IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
(MBOMBELA MAIN SEAT)

Case No.: 5718/24

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: **NO**
(2)	OF INTEREST TO OTHER JUDGES: **YES**
(3)	REVISED **YES/NO**
25 APRIL 2025	FOURIE AJ
DATE	SIGNATURE

In the application between:

WERNER SWANEPOEL **APPLICANT**

and

ROSS WEBBER HARRIS **FIRST RESPONDENT**

ELOUISE LORRAINE HARRIS **SECOND RESPONDENT**

CITY OF MBOMBELA LOCAL MUNICIPALITY **THIRD RESPONDENT**

JUDGMENT

FOURIE AJ

INTRODUCTION:

[1] The Applicant in the current urgent application is the First Respondent in an eviction application brought by the First and Second Respondents in the current application, being the First and Second Applicants in what I shall refer to hereinafter as the main application. In order to avoid confusion, the parties are referred to as in the urgent application.

[2] The Applicant makes application on an urgent basis seeking an order in the following terms:

[2.1.] That the matter be heard as one of urgency and that the usual time periods, notice, and service in terms of the Uniform Rules of Court be dispensed with;

[2.2.] Staying/dispensing the execution of the Court Order granted by this Honourable Court on the 3rd of March 2025, pending finalisation.

[2.3.] The finalisation to which the Applicant refers is the finalisation of Part B of the Application, which this Court is not tasked with currently, being an application that the Applicant wishes to move, for the rescission of the judgment granted by this Court on the 3rd of March 2025.

[2.4.] The application is opposed by the First and Second Respondents who seek the striking of the matter from the roll insofar as it relates to urgency, alternatively, the dismissal of the application together with costs.

CRONOLOGY OF EVENTS:

[3] In what is to follow, the events need to be set out as they unfolded.

[3.1.] On 12 February 2025, the main application is served by the First and Second Respondents on the Applicant.

[3.2.] On 26 February 2025, the Applicant files his Notice to Oppose the main application.

[3.3.] On 3 March 2025, the matter, as set down on the unopposed Motion Court roll of this Court, is dealt with by Montsho-Moloisane AJ granting the relief the First and Second Respondents sought on an unopposed basis.

[3.4.] On 24 March 2025, the Applicant files an Answering Affidavit in the main application.

[3.5.] On 8 April 2025, a Warrant of Ejectment is served by the First and Second Respondents on the Applicant.

[3.6.] On 17 April 2025, the current urgent application is brought and set down to be heard on 22 April 2025.

[3.7.] On 22 April 2025, at the hearing of the application, the Authority to Act of the Applicant's legal representative is challenged by the First and Second Respondents by the filing of a Rule 7(1) Notice.

[3.8.] The Applicant seeks an indulgence for the matter to stand down to be heard on 24 April 2025 to resolve any administrative issues in respect of the matter, which indulgence is granted with the Applicant being

ordered to pay the wasted costs for 22 April 2025 on an attorney and client scale.

[3.9.] On 24 April 2025, the matter was heard via a virtual platform during which the Court found the matter to be urgent and proceeded to deal with the merits of the application. The Court did not provide reasons for finding the matter to be urgent, and deals with such reasons in the current judgment.

URGENCY:

[4] The uncontested evidence in respect of the matter is that, pursuant to obtaining the Order of 3 March 2025 the First and Second Respondents proceeded to serve a warrant of Ejectment on 8 April 2025 on the Applicant.

[5] Irrespective of the fact that the Respondents' legal representative allegedly informed the messenger of the Applicant's legal representative on 24 March 2025 that the Order had been granted in the main application on 3 March 2025, 8 April 2025 was the date on which the Applicant knew that the First and Second Respondents were proceeding to enforce the ejectment by way of warrant.

[6] A litigant who approaches Court for leave on an urgent basis must comply with Rule 6(12)(b) of the Uniform Rules of Court. The Rule reads as follows:

> *"In every affidavit or petition filed in support of any application under paragraph (a) of this sub-rule, the Applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reason why he claims that he could not be afforded substantial redress at a hearing in due course."*

[7] The importance hereof is that the procedure as set out in Rule 6(12) is not there for the mere 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 it claims that it 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 the 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 a normal trial date, it would not obtain substantial redress. It is important to note that the Rule requires the absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course, but it may not be substantial. Whether an Applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case. An Applicant must make out its case in this regard[1]

[8]. There are thus two requirements that must be outlined in the Founding Affidavit in order to satisfy the requirements of the Rule[2].Whether an Applicant has succeeded in satisfying the requirements for urgency must be determined from the contents of the Founding Affidavit[3].

