



**IN THE HIGH COURT OF SOUTH AFRICA GAUTENG  
LOCAL DIVISION, JOHANNESBURG**

**Case No: 38996/2019**

(1)REPORTABLE: No

(2)OF INTEREST TO OTHERS JUDGES: No

(3)REVISED

10 December 2019

DATE

SIGNATURE

**In the matter between:**

**DAVIES GRANT EVAN**

**Applicant**

**And**

**SHWATZ BRETT RICHARD**

**First Respondent**

**MASEKANE SHALATI CHRISTINAH**

**Second Respondent**

**SDS PROTECTION (PTY) LTD**

**Third Respondent**

---

**JUDGMENT**

---

Molahlehi J

**Introduction**

[1] This is an urgent application for payment of the purchase price relating to the sale of shares by the Applicant. The Applicant firstly seeks an order to make the agreement of the sale of shares an order of the court. And secondly, once the agreement is made the order of the court, that the respondents be ordered to pay him the amount of R2 800 000 within three days of the order. The application is opposed by the Respondent.

[2] The main issue to deal with in this matter is whether the application is urgent and whether the Applicant is prejudiced by the delay in the payment of the purchase price of the sale of shares.

[3] The matter initially served before this court on 19 November 2019. It stood down to 21 November 2019. At the stage, the case stood down, one of the prayers was to compel the respondents to finish the Applicant with his 2019 IRP5 form for tax returns.

[4] The urgent application relating to the delivery of the IRP5 was subsequently withdrawn. The claim now, is as alluded to earlier, is about the payment of the instalment in the amount of R 250 000 00. In this respect, the Applicant in the founding affidavit states the following.

"8.1.2 . They failed to make payment to me of the first instalment of R250 000.00 by 31 October 2019 (despite the obligation to do so in terms of clause 6.1), as a result of which the acceleration clause in terms of clause 6.2 became

operational and the full balance of the purchase price is immediately due and payable therefore R2 800 000.00."

[5] The brief background facts, relevant to the claim as it now stands are as follows: The Applicant is a former employee of the second respondent. He resigned from his employment on 30 August 2019.

[6] On 16 September 2019, he concluded the sale of shares agreement with the respondents. In terms of the agreement, he became the registered and beneficial owner of 24.5% of shares in the third respondent. According to him, the first and second respondent agreed to sell his shares in the first respondent at the purchase price of R2 800 000.00. The initial instalment in the amount of R250 000.00 was to be paid before 31 October 2019.

#### **The grounds for urgency.**

[7] The essence of the Applicant's case is that the respondents failed to effect payment in terms of the sale of shares agreement. He contends that in paragraph 6.1.7 that he could not wait for his case to be heard in the normal course because then it would only be heard the earliest 4 December 2019. If this was to be the case, then he would not be able to obtain substantial redress. It is for that reason that he approached the court on an urgent basis.

[8] The other ground upon which he relies on concerning urgency is that if the relief is not granted on an urgent basis, he will not be able to service his various credit

agreements. He will suffer financial hardship if an order is not made for an urgent payment of the shares.

### **The principles governing urgency**

[9] It is trite that an application brought in terms of rule 6(12) of the Uniform Courts Rules (dealing with urgent application) is not there for the taking. An applicant in an urgent application needs to set out the reason for urgency, the circumstances which render the matter urgent, and the reason why substantial redress cannot be obtained at a hearing in due course. See *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2012] JOL 28244 (GSJ) at paras 6-7.

[10] In an urgent application, the Applicant has to set out in the founding affidavit why he or she is entitled to have the matter heard on an urgent basis. He or she has to set out ground/s for believing that there would be no substantial redress in due course if the matter was not heard on an urgent basis. Thus if the matter is sufficiently urgent, and it has been shown that the Applicant will not be able to obtain substantial redress in due course, the court should grant the relief.

[11] The issue in this respect is not whether the Applicant will receive the relief in due course, but whether such relief would be substantial. The burden is thus on the Applicant to show in his or her papers that the matter deserves to be heard on an urgent basis. To emphasise, the Applicant has to show that if the matter is not heard on an urgent basis, he or she will suffer prejudice as he will not be able in due course to obtain substantial relief.

## Analysis

[12] The Applicant is contending that this matter deserves to be treated as urgent referred to a number of the labour court cases and one that has to do with the non-payment of maintenance of a child by the father. In *Rowen Candice Naidoo v React Solutions (Pty) Ltd* unreported labour court case number J56/2011, the court dealt with non-pay of the salary of an employee whilst on suspension. The dispute in *Tlalane Elizabeth Tefo v Small Enterprise Development Agency* unreported labour court case number J877/18 dealt with a dispute concerning the withholding of the salary of the employee who was considered to have taken unauthorised leave and thus was not entitled to receive her salary.

[13] As stated earlier in this judgment, the Applicant is a former employee of the third respondent. He voluntarily resigned from his employment with the third respondent. This means that the employment relationship came to an end upon his resignation. The first instalment of R250 000.00 that he is claiming is not a salary but rather, as the facts show, part of the purchase price of the sale of shares. It seems to me what he is seeking to do with this application is to convert his assets in the form of shares into money. He has not in his papers shown that he will not be able to obtain substantial redress in due course if the relief sought was not granted on an urgent basis. In the circumstances, his application stands to fail.

## Order

[14] In the premises, the Applicant's application stands to be struck off the roll with costs.



E Molahlehi

Judge of the High

Court;

Johannesburg

Representation:

For the Applicant: Mr C R DU Plessis

For the Respondent Adv P Ramano

Instructed by Du Toit Attorneys.

Delivered: 10-12-19.