

**THE REPUBLIC OF SOUTH AFRICA  
IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG HIGH COURT DIVISION, PRETORIA**

Case no: **37082/2022**

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

DATE: 14 JULY 2023

SIGNATURE

In the matter between:

M[...] B[...] R[...]

Identity Number 8[...]

**Applicant**

and

K[...] R[...]

Identity Number 8[...]

**First Respondent**

GOVERNMENT EMPLOYEES PENSION FUND

**Second Respondent**

IN RE:

M[...] B[...] R[...]

Identity Number 8[...]

**Plaintiff**

And

K[...] R[...]

**Defendant**

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## J U D G M E N T

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### **MAKHOBBA, J**

- [1] This is an urgent application in term of rule 6(12) whereby the applicant seek an order for interdictory relief to prevent the payment of the pension benefit by the second respondent to the first respondent.
  
- [2] The applicant and the first respondent were married in community of property and there were two children born from the marriage.
  
- [3] On 12 July 2022 the applicant issued divorce proceedings against the first respondent and the divorce is still pending.
  
- [4] On 23 March 2023 Noko AJ issued an order *pedente lite* whereby he made an order as to the maintance of the children pending divorce.
  
- [5] It is common cause that the first respondent has been dismissed from his employment and his pension fund is to be paid out. In addressing court counsel informed the court that the pension has not been paid yet.
  
- [6] It is submitted on behalf of the first respondent that the first respondent was dismissed by his employer on 30 May 2023 however, the applicant failed to explain why she waited until 3 July 2023 thus the urgency is self-created.
  
- [7] It is further submitted that in filling the papers, the applicant used the short form notice of motion and the applicant is entirely defective.
  
- [8] The requirement of an interdict have not been satisfied. Counsel for the first respondent asked the court to strike the matter from the roll with punitive costs including cost for 13 July 2023.

[9] The trite principle is that “the procedure set out in rule 6(12) is not there for the taking”, an applicant being obliged to set forth explicitly the circumstance which he avers render the matter urgent and more importantly obliged to state the reasons why he claims that he cannot be afforded substantial redress at a hearing at in due course. The degree of urgency of matter.<sup>1</sup> An applicant cannot create his or her own urgency by simply waiting until the normal rules [or rather less strenuous rule/time periods] can no longer be applied.<sup>2</sup>

[10] In my view it is clear that the first respondent is in financial distress and may be tempted to deplete his pension fund to the detriment of the applicant and the children. The applicant will not be afforded substantial redress should the application fail.

[11] Should the application wait until the divorce is finalized that will be irrational. Thus therefore I am satisfied that the applicant has established that the matter is indeed urgent.

[10] I make the following order:

10.1 Dispensing, so far as need be, with the forms and service provided for in the Uniform Rules of Court and disposing of this Application at such time and place and in such manner and according to such procedure as this Court deems meet in terms of Rule 6(12) of the rules of this Court;

10.2 Interdicting and restricting second respondent from conducting transactions and/or transferring the pension fund interest into the first respondent’s bank account until the finalization of the pending divorce;

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<sup>1</sup> Luna Meubelvervaarders judgment: par 137 (f); see also Minister of Water Affairs and Forestry v Stilfontein Gold Mining Co Ltd 2006 (5) SA 33 (W) at 339 E – H.

<sup>2</sup> Queenstown Girls High School v MEC for Education, Eastern Cape 2009 5 SA 183 (Ck) par 11.

10.3 Interdicting and restricting the facilitation of the pension fund benefit and interest to any other financial institution and further ordering the freezing thereof pending finalization of the divorce; *alternatively*

10.4 In the event the second respondent has already transferred the proceeds of the pension fund benefit and interest into the financial Institution, ordering the second respondent to disclose the banking facility and the accounts into which the proceeds were transferred and the dates thereof;

10.5 Ordering the restoration of the pension fund benefit fund and interest by the banking facility disclosed by the second respondent and from any other person who so received same or part thereof:

10.6 Ordering that the cost of this application be borne by the first respondent;

10.7 The applicant to pay the wasted costs for the first respondent for the date 13 July 2023

**MAKHOB A J**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

**HEARD: 14 JULY 2023**

**JUDGMENT HANDED DOWN ON: 14 JULY 2023**

Appearances:

For the Applicant: Ms R B Tlou (from) TLOU BANGISWANI ATTORNEYS

For the Respondent: Mr J Lazarus (from) SHAPIRO & LEDWABA ATTORNEYS