GAUTENG HIGH COURT, PRETORIA

URGENT ROLL: 09 MARCH 2021

JUDGE: DE VOS

JUDGE: BAM (AJ)

No	Parties	Case number
1	MOBILE TELEPHONE NETWORKS VS INDEPENDENT COMMUNICATIONS Bam, AJ	3619/2021
2	POOL TEAM (PTY) LTD VS SAREL JOHANNES PRETORIUS NO. De Vos, J	6380/2021
3	SOUTH AFRICAN PRACTICE VS SIVUYILE SANDILE ZIWA + 1 Bam, AJ	7367/2021
4	ADRIENNE DE KOCK VS CONRAD WILLIAM DE KOCK De Vos, J	32092/2020
5	POPPIE DINAH MAHLANGU VS ABSA BANK LTD + 1 Bam, AJ	8651/2021
6	P G NAGAR + 4 VS STEWART CONSTRUCTION + 3 De Vos, J	8076/2021
7	ERIKA SUTTON + 1 VS REALGROWTH DEVELOPMENT + 17 De Vos	8126/2021 removed
8	STANDARD BANK OF SA LTD VS MATHABA A H Bam, AJ	71830/2019
9	PAULINE MNISI OBO. ORATILE MNISI VS RAF De Vos, J	10239/2016
10	GONTSANA SIKELELA VS RAF De Vos, J	8880/2018
11	MKANSI SYDWELL VS RAF De Vos, J	44125/2018
12	VONANI HUMPHREY VALOJI VS RAF De Vos, J	42010/2018
13	KHUMALO NOSIPHO VS RAF De Vos, J	7411/2017

14	MAVASA R VS RAF De Vos, J	53552/2017
15	ESTHER MALEGATE MNGUNI VS DUDUZILE DAPHNEY MNGUNI Bam, AJ	8662/2021
16	MOGALE CITY LOCAL MUNICIPALITY VS C VAN WYK Bam, AJ	8877/2021 NO INVITE
17	S A NATIONAL SPACE AGENCY VS MTHIMUNYE OLGA NOMFUNDO Bam, AJ	8703/2021
18	GEPF VS FIRSTRAND BANK LTD De Vos, J	9169/2021
19	ZOLOM P BUDA NO. VS MINISTER OF MINERAL RESOURCES + 5 Bam, AJ	9345/2021
20	FABROSANZ CREATION CC VS ANKARA TEXTILES De Vos, AJ	9358/2021
21	AVBOB MUTUAL ASSURANCE VS GOUNDEN K Bam, AJ	9263/2021
22	S A MEDICAL ASS. VS SA MEDICAL AS + 1 Bam, AJ	9258/2021
23	NUTTO PROPERTIES CC VS M T MORRISSON PROJECTS Bam, AJ	9065/2021
24	NUTRO PROPERTIES CC VS SAHR MOSES ELBA Bam, AJ	9066/2021
25	NUTTO PROPERTIES VS BABAMA CASH &CARRY CC Bam, AJ	9067/2021
26	REJINAH MAMALOPE MOGASHOA VS ITUMELENG MOGOMOTSI Bam, AJ	9179/2021
27	SHELL DAWNSTREAM SA VS SARS De Vos, J	9541/2021
28	KILIAN WONG SALONS VS SHARON DU PLESSIS De Vos, J	9344/2021
29	FANOSE ADOBE VS MINISTER OF HOME AFFAIRS + 3 Bam, AJ	59066/2021 NOT AUTHORISED