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[9] In **LUNA MEUBELVERVAARDIGERS (PTY) LTD V MAKIN & ANOTHER**[4]Coetzee J held with reference to Rule 6(12)(b) the following:

> *"Mere lip service to the requirement 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."*

[10] In the current matter, the Applicant approaches the Court on an urgent basis to stay a warrant, whereby if executed, he will be evicted from a residential premises.

[11] The test in as far as it relates to urgency remains, at its core whether, if the Court does not deal with the matter at the current junction, and the Court allows the matter to be heard in the normal course, whether the Applicant will be able to obtain substantial redress. Substantial redress will depend on the facts of each specific matter.

[12] The Court takes judicial notice of the fact that should a matter be enrolled to be heard on the opposed Motion Court roll as at the date of this judgment, the date obtained from the Registrar will be approximately one year from the date of such enrolment.

[13] The papers filed by the respective parties are clear in that the First and Second Respondents intend not to wait for the adjudication on the rescission of judgment before they proceed with the enforcement of such order by proceeding to have the Applicant evicted by way of Warrant with the assistance of the Sheriff.

[14] Under the circumstances, the Applicant would, in the normal cause, have been evicted from the premises for a period of approximately a year by the time the

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rescission of judgment application is heard. It is an unthinkable proposition that the Applicant would receive substantial redress if the matter were not heard as one of urgency.

[15] The only aspect the Court ought to evaluate, following from the fact that the Court has found that the matter is urgent, is whether the urgency was self-created.

[16] If the Applicant was the reason for the matter being urgent the Court will not come to the aid of the Applicant as he would be the master of his own demise.

[17] The principles relating to self-created urgency are trite, and the current matter is not one where it is deserving to restate the trite principles pertaining to self-created urgency.

[18] The issue the First and Second Respondent by way of counsel appearing for the First and Second Respondents have raised is that the Appellant had sat on his laurels or absconded from the litigious process in the main application which resulted in the initial order being granted and after the Applicant became aware of the initial order, he again unduly delayed the bringing of the current application.

[19] From an evaluation of the chronology which the Court has already set out, the proposition that the Applicant sat idly by and did not actively partake in the litigious process is incorrect.

[20] Similarly, when confronted with the fact that the First and Second Respondents were proceeding with the enforcement of the eviction, the current application followed without undue time delay.

[21] As such the Court is not convinced by the argument of the First and Second Respondents that the urgency in respect of the matter is self-created.

STAY OF EXECUTION PROCESS:

[22] The only issue remaining outstanding in respect of the matter was whether the Applicant met the threshold as per Rule 45A of the Uniform Rules of Court to obtain the stay of the execution process pending the finalisation of their rescission of judgment application.

[23] In the matter of **STOFFBERG N.O. AND ANOTHER v CAPITAL HARVEST (PTY) LTD**[5] the Court stated the following regarding Rule 45A:

> *"The incorporation of Rule 45A suggests that it was intended to be a restatement of the Court's common law discretionary power. The particular power is an instance of the Court's authority to regulate its own process. Being a judicial power, it falls to be exercised judicially. Its exercise will therefore be fact-specific, and the guiding principle will be that execution will be suspended where real and substantial justice requires that. Real and substantial justice is a concept that defies precise definition, rather like good cause or substantial reason. It is for the Court to decide on the facts of each given case whether considerations of real and substantial justice are sufficiently engaged to warrant suspending the execution of a judgment and if they are on what terms any suspension it might be persuaded to allow or should be granted."*

[24] The general principles for the granting of a stay in execution may therefore be summarised as follows:

a. A Court will grant a stay of execution where real and substantial justice requires it, or where injustice would otherwise result.

b. The Court will be guided by considering the fact that is usually applicable to interim interdicts, except where the Applicant is not ascertaining right but attempting a avert injustice.

