

REPUBLIC OF SOUTH AFRICA



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

- (1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED.

22/3/2023

DATE

[Signature]

SIGNATURE

Case no.: **006300/2023**

In the matter between:

LANEMODE (PTY) LTD

APPLICANT

and

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

RESPONDENT

Coram:

Dlamini J

Date of request for reasons:

10 February 2023.

Date of delivery of reasons:

22 March 2023.

These reasons are deemed to have been delivered electronically by circulation to the parties' representatives via email and the same shall be uploaded onto the caselines system.

JUDGMENT

DLAMINI J

- [1] This is an urgent application brought by the applicant wherein the applicant seeks an order that the respondent is interdicted and restrained from removing the applicant's billboards.
- [2] On 01 February 2023, I signed an order marked "X" and made it an order of this court. The following I my reasons for granting that order.
- [3] In its notice of motion, the applicant seeks the following relief;
- 3.1 that this application be heard as an urgent application;
 - 3.2 the respondent be interdicted and prohibited from removing or cause to be removed the applicant's billboards without a Court order;
 - 3.3 the respondent be ordered to restore possession of and replace the applicant's billboards to their respective locations and their former state within 1(one) day of the Order being granted and furnished to the respondent;
 - 3.4 the respondent be ordered to pay all such costs as are necessary for the restoration and replacement of its billboard;
 - 3.5 In the event of the respondent failing to comply with prayer 3.3 above, the applicant is entitled to appoint a contractor to perform such restoration, and the respondent will be responsible for the costs therefore.

URGENCY

- [4] The applicant claims that the respondent has unlawfully removed its advertising billboards one situate at Kliprivier Road, adjacent to Thaba Eco Village, and the second billboard situated at Kliprivier Road near the intersection with Bellairs Drive, Rietvlei.
- [5] The applicant further testified that it wrote several letters of demand to the respondent, calling upon the respondent to restore the billboards without success.
- [6] On 25 January 2022, the applicant launched this urgent application.
- [7] In launching this urgent application, the applicant relies on the principle of mandement van spolie, that the applicant was in peaceful and undisturbed possession of its billboards and that the respondent should place it in its former possession ante the removal.
- [8] At the heart of the dispute is whether this application is urgent, that is, if an urgent order is not granted in favour of the applicants, the applicant will not get substantial relief in due course.
- [9] It was submitted on behalf of the applicant that this application is urgent in that the applicant's business operations have suffered, and will continue to suffer dearly as a result of the respondent's conduct. This assertion is based on the fact that the 2 (two) billboards have been removed within 2 (two) days, therefore the applicant argues that it has genuine reasons to believe that more of its billboard removals will follow.
- [10] Finally, the applicant submits that urgency may not relate only to a threat to life or liberty but also to commercial interest.

- [11] In its reply, the respondent submit that no case for urgency has been made by the applicant. In that, the billboards have already been removed. Further that if the applicant argues that it has lost business, the applicant can have a claim, and such claim can be adjudicated upon in due course.
- [12] It is now a well-established principle of our law that substantial support for an order in terms of Rule 6(12) needs to be submitted for consideration before this Court may deem a matter to be urgent. This principle was confirmed by the Court in *East Rock Trading 7 (Pty) Limited and Another v Eagle Valley Granite (Pty) Limited and Others*,¹ the Court said “the import thereof is that the procedure set out in Rule 6(12) is not there for the taking. An applicant has to set forth explicitly the circumstances under which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course.”
- [13] In *Democratic Nursing Organisation of SA and Another v Director General: Department of Health and Others*,² it was held in para [19] “As a general principle, financial hardship or loss of income cannot be regarded as grounds for urgent relief.”
- [14] In my view, the applicant has not made out the case for urgency. This is so because the impending billboards have already been removed by the respondent. The respondent admitted removing the billboards on the basis that the billboards posed an imminent danger to the public. The proverbial horse has already bolted. The applicant is not remedyless and can obtain substantial relief in due course. The applicant, if it so wishes can pay the necessary fine, and collect its billboards from the respondent. Once this is done, the applicant will be at liberty to institute an action and claim whatever damages that the applicant wishes to pursue against the respondent.

¹ (11/33767) [2011] ZAGPJHC 196 (23 September 2011)

² (J2386/08) [2009] ZALC 211 (5 January 2009)

[15] The applicant's submission that the business has suffered and will continue to suffer as a result of the respondent's action is no ground for urgency. It is apparent from the founding affidavit that the harm and prejudice that the applicant aims to protect are financial in nature. As was stated in *Democratic Nursing* above, the same does not justify the type of harm to be protected during urgent proceedings.

[16] In all the circumstances that I have alluded to above, the applicant has failed to establish that the application is heard on an urgent basis.

ORDER

1. The order marked X that I signed on 01 February 2023 is made an order of this court duly amended as follows;
2. The application is dismissed with costs for lack of urgency.



DLAMINI J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Date of request for reasons: 10 February 2023

Delivered: 22 March 2023

For the Applicant: Cliven Chauke
cliven@scattorneys.co.za

instructed by: Shinyori Chauke Inc.
cliven@scattorneys.co.za

Respondent: Adv. C Shongwe

Instructed by:

Wakaba and Partners Inc.

max@wakaba.co.za