30	TACTICAL K9 AFRICA CC VS AFRIQUE DU SUD K9 NO. De Vos, J	10518/2021
31	MARI HAYWOOD + JAN MULLER NO. Bam, AJ	10519/2021
32	P H L S FOCHVILLE VS GAUTENG LIQOUR De Vos, J	10199/2021
33	DYKMAN W G H VS ENSLIN M A De Vos, J	9626/2021 NO INVITE
34	TIMBERLIFE VS BRITS POLBS SA + 2 Bam, AJ	9896/2021 NO INVITE
35	ASOMUGHA SARAH MOKONE VS MINISTER OF JUSTICE + 3 Bam, AJ	10594/2021
36	KGAOGELO SARAH MOKONE VS MINISTER OF JUSTICE + 3 Bam, AJ	10054/2021 NO INVITE
37	FANOSE ADOBE VS MINISTER OF HOME AFFAIRS + 4 Bam, AJ	59066/2019 NO AUTHORISE
38	RAMAPUPUTLA ATTORNEYS VS NOMBULELEO MBULAWA + 2 De Vos, J	57019/2016
39	TERENCE PAUL LOCKE De Vos, J	62281/2020
40	FORTUNA FOODS VS LARRY LEIPOLDT + 1 De Vos, J	560/2021 NO INVITE
41	NEDENE LUBBE VS P J LUBBE De Vos, J	72706/2016
42	MACNEIL PLASTICS VS VAN DER HEEVER + 3 Bam, AJ	1018/2019
43	DARIUS ODENDAAL VS VAN ROOYEN H J De Vos, J	6689/2021
44	4 ACES AND NEW AND USED SPARES VS P A CARGO Bam, AJ	14210/2014
45	BRENNTAG SA + 1 VS DG AGRICULTURE De Vos, J	7946/2021
46	BOLENG MINING SOLUTIONS + 2 VS THE MINISTER OF HOME AFFAIRS + 2 Bam, AJ	10688/2021

47	MAMOLATELO A SELOTA VS SA LEGAL PRACTICE COUNCIL De Vos, J	10869/2021
48	MANKWANA C MASEMOLA VS K F MASEMOLA Bam, AJ	8434/2021
49	IKWEZI VANADIUM VS MINISTER OF MINERAL RESOURCES Bam, AJ	10936/2021 08/03/2021
50	NATASHA STOLZ VS MINISTER OF AGRICULTURE + 6 De Vos, J	89684/2019 NO AUTHOSISE
51	KISH GAS VS CELAGLO + 6 Bam, AJ	9895/2021
52	GARETH ATHOL MURRAY VS FALAN LARA SCHMIDT De Vos, J	8560/2021 NO INVITE
53	DOROTHY MWAMBA VS STANLEY K MWAMBA Bam, AJ	11251/2021
54	EBRAHIM GOOLAM M AMOD VS ABU BAKER JOOSUB Bam, AJ	11262/2021
55	P H L S FOCHVILLE VS GAUTENG PROVINCIAL LIQOUR BOARD + 1 De Vos, J	10199/2021
56	LESLIE BOSMAN (EXPARTE) De Vos, J	11354/2021
57	PAULINE THEMBI TSHABALALA VS S TSHABALALA Bam, AJ	85596/2017 NOT AUTHORISED
58	REINETTE STEYNBERG NO. VS MASTER OF HIGH COURT PRETORIA De Vos, J	11327/2021 NO INVITE
59	RAMUGA Z VS DEPT OF HEALTH NO. Bam, AJ	29175/2020
60	ANDREW GEORGE CLAASSENS VS RAF De Vos, J	94606/2016 NOT AUTHORISED
61	Ngwenya v Ncoco	11723/21 DeVos, J
62	Stolz v Min of agriculture	89684/19 Bam, A
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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA
CHAMBERS OF THE HONOURABLE JUDGE DE VOS

DIRECTIVE: URGENT APPLICATIONS BEFORE DE VOS J AND BAM AJ FOR THE WEEK 9 – 12 MARCH 2021

Judge De Vos and Acting Judge Bam will hear urgent court applications from Friday 5 March 2021 at 16:00 until Friday 12 March 2021 at 16:00. You are kindly requested to note the following directive issued by Judge De Vos in respect of all urgent applications enrolled for hearing during this period.

1. This directive is accompanied by an allocated roll for the urgent applications to be heard during the week 5 March 2021 to 12 March 2021, which indicates the Judge to which each matter has been allocated for hearing.

2. Ms Esther Rikhotso is the secretary to Acting Judge Bam. Please note there is two Judges with the surname Bam. Make sure you contact the correct one. (The one is a permanent Judge and the other an Acting Judge.) You can contact Ms Rikhotso at ERikhotso@judiciary.org.za.