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c. The Court must be satisfied that:

i. The Applicant has a well-grounded apprehension that the execution is taking place at the instance of the Respondent, and

ii. Irreparable harm will result if execution is not stayed and the Applicant ultimately succeeds in establishing a clear right.

d. Irreparable harm will invariably result if there is a possibility that the underlying *causa* may ultimately be removed i.e. where the underlying *causa* is the subject matter of an ongoing dispute between the parties.

e. The Court is not concerned with the merits of the underlying dispute the sole inquiry is simply whether the *causa* is in dispute.

[25] The Court in **VAN RENSBURG AND ANOTHER NNO v NAIDO AND OTHERS**[6]stated that:

> *"A Court will grant a stay of execution in terms of Uniform Rule 45A where the underlying causa of a judgment debt is being disputed or no longer exists or when an attempt is made to use the levying of execution for ulterior purposes As a general rule, Court acting in terms of this rule will suspend the execution of an order where real and substantial justice compels such actions."*

[26] I align myself further with the statement of Navsa JA in the matter of **VAN RENSBURG** *supra* where it was stated that:

> *"Apart from the provisions of Uniform Rule 45A, a Court has inherited jurisdiction in appropriate circumstances to order a stay of execution or to suspend an order. It might, for example, stay a sale in execution or suspend an ejectment order. Such discretion must be exercised judicially. As a general rule, a Court will only do so where injustice will otherwise ensue."*

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[27] In the current matter, the Court needs to evaluate, on all the principles previously stated whether injustice would result if the Court does not intervene and grant the stay of the execution proceedings.

[28] The well-grounded apprehension that the execution is taking place at the instance of the First and Second Respondents stands obvious and same is not contested.

[29] For the same reasoning as the Court has found in respect of whether substantial redress in due course could be had by the Applicant if the matter is not heard on the Urgent Court roll, although the test is different, it is abundantly clear that irreparable harm will result if execution is not stayed and the Applicant ultimately succeeds in establishing a clear right as the underlying *causa* between the Plaintiff and the First and Second Respondents are obviously contested as is the exitance of the Court Order of 3 March 2025 and whether or not same ought to be rescinded.

[30] This Court will not concern itself with the merits of the underlying dispute and simply needs to take notice whether the underlying *causa* is in dispute. The dispute between the Applicant and the First and Second Respondents is not contested to be in existence. Similarly, the fact that the Applicant wishes the Order of 3 March 2025 to be rescinded is also not in dispute, such an application by way of Part B of the current application is already pending.

[31] This Court is neither called upon to finally find whether the Order of 3 March 2025 ought to be rescinded nor am I of the intention of doing so.

[32] I am however requested to exercise my judicial discretion to evaluate, with the facts the Court is faced with, whether real and substantial justice dictates the staying of the execution and in order to make a ruling on that principle, the

underlying dispute, being the Order of 3 March 2025 and how the Order came into existence needs to be evaluated and cannot be ignored.

[33] The crux of the issue that exist between the Applicant and the First and Second Respondents upon which the Court hearing the rescission of the judgment would ultimately need to decide is whether, on 3 March 2025 when the matter served on the unopposed roll and the Order was ultimately granted, the matter ought to have been regarded as unopposed or opposed.

[34] If the Court is of the view that the matter ought to have been regarded as unopposed and same is glaringly obvious from the facts, it could never be the contention that real and substantial justice dictates the warrant of execution being suspended.

[35] If, however, the Court holds the view that the matter ought to have been regarded as being opposed when the matter was heard on the 3rd of March 2025, it would follow that real and substantial justice dictates that the warrant of execution to be stayed and for the Applicant to be afforded the opportunity to pursue a rescission of such a judgment.

[36] The Notice of Motion filed by the Applicant in the main application and served on the Respondent on 12 February 2025 afforded the Applicant in the current application the opportunity to oppose the main application within 10 (ten) days of the application so being served on him. The last day for the filing of a Notice of Intention to Oppose by the Applicant was accordingly 26 February 2025. On 26 February 2025 the Applicant, totally compliant with the Notice of Motion and the time frames afforded to him therein filed his Notice of Intention to Oppose.

