselves in the wrong forum.

The Factual Background

[6] The first applicant and the respondent are married in community of property. They have two minor children born of their marriage. The parties live separately and are engaged in, what would appear to be, an unfortunately acrimonious divorce. They have reciprocal domestic violence protection orders against each other.

[7] The interim protection order was served on the first respondent on 21 February 2025. In the nature of interim domestic violence proceedings, the first applicant was entitled to anticipate the return date on 24 hours to the respondent. In effect, the first applicant was entitled to anticipate the return date as early as 24 February 2025, all things being equal.

[8] As it turned out, the first applicant waited until 27 February 2025 to anticipate the return day. In her supporting sworn declaration, the first applicant complains that the second applicant requires the Toyota motor vehicle for its business and that she requires it also for personal use and to transport her two minor children.

[9] On the anticipated return day, no doubt because the first applicant and the respondent enjoyed reciprocal orders against each other, the presiding magistrate postponed proceedings to 12 May 2025 for their respective domestic violence applications to be heard together. The presiding magistrate did not disturb the interim order relating to the Toyota motor vehicle. The first applicant was legally represented during the anticipated proceedings while the respondent appeared personally.

[10] So much for the background. The application serves on this Court's urgent roll as the applicants allege that their application is so urgent that it cannot wait till 12 May 2025 for their reciprocal domestic violence applications, and for the dispute around the Toyota motor vehicle, to be determined.

[11] Before determining the merits of the application, this Court must first consider whether the application is indeed so urgent that it must be dealt with on the urgent court roll.

Urgency

[12] Uniform Rule 6(12) makes provision for an applicant to create its own rules within which a respondent must file a notice to oppose and an answering affidavit. An applicant must however seek the Court's condonation that the forms and service provided for by the Rules may be so dispensed with. It follows that an applicant who

cannot convince the court of the necessity for the timeline devised by it, should expect its application to be struck from the roll with costs¹. It is then at liberty to set the matter down again, on proper notice and compliance with the Rules of Court².

[13] Rule 6(12)(b) has two requirements that an applicant who makes urgent application must comply with. First, the circumstances relating to urgency must be explicitly set out and, second, the reasons why the applicant cannot be afforded substantial redress at a hearing in due course.

[14] In the seminal *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers) 1977(4) SA 135(W)* at 137F, Coetzee J held with reference to Rule 6(12)(b), that; '*(m)ere 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.*'

[15] In the applicants' notice of motion delivered to the respondent on 4 March 2025, the respondent is called on to deliver his notice of intention to oppose *that same day* and, *within a day*, on 5 March 2025, to deliver his answer so that the applicants may file their reply, if any, no later than 6 March 2025.

[16] In terms of this Court's practice directives this truncated timeline characterises the application as *extremely* urgent. The Court in *Luna Meubel* cautioned that:

'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 the case demands. It must be commensurate therewith.'

¹ See *L & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd & Another; Aroma Inn (Pty) Ltd v Hypermarkets (Pty) Ltd & Another*

² *SARS v Hawker Air Services (Pty) Ltd* [2006] ZASCA 51; 2006 (4) 292(SCA)

[17] The application was initially delivered incomplete as every other page was not included in the papers. After complaint by the respondent, a complete application was subsequently served on him at approximately 10h17 on 5 March 2025 and he was then granted an extension till noon on 6 March 2025 to oppose the application and to deliver his answer. The respondent formally opposed the application about two hours later. It stands to the respondent's legal representatives' credit that an answering affidavit could be ably prepared and delivered before the hearing of the application.

[18] The application itself is unfortunately not a model of clarity and the founding and replying affidavits also contain contradictory allegations. From what may however be gleaned from the applicants' papers, the first applicant contends that the application is urgent because the applicants require the Toyota motor vehicle for the second applicant's business and for her personal use. In essence, the applicants complain of financial harm should they not continue to enjoy access to the Toyota motor vehicle.

[19] The applicants make no averment of any kind why their application must however be heard *forthwith*. On the common cause facts, the applicants waited some 7 days to approach this Court for relief on an *extremely* urgent basis. This 'inordinate delay', as the first applicant herself describes it surprisingly enough, is not satisfactorily explained. A delay in bringing the application, or self-created urgency, is a basis for a court to refuse to hear a matter on an urgent basis³.

[20] Further, in *Mogalakwena Local Municipality v The Provincial Executive Council, Limpopo and others*⁴ the Court stated that "...when urgency is an 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."

³ *Twentieth Century Fox Film Corporation and another v Anthony Black Films (Pty) Ltd* 1982 (3) SA 582 (W) at 586A-C

⁴ (2014) JOL 32103 (GP) at para63 – 64.

[21] It is common cause that the issue relating to the Toyota motor vehicle will be determined in the Mmabatho Magistrates Court on 12 May 2025. The applicants will enjoy substantial redress on that day and in that forum. The applicants' particular financial issues pending that day is of no moment. It is trite that the particular financial exigency of an applicant is an insufficient basis to found urgency unless it can be shown that undue hardship will result.

[22] On her own version, the first applicant is a self-employed businesswoman who earns a substantial gross income, quite aside from the income that the second applicant generates from its transportation business. The evidence is also that the applicants enjoy access to other motor vehicles, more particularly the second applicant who has an 18-seater Mercedes Benz Sprinter bus, more suitable for its transportation business, at its disposal. On the facts, it is therefore not established that the applicants will suffer undue hardship were this Court to decline to hear them urgently.

[23] Given what this Court has found in relation to urgency, it is not necessary to determine the merits of the application. Even if this Court is wrong on the issue of urgency, quite aside from a lack of extreme urgency, or any urgency for that matter, the application faces other difficulties.

[24] For its part, the second applicant has not established that it enjoys a *prima facie* right to the Toyota motor vehicle. The issue raised here is also pending in the Mmabatho magistrates court. That the applicants are aggrieved by the order of the presiding magistrate on 27 February 2025, postponing a finding on the Toyota motor vehicle to 12 May 2025, does not, without more, entitle the applicants to access this Court's urgent roll for a potentially different outcome. If anything, the application may well amount to an abuse of this Court's process.

Order

[25] In the premises, the application is struck off the roll for lack of urgency, with costs to be taxed on scale A.

**RR TITUS
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG**

APPEARANCES

DATE OF HEARING : 07 MARCH 2025

DATE OF JUDGMENT : 12 MARCH 2025

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