3. Ms Belinda Harris is the secretary to Judge De Vos. You can contact her at bharris@judiciary.org.za.

4. With the exception of applications brought outside of normal court hours, all applications should be properly issued by the Registrar before approaching the senior Judge's Secretary for enrollment of the application.

5. The contact number for urgent applications to be heard out of ordinary court hours is 0681047107. This number is not to be used for general enquiries or for any other issue than urgent applications to be heard out of ordinary court hours. Ms Belinda Harris will attend to after-hour urgent applications.

6. Applications before Judge De Vos will be heard in open court by way of physical hearings during normal court hours. Please consult the day roll as to which court room will be used for this purpose. Acting Judge Bam will publish her own directive regarding the matters on her roll. Each Judge will individually decide as to the form of hearing for applications to be heard outside normal court hours.

7. With the exception of return date applications and matters of extreme urgency, a general roll call for matters enrolled before Judge De Vos will be held at 10:00 on Tuesday 9 March 2021 which roll call must be attended by counsel. During roll call, removals settlements and ex parte matters will be disposed of first. Thereafter counsel may call their matters in order of seniority for unopposed urgent applications to be hears and/or the allocation of opposed applications for hearing during the remainder of the week.

8. In the event that alternative arrangements regarding the date or time allocated for the hearing of a matter are requested, such request must be made in writing and sent by way of email to the respective Judges secretary.

9. In addition to the requirements contained in the directive issue by the Judge President that all matters must be registered in Caselines and all documents to be properly uploaded, Judge De Vos kindly requests for the delivery of hard copies of the relevant court documents in all applications enrolled before him. To afford Judge De Vos with sufficient time for preparation, hard copies of his documents are to be delivered to the Palace of Justice on Monday 8 March 2021, by no later than 10:00. A box situated at the entrance security of the Palace of Justice, will be provided for deliveries.

10. Said hard copies must be accompanied by two copies of a draft order, short heads of argument by counsel moving the matter, and a practice note indicating the following information:

    10.1 the particulars of counsel moving the matter
    10.2 a brief summary of the issues to be determined
    10.3 a brief summary of the reasons for urgency
    10.4 the estimated duration of the arguments to be heard
    10.5 if necessary, reasons for failing to bring the application in term of the rules pertaining to urgent applications, and an explanation of why the matter warrants hearing despite such non-compliance.

10.6 Due to the time constraints imposed by the nature of the urgent court, no consideration will be given to documents received after the stipulated time, save for exceptional reasons which must be satisfactorily explained in the practice note.

11. Where a draft order is made an order of Court by Judge De Vos, and two hard copies of same draft order was provided to the Court, a copy of same order will be available from Ms. Harris immediately after granting the order. Same orders shall be uploaded to Caselines in due course and after having been signed and stamped by the Registrar

12. Practitioners are reminded of the normal Rules or practice pertaining to the bringing of urgent applications and are urged to take not of the Memorandum to Practitioners in re: Procedure in the Pretoria Urgent Motion Court, attached hereto as Annexure A for your convenience.

13. The normal time for the bringing of an urgent application is at 10:00, on the Tuesday of the week. If the application cannot be brought at 10:00 on Tuesday, it may be brought at any time during the court day. However, the applicant, in the founding affidavit, must set out facts which justify the bringing of the application a time other than 10:00 on the Tuesday. This requirement is in addition to the applicant's obligation to set out explicitly the circumstances which render the matter urgent. In this regard it is emphasized that while an application may be urgent, it may not be sufficiently urgent to be heard at the time selected by the applicant.

14. Deviation from the time periods prescribed by the Rules of Court must be strictly commensurate with the urgency of the matter as set out in the founding papers. If the facts and circumstances set out in the applicant's affidavits do not;

14.1 Constitute sufficient urgency for the application to be brought as an urgent application and or

14.2 Justify the abrogation or curtailment of the time periods referred to in Rule 6(5) and/or

14.3 Justify the failure to serve the application as required in Rule 4, the court will decline to grant an order for the enrolment of the application as an urgent application and/or for the dispensing of the forms and services provided for in the Rule. Save for a possible

adverse cost order against the applicant, the court will make no order on the application.