[37] In line with Rule 6(5)(d)(ii) which reflects the Notice of Motion, the Applicant was afforded 15 (fifteen) days from the date on which his Notice of Intention to Oppose was filed to file his Answering Affidavit in the main application.

[38] The time for the filing of the Applicant's Answering Affidavit in the main application would accordingly run its course on 19 March 2025. All of these timeframes were confirmed and conceded by the First and Second Respondents' legal representatives at the hearing of the matter.

[39] The Notice of Motion filed in the main application by the First and Second Respondents expressly states that:

> *"If no such Notice of Intention to Oppose be given the application will be made on 3 March 2025 at 09h00."*

[40] Despite the Notice of Intention to Oppose being given within the correct timeframe and despite the Applicant having approximately 16 Calendar days left to file his Answering Affidavit the Court granted the main application in favour of the First and Second Respondents in the absence of the Applicant. At the hearing of the matter, the legal representatives of the respective parties were referred to the matter of **VALUE POOLS (PTY) LTD v COMMUNITY PROPERTY CO (PTY) LTD**[7]. For purposes of the current application and in order to avoid proposing an order in respect of the rescission of judgment this Court refrains from making a ruling that might influence in any way the rescission of judgment application, pending in terms of Rule 42 of the Uniform Rules of Court as brought by the Applicant. Simply because, in such an application the Applicant has several ancillary hurdles to overcome other than that which is addressed in the current judgment. I align myself however with the set out of Greyling-Coetzer AJ in stating that the Practice Directives of Court can never override the Uniform Rules of Court. The balance between the Practice Directives and the Uniform Rules of Court ensures the proper functioning of our Courts.

[41] In the matter of **VALUE POOLS** *supra,* the Respondent, after the filing of a Notice of Intention to Oppose, failed to act in line with the Uniform Rules of Court which was the position the Court was faced with when granting judgment against the Respondent in that matter.

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[42] The Practice Directives of this Division indicate that a matter remains to be regarded as unopposed until the filing of an Answering Affidavit by a Respondent. I find it important to clarify this position in that the aforesaid would be the position if, after the expiring of the time allowed for the filing of Answering Affidavit, the Respondent has, given Notice of Intention to Oppose but has failed to be compliant with the Rules of Court, specifically Rule 6(5)(d)(ii). Under such a circumstance, an Applicant would be justified in invoking the Practice Directives, which reflect how the Uniform Rules of Court are to be interpreted to regard a matter as unopposed.

[43] The position is, however, significantly different for the period of 15 (fifteen) days from the time when a Respondent is requested to provide his Notice of Intention to Oppose to the date on which he is afforded the right to file such an Answering Affidavit as he deems appropriate. To reason that, for this 15 (fifteen) day period, a matter ought to be regarded as unopposed and not to grant a Respondent the security of regarding a matter as opposed specifically for this 15 (fifteen) day period would lead to undesirable effects and would not make any sense. To reason that the 15 (fifteen) day period as afforded in the Rules does not afford the Respondent the security, specifically for this 15 (fifteen) day period of having the matter regarded as opposed, would lead to Respondents being necessitated to file Answering Affidavits together or shortly after the filing of Notices to Oppose which stands directly opposite to the time that is provided to a Respondent to effectively prepare their Answering Affidavit per the Rules of Court. The 15 (fifteen) day period afforded in the Rules of Court has been included in the Rules to allow a Respondent a reasonable amount of time to prepare their answer and to file same at Court.

[44] If, at the lapse of the 15 (fifteen) day period the Respondent has remained non-compliant and has failed to file their Answering Affidavit, it would be reasonable for the Respondent to forego the security offered to him by Rule 6(5)(d)(ii) and for the application to be regarded as unopposed, to be dealt with as such.

[45] Under circumstances where it was conceded by the First and Second Respondents' legal representative that the Order was granted at a time when the 15 (fifteen) day protection period as per Rule 6(5)(d)(ii) had not yet run out, I am satisfied that substantial justice requires that this Court intervenes in respect of the matter and to Order that the warrant of execution be stayed to afford the Applicant an opportunity of applying to rescind the judgment of 3 March 2025.

