

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NO: 29769/2018**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED YES

**28 AUGUST 2018**

**AH PETERSEN**

In the matter between:

**DENNIS JAMES ERNEST BYRNE**

**Applicant**

**and**

**DENISE CAROL BYRNE**

**First Respondent**

**DI SIENA ATTORNEYS**

**Second Respondent**

**SHERIFF SANDTON SOUTH**

**Third Respondent**

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**JUDGMENT (REASONS)**

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**PETERSEN AJ:**

[1] This matter came before me as an urgent application on 17 August 2018. The application was struck from the roll with costs for lack of urgency.

[2] The applicant sought an order in the following terms:

“(a) Dispensing with the forms and service prescribed by the Rules of this Honourable Court and permitting this application to be heard as one of urgency.

(b) Pending the final determination of the relief sought as set out in Part B below, the First Respondent be:

- (i) Interdicted and restrained from proceeding with the Warrant of Execution dated the 19 July 2018 and issued by the Registrar of the above Honourable Court on the 20 July 2018 in terms of whereof the Third Respondent was directed to attach and take into execution the incorporeal movable assets of the Applicant, being the available monies held in the Applicant’s Nedbank Savings Account with Account Number [...] for a sum of R480 000.00 (Four Hundred and Eighty Thousand Rand) plus interest at the rate of 10.25% per annum *a tempore morae* and costs, (“Writ of Execution”).
- (ii) Directing the Second and Third respondents to give effect to what is contained in (i) above.
- (iii) Directing that the costs of this application be reserved for determination with the relief sought in Part B below.

....”

[3] At the hearing of the matter I admitted a replying affidavit deposed to by the daughter of the applicant, albeit opposed by the first respondent. The replying affidavit reflected an amount of R547 392.60 debited to the Nedbank Savings Account of the applicant pursuant to the Writ of Execution.

[4] Rule 6(12) of the Uniform Rules of Court regulates the enrolment of a matter as urgent. In terms of rule 6(12)(b) an applicant in every affidavit in support of an urgent application “...must set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that the applicant could not be afforded substantial redress at a hearing in due course.” The applicant is therefore required to: (1) set forth explicitly the circumstances which render the matter urgent; and (2) state the reasons why he cannot be afforded substantial redress at a hearing in due course.

[5] The applicant premised the relief sought on an urgent basis on the following basis: (1) that the Sheriff had attached the amount of R547 392.60, was proceeding to execute thereon from the Nedbank Savings Account and he would not be afforded substantial redress in due course; (2) that the amount was a duplication of purported arrear maintenance for the period 1 August 2017 to March 2018 in the sum of R320 000.00; (3) he would suffer irreparable harm if the Third Writ is proceeded with and not set aside, as he would incur substantial costs recovering the amounts from the First Respondent, if he is able to do so at all; (4) the underlying substratum of the order is the subject of the Rule 43(6) application and may fall away; (5) there has been an abuse of the rules and provisions of the Honourable Court relating to the issuing of the Third Writ; the first respondent would have adequate time to deal with what is contained in Part B of the relief sought.

[6] The nub of the matter is that at the time of the hearing the writ had been executed, which on the applicant's own case was confirmed by the replying affidavit. It follows that with the Writ having been executed it had accordingly fallen away. In addition the Sheriff of the court had been instructed to release the funds by the first respondent. The first respondent gave an undertaking to return any surplus to the applicant, on a concession of a miscalculation. The very basis of the relief sought by the applicant had been overtaken by the aforementioned sequence of events and the need to approach the court on an urgent basis was questionable.

[7] In seeking an interim interdict, the applicant had to meet the following requirements:

1. a *prima facie* right;
2. a reasonable apprehension of harm if the interdict is not granted;
3. no alternative satisfactory remedy;
4. the balance of convenience favours the granting of the interim relief.

[8] The applicant failed to establish any of the requirements for the granting of an interim interdict and in particular that he will suffer irreparable harm by having to incur substantial costs to recover the amounts. He further failed to demonstrate that

he has no alternative satisfactory remedy and consequently why he would not be afforded substantial redress in due course.

[9] In the result the striking the application from the roll for lack of urgency with costs was issued.

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**AH PETERSEN**

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA**

For the Applicant: Adv Coock

Instructed by: Raymond Joffe & Associates

For the Respondents: Adv Van Beek

Instructed by: Di Siena Attorneys

Date Heard: 17 August 2018

Date of Reasons for Judgment: 28 August 2018