IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED

10 October 2022 Moaleye

DATE SIGNATURE

CASE NO: 38897/2022

DATE: 10 October 2022

In the matter between:-

SIPHO ELIAS MOHLAHLO	Applicant
V	
TRIP KGAKGAUDI MONASWE	First Respondent
TRIP KGAGUDI MONASWE ATTORNEYS	Second Respondent
FIRST NATIONAL BANK	Third Respondent
LEGAL PRACTICE COUNCIL	Fourth Respondent
THE ROAD ACCIDENT FUND	Fifth Respondent

JUDGMENT

KOOVERJIE J

[1] The applicant, Mr Mohlahlo, seeks payment of an outstanding amount which he alleges is due to him by virtue of his damages award in terms of his Road Accident Fund (RAF) claim. He claims that his instructing attorney had not paid him the full capital amount awarded by the RAF. The applicant further contended that his erstwhile instructing attorney (second respondent) was not entitled to deduct their fees from the capital amount.

[2] The second respondent is the instructing attorney instructed on behalf of the applicant, namely Trip Kgaukgadi Monaswe Attorneys. The third respondent is the First National Bank, the banking institution where the RAF had paid the capital amount.

[3] The respondent raised various points *in limine* which included:

(i) the non-compliance of the Justice of Peace and Commissioners Oaths Act 16 of 1963 read with the Regulations governing the administration of an oath or affirmation;

(ii) the issue of non-joinder, that namely counsel, representing the applicant in the RAF proceedings, should have been joined;

(iii) the fact that material disputes of fact exist, more particularly, regarding the damages paid to him as well as whether a contingency fee was in place.

URGENCY

[4] The applicant is well aware that before I set out to make a determination on the merits of his matter, I must be satisfied that the requirements for urgency has been met.

[5] The nub of the applicant's case is that his civil claim deserves an urgent hearing. In argument, it was submitted that he recently learnt that the full capital amount of R3,237,622.55 was paid by the RAF to the second respondent. It was also submitted that this matter deserves urgent attention since the applicant is in a financially compromised position and his health is deteriorating. The latter submissions were made from the bar and are not in the papers.

[6] I deem it necessary to reiterate paragraph 12 where the applicant sets out the basis of his urgency:

"12.1 In terms of Rule 6(12) of the uniform Rules of this court, I am entitled to bring an urgent application for relief in respect of any right whether intimately personal or purely commercial or any else.

12.2 Thereafter my matter under consideration involves commercial interest of my civil claim granted by this court and paid by the RAF into the Trust Account of my then attorney of record, Mr Manaswe, who then misappropriated and unlawfully deducted same without any justification.

12.3 Mr Manaswe never gave me any statement of account of the costs of the matter or the court order thereof. On 19 September 2022, I approached the registrar of the above Court and I was given a Court Order and it was then I

became aware that the total amount paid by the RAF was R3,237,622.55 and not the amount of R1,350,718.46 paid by Mr Manaswe on the 30 January 2022.

12.4 I am a lay person and not familiar with court proceedings hence I approached my current legal representative on Thursday 22 September 2022 and I gave them a mandate to lodge this urgent application since my commercial right herein has been infringed.

12.5 I humbly submit that I will not be afforded substantial redress in due course. I gave the mandate to my current attorney to file the matter on the urgent basis. This (sic) court cannot turn a blind eye to my application since I am a litigant in need of a legal assistance."

[7] The applicant relied on the ***East Rock Trading***[1] matter where he submitted that he may have been delayed in instituting these proceedings but that should be reason to bar him an opportunity to be heard on an urgent basis:

"… the delay in instituting proceedings is not on its own a ground to refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given.

The important issue is whether despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course. The correct and crucial test is whether if the matter were to follow its natural course as laid down by the Rules, an applicant will be afforded substantial redress at a hearing in due course then the matter qualifies to be enrolled and heard as urgent application."

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[1] East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others 11/33767 [2011] ZAGPJHC 196 (23 September 2011)

[8] In my view, I find that the applicant has failed to satisfy this court that the matter is urgent. He would most certainly be afforded substantial redress in the normal course. The fact that he claims to have a civil claim does not afford him automatic access to the urgent court.

[9] At paragraph 6 of the ***East Rock Trading*** matter, the court stated:

> *"(6) The impact thereof is that the procedure set out in rule 6(12) is not there for the taking. An applicant has to set explicitly the circumstances which he avers the matter is 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. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of 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 the normal course laid down by the rules it will not obtain substantial redress."*

[10] Clearly the applicant's understanding that he has automatic access to the urgent court due to his civil claim is misconstrued.

[11] The applicant may have recently learnt of the full capital amount paid by the RAF. However, this reasoning does not warrant an urgent hearing.

[12] The current and crucial test is whether if the matter were to follow its normal course as laid down by the rules, an applicant will be afforded substantial redress. If he

cannot be afforded substantial redress in due course, then the matter should be enrolled and heard as an urgent application.

[13] in the ***Luna Meubels*** matter[2] the court held, *inter alia*, that applicants who abused court process should be penalized and the matters should simply be struck off the roll with costs for lack of urgency.

[14] In ***Maqubela v SA Graduates Development Association and Another (2014) 35 ILJ 2479 LC at par 32*** it was stated that in considering why the relief is necessary today and not tomorrow, requires a court to be placed in a position where the court must appreciate that if it does not issue a relief as a matter of urgency, something is likely to happen. By way of example if the court were not to issue an injunction, some unlawful act is likely to happen at a particular stage and at a particular date.

[15] In my view, this matter should have never been placed on the urgent roll. The fact that it is a monetary claim does not, on its own, justify an urgent hearing. The applicant can ventilate the issues in dispute in the normal course of events.

[16] It should be clear that when a client approaches a practitioner about an urgent application, the practitioner should determine the facts of the matter and whether the client can obtain real relief to protect his rights in due course. If not, then urgent proceedings should be recommended.

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[2] Luna Meubels (Edms) Bpk v Makin (t/a Makin's Furniture Manufacturers) 1977 (4) SA 135 W

[17] Furthermore I have taken cognisance of the not only the point *in limine* but the disputes of fact raised, particularly in respect of the existence of the contingency fee agreement and the amount paid to him.

[18] In the premises therefore I make the following order:

The application is struck off the roll with costs.

H KOOVERJIE

JUDGE OF THE HIGH COURT

Appearances:

Counsel for the applicant:	Adv DPRS Masango
Instructed by:	Malebale Makwala Inc
Counsel for the first respondent:	Adv VM Magwane
Instructed by:	Trip Kgagudi Manaswe Attorneys
Date heard:	4 October 2022
Date of Judgment:	10 October 2022