[46] In the main application, the Applicant in the current application has already filed his Answering Affidavit all be it after the Order of 3 March 2025 was granted against him. The opposition such an Answering Affidavit contains and whether such an opposition holds any prospect of success is, for purposes of the current evaluation, irrelevant.

[47] Whether the Applicant ultimately succeeds in meeting the threshold of Rule 42 of the Uniform Rules of Court and succeeds with the rescission of the judgment of 3 March 2025 is dependent on whether the Applicant in such an application will advance the relevant facts to substantiate such relief.

[48] With the facts this Court is faced with, however, to allow the warrant of execution to proceed to be executed would amount to an injustice.

CONCLUSION:

[49] For all the reasons *supra,* the application for the stay of execution and the suspending of the Court Order of 3 March 2025 must succeed.

COSTS:

[50] The Applicant in the current application sought that the costs of the application stand over for determination at the hearing of Part B of the application in the event of the application remaining unopposed. The Applicant sought costs on an attorney and own client scale against any Respondent opposing the current application.

[51] Although the Applicant has been substantially successful with his urgent application, the ultimate test of whether the Applicant was justified in bringing his application would be whether the Applicant succeeds in obtaining the relief as per Part B of his application, being the rescission of the judgment of 3 March 2025.

[52] As such, the costs in respect of Part A of the Applicant's application shall be costs in the cause and the party ultimately successful at the hearing of Part B of the application, being the rescission of judgment application, will be entitled to the costs of the current application forming Part A of such application.

ORDER:

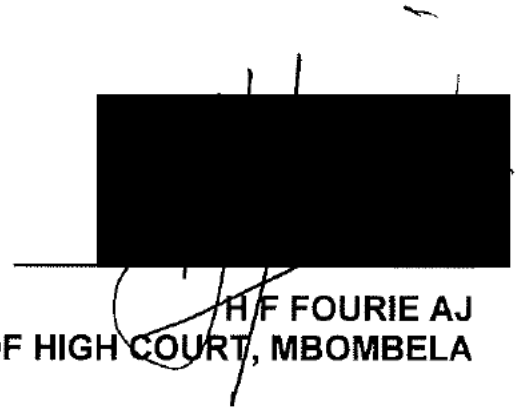
[53] In the premise, the following order is made:

1. The matter is found to be urgent and dispensed with as an urgent application.

2. The Order of Court dated 3 March 2025 is suspended, and the Warrant of Ejectment emanating from the Court Order of 3 March 2025 is stayed pending the finalisation of the Applicant's rescission of Judgment application as per Part B of his application.

3. In order to Case Manage Part B of the Applicant's application, the parties are directed to approach the Registrar of Court by no later than 30 April 2025 for the completion of Form B and to obtain a date for the hearing of Part B of the Applicant's application on the Opposed Motion Court roll.

4. The costs of Part A of the application shall be costs in the suit to form part of the costs of Part B of the application.



H F FOURIE AJ
ACTING JUDGE OF HIGH COURT, MBOMBELA

Counsel for the Applicant: **ADV LK NGCANGCA**
Instructed by:

Counsel for the Respondent: **ADV JJ VENTER**
Instructed by: **HvH ATTORNEYS**

Judgment reserved on: 24 APRIL 2025
Date of delivery: 25 APRIL 2025

[1] Eastrock Trading 7 (Pty) Ltd & Another v Eagle Valley Granite (Pty) Ltd & Others (11133767) [2011] ZAGPJHC 196 (23 September 2011)

[2] Salt & Another v Smith 1991 (2) SA 186 (NM) at 197 A

[3] Il & B Marcow Caterers v Greatermans SA 1981 (4) SA 108 (C) at 111 A

[4] Luna Meubelvervaardigers (Pty) Ltd v Makin & Another 1977 (4) SA 135 (W) at 137 F

[5] Stoffberg N.O. and Another v Capital Harvest (Pty) Ltd 2021 JDR 1644 BCC

[6] Van Rensburg and Another NNO v Naido and Others 2011 (4) SA 149 (SCA)

[7] Value Pools (Pty) Ltd v Community Property Co (Pty) Ltd (496/2020) [2022] ZAMPNBHC 5 (25 January 2022)