Reportable:	~~YES~~ / **NO**
Circulate to Judges:	~~YES~~ / **NO**
Circulate to Magistrates:	~~YES~~ / **NO**
Circulate to Regional Magistrates:	~~YES~~ / **NO**

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

CASE NUMBER: 4948/24

BRIDGE TAXI FINANCE NO 05 (PTY) LTD — **APPLICANT**

and

SITHELE; MINIKI JOSEPH — **RESPONDENT**

CASE NUMBER: 4949/24

BRIDGE TAXI FINANCE NO 08 (PTY) LTD — **APPLICANT**

and

MOLEFI; KENOLE CAROLINE — **RESPONDENT**

CASE NUMBER: 4950/24

BRIDGE TAXI FINANCE NO 08 (PTY) LTD — **APPLICANT**

and

MODIBANE; DANIEL TUMELO — **RESPONDENT**

CASE NUMBER: 4946/24

BRIDGE TAXI FINANCE NO 08 (PTY) LTD — **APPLICANT**

and

MOFOKENG;KEGOMODITSWE MAGDELINE — **RESPONDENT**

Coram: WESSELS AJ

Date: 5 June 2025

ORDER

i. The applications are removed from the roll.

ii. The applicants are granted leave to re-enrol the applications on the same papers, duly supplemented.

iii. No order as to costs.

JUDGMENT

Introduction

[1] Four ex parte applications served before this Court on the unopposed motion court roll of 17 April 2025. The relief claimed in all the applications is for the preservation of motor vehicles ('vehicles'), used as taxis, pending the final determination of actions to be instituted by the applicants based on the breach of the credit agreements relating to the vehicles. The actions to be instituted are for the return of the vehicles, forfeiture of all amounts paid in terms of the lease agreements and damages following, upon the sale of thereof.

[2] The issue to be decided is whether the applicants succeeded in establishing a case for the interim preservation of the vehicles on an ex parte basis.

Facts

[3] The respondents concluded credit agreements ('the agreements') within the purview of the National Credit Act 34 of 2005 ('NCA'), termed *'developmental credit agreements'*, with the applicants in terms of which the respondents leased vehicles from the applicants.

[4] The usual clauses reserving the right to ownership of the vehicles pending full payment of the outstanding amounts, in accordance with the agreements, were agreed upon by the parties.

[5] The respondents fell into arrears with the contractual payments owing to the applicants. The applicants brought the ex parte applications now serving before this Court for the return of the vehicles pending the institution and finalisation of actions for the confirmation of the cancellation of the agreements, forfeiture of all amounts already paid in terms thereof and leave to apply for damages after compliance with the relevant provisions of s 127 of the NCA.

Content of the applications

[6] Although the registered names of the applicants differ, their principal places of business are similar. The deponent to the founding affidavits is the same individual in each instance, having deposed thereto in his capacity as the operational director of the applicants. Unsurprisingly, all the applicants are represented by the same firm of attorneys.

[7] The following correlative relief has been requested in all the applications:

> *'1. A rule nisi do hereby issue calling upon the Respondent [...] to show cause to this Court on [...] or as soon thereafter as the matter can be heard why he should not be ordered to restore to the Applicant forthwith possession of ... ("the vehicle").'*
>
> *2. That this rule nisi operates as an interim interdict with immediate effect pending the outcome of the action, and the sheriff of the court is authorised and directed to attach and remove the said vehicle, from the Respondent or wherever it may be found, and place the Applicant in possession thereof to store and preserve the vehicle pending the final determination of the action for which this shall be the Sheriff's warrant.*
>
> *3. ...*
>
> *4. Costs be costs in the Action'*

[8] The applications are similar in their general outline, as well as the overwhelming majority of allegations contained in the respective founding affidavits that mirror each other. In all the applications, the following allegations are found:

> *'25. Notwithstanding the aforesaid I respectfully submit that it is reasonable for the Applicant to apprehend irreparable harm: –*
>
> *25.1 The rigorous use <u>that taxis in general are subjected to</u> is notorious;'*