15. The enrollment of an allegedly urgent matter found not to warrant a hearing on this roll may, at the discretion of the Judge seized with the matter, result in punitive costs being awarded.

16. Service of process in all urgent applications shall comply with the Rules of Court. Where an agreement was reached by the representatives of all parties to vary the requirements of the Rules to facilitate a wholly electronic exchange of papers this must be specifically stated.

17. Covid-19 still holds a threat to our health and to ensure the safety of all parties involved only the necessary legal representatives and applicants/respondents appearing in person will be allowed to attend court proceedings. Therefore, anyone seeking access into the court building must submit to compulsory screening, must wear a face mask, and must adhere to applicable social distancing rules.

Sincerely

Ms. Belinda Harris
Secretary to the Honourable Judge De Vos
High Court of South Africa
Gauteng Division, Pretoria

"Annexure A"

MEMORANDUM TO PRACTITIONERS

RE: PROCEDURE IN THE PRETORIA URGENT MOTION COURT

[1] Urgent applications must be brought in accordance with rule 6 and the guidelines set out in cases such as *Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk* 1972 (1) SA 773 (A) at 782A–G, *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) and *Sikwe v SA Mutual Fire & General Insurance* 1977 (3) SA 438 (W) at 440G–441A. The majority of practitioners launch urgent applications without taking account of the rules or the guidelines. Apparently many practitioners feel entitled to select any day of the week and any time of the day (or night) to demand a hearing. The result is that procedures are followed which do not accord remotely with 'the good order which is necessary for the dignified functioning of the Court'—*Luna Meubel Vervaardigers* at 136G–H.

[2] The purpose of this memorandum is to inform practitioners how rule 6(12) must be applied and the manner in which the urgent court will be managed to ensure that there is an orderly and dignified adjudication of applications in that court. This means ensuring that the papers are filed timeously and ready for adjudication. In general this means that they must be complete when filed by 12:00 on the Thursday ready for roll call at 10:00 the following Tuesday.

[3] The attention of practitioners is drawn to the following:

[3.1] Urgent applications must as far as practicable be in terms of the rules: ie the deviation from the rules must be commensurate with the urgency of the case;

[3.2] Urgency mainly involves the abridgment of times prescribed by the rules and secondarily the departure from established filing and sitting times;

[3.3] In *Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk* 1972 (1) SA 773 (A) at 782A–G the court considered the effect of rule 6(12) (what follows is a translation)—

> 'It is of importance to state what the effect of this rule is. In the case of an urgent application an applicant is permitted to act by way of notice of motion without taking into account the rules which are usually applicable. The applicant is, in a certain sense, taking into account the circumstances of the case, permitted to make his own rules, but 'as far as practicable' in accordance with the existing rules. Rule 6(12) therefore makes provision for a process subject to rules different from the usual and when an applicant appears before a judge in such a procedural manner he must ask the judge to disregard the rules applicable to ordinary adjudication. He is not obliged to go to the judge first to ask permission to act by means of extraordinary adjudication because rule 6(12)

expressly provides that the judge may deal with such a matter when and where he deems fit. **If an applicant acts in terms of this rule and informs the respondent that he regards the application as urgent it follows, in my view, that the respondent is obliged, in the sense that he runs the risk of an order against him by default, and is entitled to provisionally accept the rules which the applicant has adopted. When the matter comes before the judge he can object, but in the meantime, he dare not disregard the rules which the applicant has made for himself.** Even if the rules of court with regard to ordinary adjudication are deemed to determine that an action is instituted when the notice of motion is handed to the registrar, in the case of an urgent application the applicant in the absence of the registrar may launch the matter directly to the judge and the judge can disregard the rules of ordinary adjudication in this connection. Rule 6(12)(a) provides that in the case of urgent applications a judge can disregard the 'forms and service' prescribed by the rules. Delivery of a notice of motion to the registrar is no 'service' but because in the case of an opposed motion the applicable form 2(a) in the first Schedule requires express notice to the registrar and respondent, a judge in an urgent case when the registrar is not available can disregard the requirement that form 2(a) be directed to the registrar.'