'25.4 The Applicant reasonably apprehends that the vehicle is not being maintained. This apprehension stems from the Respondent's breach of the agreement, and the Respondent's failure to remedy the breach despite it having been drawn to the Respondent's attention. The Respondent's conduct raises the reasonable apprehension that the respondent is probably also not maintaining the vehicle or ensuring it against damage, or loss; and

25.5 Moreover, it is my experience from other similar cases which the applicant has experienced in the past, that: –

25.5.1 respondents in a position similar to that in which the Respondent is (that is a failure to pay the contractual instalments due under the agreement) display a general mental attitude of lack of concern for the Applicant's interests in the relevant vehicle;

25.5.2 such mental attitude often manifests in an abuse of the vehicle whether through overloading, subjecting the engine to maximum performance without concomitant maintenance and care (such as checking water and oil levels) and generally driving the vehicle in a fashion that only accelerates its mechanical deterioration and eventual breakdown;'

25.5.3 often, upon a breakdown of the vehicle, or the engine, attempts to repair such breakdown of parts or components are associated with the attempts by unqualified persons to effect repairs or maintenance by either using (at best) parts not approved by the vehicle's manufacturer, or sometimes by using home-made creative solutions being the proverbial "hammer and nail". Such solutions often accelerate the mechanical deterioration of the vehicle;

25.5.4 many respondents that have in the past received notice of the Applicant's intention to pursue a recovery of the vehicle, make the

recovery of the vehicle virtually impossible. This is usually done by stripping down the vehicle and (presumably) selling the individual parts;

25.5.5 in this latter regard I annex a series of photographs, annexures "[...]" to "[...]", merely as an example of a vehicle that the Applicant had eventually recovered after cancelling the relevant agreement, but not before the consumer had stripped the vehicle of its constituent parts. The photographs were taken by one of the tracing agents employed by the Applicant. In view of the fact that the photographs do not relate directly to the vehicle financed for the Respondent, the Applicant does not burden this application with a confirmatory affidavit by the tracing agent;'

(emphasis added)

[9] The applicants refer to general statistical data they gathered between April 2023 and August 2023, which indicates that between 33 and 41 percent of vehicles financed by the applicants have been stripped, following the applicants' notification to their consumers of their intention to repossess the vehicles.

Legal principles applied

[10] The underlying principle of ex parte applications is well established in that it demands the utmost good faith from an applicant. The distinguishing feature of an ex parte application is that the Uniform Rules of Court exclude, at least initially, the observance of the audi alteram partem principle. In *Schlesinger*

v Schlesinger[1], the court spoke to an applicant's duty to disclose all relevant facts as follows:

> *'Although these broad principles appear well-settled, I have not come across an authoritative statement as to when a Court will exercise its discretion in favour of a party who has been remiss in its duty to disclose, rather than to set aside the order obtained by it on incomplete facts. On the other hand, the circumstances may be so divergent and variegated that it is impossible to lay down any guideline at all."*

[11] An ex parte application is not the norm and should be allowed only in exceptional circumstances. The following remarks regarding the interplay between exceptional circumstances and the audi alteram partem principle in ex parte applications by the court in *South African Airways Soc v BDFM Publishers (Pty) Ltd and Others*[2] are apposite:

> *'The principle of audi alteram partem is sacrosanct in the South African legal system. Although, like all other constitutional values, it is not absolute, and must be flexible enough to prevent inadvertent harm, the only times that a court shall consider a matter behind a litigant's back are in exceptional circumstances. The phrase "exceptional circumstances" has regrettably through overuse, and the habits of hyperbole, lost much of its impact. To do that phrase justice, it must mean very rarely, only if a countervailing interest is so compelling that a compromise is sensible, and then a compromise that is parsimonious in the deviation allowed. The law on the procedure is well established.'*

---

[1] Schlesinger v Schlesinger 1979 (4) SA 342 (W) 349 B-C
[2] South African Airways Soc v BDFM Publishers (Pty) Ltd and Others [2015] ZAGPJHC 293;2016 (2) SA 561 (GJ) para 22

[12] The applications are littered with sweeping statements and contain general, unsubstantiated assumptions, following a one-size-fits-all approach regarding their structure and content.

[13] Applications of this nature have been labelled by the courts as constituting an abuse of court process. In particular, the abuse of court process caused by the practice of employing almost identical content in affidavits in different matters has been described by the Full Court of the Gauteng Division, Johannesburg, in *Lembore and Others v Minister of Home Affairs and Others*[3] as *'something this Court has inherent power to guard against'*.

[14] Aside from this clear abuse of the court process, the applications rely on assumptions, which are not founded on objective facts.

[15] The applicants state that due to the respondents' lack of prompt payment, the motor vehicles are not being properly maintained because of the respondents' *'general mental attitude'* and neglect towards the applicants' interests in the vehicles. The applicants cite a perceived intention on the part of the respondents to employ substandard reparation and maintenance practices on these vehicles while subjecting the vehicles to extreme forms of abuse.

---

[3] Lembore and Others v Minister of Home Affairs and Others [2024] ZAGPJHC 102; 2024 (5) SA 251 (GJ)

[16] A further concern is what the applicants refer to as a general phenomenon of stripping of motor vehicles, which the applicants employ as a compelling consideration for the granting of the order on an ex parte basis. This concern is not based on any objective facts, but rather on the applicants' own statistical data of similar motor vehicles that had been stripped in unrelated instances. Pertinently, the applicants attach the same nondescript photograph of a stripped minibus motor vehicle to all the applications to bolster this point. The applicants concede that these photographs, attached to all the applications, do not relate to any of the vehicles in question and are merely examples of a vehicle that had been recovered by the applicants after it had been stripped to its primary structure following the notice of cancellation of the credit agreement.

[17] What is particularly disconcerting is the allegation (again contained in all the applications) that the applicants are unlikely to recover the damages caused to the vehicles due to the financial profile of the respondents, as the respondents are unlikely to have the financial means to satisfy a judgment for damages. The applicants do not mention that any more recent financial profiles have been obtained from any of the respondents. The reasonable conclusion to be drawn is that the financial profiles the applicants refers to are the financial profiles obtained from the respondents' initial credit applications. It stands to reason that if the respondents' financial profiles were poor, credit should not have been granted to them in the first instance. Disconcerting as it may be, this point does not fall within the purview of the issue that stands to

be decided, but rather illustrates the sweeping approach followed by the applicants in the founding affidavits.

[18] The speculative content of the various founding affidavits does not constitute evidence, and the conclusions drawn by the applicants are not substantiated by evidence. Put differently, applicants should present their case based on objective facts rather than conjecture. The lack of the required factual disclosure falls short of the utmost good faith expected from an applicant in an ex parte application. Consequently, there is no justification to absolve the applicants from the obligation to disclose all relevant facts in support of the relief requested in the applications. Therefore, the relief sought cannot be granted. Should such a finding lead to the dismissal of the applications?

[19] Rule 6(6) empowers a court hearing an ex parte application to grant leave to the applicants to renew their applications on the same papers supplemented by such further affidavits as the case may require. Although the applications do not pass the threshold necessary for the ex parte relief they seek, it does not seem to be a reasonable ground to dismiss the applications at this stage.

Order

[20] Resultantly, the following order is made:

i. The applications are removed from the roll.

ii. The applicants are granted leave to re-enrol the applications on the same papers, duly supplemented.

iii. No order as to costs.

M WESSELS
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Date of hearing	**:17 April 2025**
Date of judgment	**:5 June 2025**

APPEARANCES

Counsel for Applicant	**:Adv Riley**
Instructed by	**:ODBB Attorneys**
	:Sandton
	:c/o LFS Attorneys
	Mahikeng
Counsel for Respondent	**:no appearance**