[3.4] Judges sit in the urgent motion court on a weekly basis and matters should be set down bearing that in mind. Whether unopposed or opposed the papers must be filed (bound, indexed and paginated) by 12:00 the previous Thursday, unless the matter is so urgent that relief must be granted sooner. In *Luna Meubel Vervaardigers* at 137A–E the ascending order of urgency is set out:

[3.4.1] The question is whether there must be a departure at all from the times prescribed in rule 6(5)*(b)*. Usually this involves a departure from the time of 7 (now 10) days which must elapse from the date of service of the papers until the stated day for hearing. Once that is so, this requirement may be ignored and the application may be set down for hearing on the first available motion day **but regard must still be had to the necessity of filing papers with the registrar by the preceding Thursday so that it can come onto the following week's motion roll which will be prepared by the Judge on duty for that week.**

[3.4.2] Only if the matter is so urgent that the applicant cannot wait for the next motion day, from the point of view of the obligation to file the papers by the preceding

Thursday, can he consider placing it on the roll for the next Tuesday, without having filed papers by the previous Thursday.

[3.4.3] Only if the urgency be such that the applicant dare not wait even for the next Tuesday, may he set the matter down for hearing on the next court day at the normal time of 10:00 am or for the same day if the court has not yet adjourned.

[3.4.4] Once the court has dealt with the causes for that day and has adjourned, only if the applicant cannot possibly wait for the hearing until the next court day at the normal time that the court sits, may he set the matter down forthwith for hearing at any reasonably convenient time, in consultation with the registrar, even that be at night, or during the weekend. 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 under 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 is set down.

[3.4.5] Normally a respondent has not less than five days after service to give notice of his/her intention to oppose the application (rule 6(5)*(b)*) and if no notice of intention to oppose is given, a period of not less than 10 days must elapse between the date of service and the date of the hearing stipulated in the notice of motion (rule 6(5)*(b)*). If the respondent gives notice of intention to oppose the respondent has 15 days from the date of service of the notice within which to file the answering affidavit or a notice of his/her intention to raise a question of law (rule 6(5)*(d)*). Thereafter the applicant has 10 days from the date of service of the answering affidavit to file a replying affidavit (rule 6(5)*(e)*). After that the applicant may within five days apply for the allocation of a date for the hearing, failing which the respondent may do so (rule 6(5)*(f)*). It is clear from these times that the respondent is normally given ample time to consider whether to oppose (five days); to file an answering affidavit (15 days); and to consider the replying affidavit before the matter is enrolled (five days).

[3.4.6] The rule ensures an orderly flow of applications through the court and their expeditious adjudication. Rule 6(12) allows an applicant who requires relief urgently to have his case decided without the delays necessitated by the

ordinary procedure. However, the normal times will be abridged and the deviation from rule 6 will be permitted only when the matter is urgent. The degree of abridgement and deviation must be commensurate with the case and must be justified in the founding affidavit. It is also required that the applicant satisfy the court that the circumstances of the case are such that the applicant will not be afforded substantial redress at a hearing in due course. Rule 6(12)*(b)* provides that—

'In every affidavit or petition filed in support of any application under sub-paragraph *(a)* of this sub-rule, the applicant 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.'

[3.4.7] Too many practitioners are over-optimistic or reckless in their assessment of the requirements set out in rule 6(12)*(b)* and attempt to use rule 6(12) to jump the queue to their client's advantage. Many applications are struck off the roll because the court has found them not to be urgent. It is clear that the rule continues to be the most abused rule in the Division.

[3.4.8] In accordance with the *Republikeinse Publikasies* judgment an applicant may choose to set the matter down on any Tuesday (or other day, in accordance with the degrees of urgency referred to in *Luna Meubel Vervaardigers*), but if the applicant does not wish to have the matter heard on that day at the time indicated it is wrongly enrolled and the procedure abused. If an applicant anticipates that the application will be opposed it is essential that the respondent and the applicant be allowed reasonable times for the filing of answering and replying affidavits before the roll closes at 12:00 on Thursday. If these affidavits cannot be filed in time and the matter cannot be heard at the time indicated in the notice of motion the procedure is abused. In every case the court will decide whether reasonable time has been allowed in the light of the circumstances revealed in the affidavits. If reasonable times have been allowed the respondent will not be allowed to delay the process.

[3.4.9] Where the urgent motion court judge has found that the application is not urgent and strikes it off the roll the applicant is not prevented from re-enrolling the application duly amplified in a later week.

[4] In the light of the aforegoing practitioners can expect the following approach in the urgent motion court—

[4.1] Strict application of the *Republikeinse Publikasies* and *Luna Meubel Vervaardigers* judgments: all urgent applications must be enrolled by 12:00 on the previous Thursday for hearing at 10:00 on Tuesday unless they are covered by the other three degrees of ascending urgency referred to in *Luna Meubel Vervaardigers*;

[4.2] Insistence by the urgent court judge that the judge be satisfied that—

[4.2.1] the abridgement of times and the deviation from the rule is justified by the circumstances of the case; and

[4.2.2] if the matter is not heard immediately the applicant will not be afforded substantial redress at a hearing in due course;

These matters must be pertinently dealt with in the affidavits filed in support of the application;

[4.3] If an application is not filed (bound, indexed and paginated) by 12:00 on the previous Thursday (subject to the remaining degrees of ascending urgency in *Luna Meubel Vervaardigers*), the application will not be heard and will be struck off the roll. The object of timeous filing of the papers is to enable the court to prepare and adjudicate upon the matter expeditiously;

[4.4] If the judge is not satisfied that the application must be heard in the week in which it is enrolled for hearing it will be struck from the roll;

[4.5] If the application is enrolled for hearing outside normal court hours (ie 10:00–16:00) without satisfactory explanation, it will be struck from the roll;

[4.6] If an application, whether unopposed or opposed, is not ready to be adjudicated upon at the time indicated in the notice of motion it will be struck off the roll. If this occurs in an opposed application because the affidavits have not been filed timeously before 12:00 the previous Thursday (subject to the application falling under the remaining three degrees of ascending urgency referred to in *Luna Meubel Vervaardigers*) this will mean that the applicant has not complied with the *Republikeinse Publikasies* guidelines. The judge in the urgent motion court will not permit the application to stand down so that further affidavits can be filed;

[4.7] If a matter is not ready for hearing in the week in which it is enrolled for hearing, for whatever reason, in the absence of exceptional circumstances, which must appear from an affidavit, it will not be postponed to a later week. It will be struck off the roll;

[4.8] If the circumstances of a case are exceptional and the judge postpones the matter to a later week the judge will order—

[4.8.1] that the remaining affidavits be filed (bound, indexed and paginated) by specific times;

[4.8.2] that the papers be taken immediately to the judge who will sit in the later court;

[4.8.3] that the applicant immediately deliver to the judge who will sit in the later week a letter summarising the issues in the matter and the nature of the urgency;

[4.9] The return day of a rule *nisi* will be heard in the ordinary motion court unless the rule *nisi* expressly orders that the return day be heard in the urgent motion court. If parties agree that interim relief be granted and the respondent contends that the final adjudication of the matter is urgent, this must be dealt with in an affidavit so that the judge in the urgent motion court can make the appropriate order;

[4.10] No matter involving more than 500 pages will be considered by the judge in the urgent court (subject to the remaining three degrees of ascending urgency) unless the papers are delivered to the judge who will hear the matter at least 48 hours before the time of the hearing in the notice of motion;

[4.11] Any semi-urgent application which involves bulky affidavits in excess of 500 pages and/or argument in excess of three hours will be referred to the Deputy Judge President to allocate a date and judge for the hearing. Where practitioners anticipate that a dispute is of such importance that it must be resolved urgently by the court, for whatever reason, they should approach the Deputy Judge President to allocate a date for the hearing and determine dates for the filing of affidavits and heads of argument and the indexing and pagination of the affidavits.
