OPINION

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Urgency is more than just a word

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Abstract

This article explores the concept of urgency in South African law, particularly focusing on the abuse of Rule 6(12) of the Uniform Rules of Court. While this rule allows litigants to deviate from standard court procedures in genuinely urgent matters, there has been a growing trend of its misuse. The discussion underscores the legal requirements for proving urgency, referencing significant case law such as East Rock Trading v Eagle Valley Granite and Mangala v Mangala. The article also addresses the consequences of abusing the urgent court process, including adverse cost orders, and calls for the judiciary to enforce penalties to prevent frivolous and vexatious litigation. By examining relevant judgments and legal principles, this piece emphasises the importance of maintaining the integrity of the court system and ensuring that justice is accessible to those with legitimate urgent matters.

Keywords: urgency, south africa, law, legal, south african high court, legal argument

In South Africa, Rule 6(12) of the Uniform Rules of Court permits litigants to deviate from the standard court formalities and timelines when genuine urgency exists. Unfortunately, this rule has been increasingly abused by litigants trying to bypass the Rules of Court without real urgency.

1. What Constitutes Urgency?

Not everything is urgent. Urgency, as required by law, is not a subjective desire for immediate results or a tool for litigants to exploit the legal process. To qualify as urgent, a matter must genuinely be so. If an applicant cannot show valid urgency—because their reasons are nonsensical, poorly advised, or inadequate—there will be consequences.

A litigant approaching the court on an urgent basis must comply with Rule 6(12)(b) of the Uniform Rules of Court. The rule reads:

"In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course."

Failing to comply with this requirement not only wastes the court's time but also shows a lack of respect for the judiciary. As Judge Wepener remarked in In Re: Several Matters of the Urgent Court Roll (South Gauteng High Court, 18 September 2012), it is discourteous to present non-urgent matters to a judge who must preside over numerous urgent cases.

2. Abuse of the Urgent Court Process

As Notshe AJ stated in East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others (11/33767) [2011] ZAGPJHC 196, 23 September 2011:

"The procedure set out in Rule 6(12) is not there for the taking. An applicant has to set forth explicitly the circumstances 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."

In this case, the question of whether a matter is sufficiently urgent is based on the issue of substantial redress. The court assists litigants on an urgent basis because waiting for a regular hearing would result in the applicant not obtaining substantial redress. Urgency, however, does not equate to irreparable harm but refers to the risk of not receiving adequate relief in a timely manner.

Judge Wepener, in In Re: Several Matters of the Urgent Court Roll (2012), stated that urgency is a matter of degree. Litigants who abuse the court's process should face penalties, including having their matters struck from the roll with costs for lack of urgency.

In the case of Hurricharan and 6 Others v Minister of Safety and Security and 2 Others (South Eastern Cape Local Division, Case No: 2075/07), the court dealt with a matter where the application lacked the requisite urgency and was struck from the roll. This followed a long-standing principle outlined in Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd (1982 (3) SA 582 (W) at 586G) and Bandle Investments (Pty) Ltd v Registrar of Deeds 2001 (2) SA 203 (SECLD).

These cases affirm that courts weigh the merits of each application to determine the degree of urgency and the corresponding relaxation of the court's rules.

3. Consequences of failing to prove Urgency

It is essential for the applicant to show the court why they could not be afforded redress in the ordinary course of proceedings—whether that redress is substantial or not. In Mangala v Mangala (1967 (2) SA 415E, this principle was reinforced, stressing the need for applicants to demonstrate why ordinary legal procedures would fail to provide adequate relief.

In the unreported case of XK-V v MSV (North Gauteng High Court, Case No: 2006/12, Date: 15/05/2013), Judge Makgoka cited Republikeinse Publikasies 1972 (1) SA 773 (A) at 782A-G, underscoring that applications should only be heard on the correct day according to their degree of urgency. If the applicant fails to respect the timelines for filing affidavits, they abuse the process.

4. Adverse Cost Orders

In Lawyers for Human Rights v Minister in the Presidency [2016] ZACC 45; 2017 (10) SA 645 (CC); 2017 (4) BCLR 445 (CC), the court considered the imposition of an adverse cost order on a party litigating to protect constitutional rights. The court referenced the Biowatch Trust v Registrar, Genetic Resources [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC) exceptions, noting that vexatious litigation is:

"Litigation that is frivolous, improper, instituted without sufficient ground, to serve solely as an annoyance to the defendant."

The courts have the discretion to penalise an applicant for vexatious or malicious conduct, especially when they bring non-urgent applications. While this authority exists, courts have recently been more hesitant to issue punitive cost orders, even when applicants abuse the legal process.

5. Conclusion

It is in the best interest of justice that courts guard against the misuse of the urgent court process. Litigants must respect the sanctity and authority of the Honourable Courts. Frivolous and non-urgent applications clog court rolls, limiting access to justice for those with legitimate needs. Matters that severely lack urgency should never be brought before the urgent court, as they show gross disrespect for the South African justice system.

Failure to impose appropriate cost orders on such litigants creates a dangerous precedent, implying that the legal process is open to abuse with little consequence. Legal practitioners have an ethical duty to ensure that clients are properly advised and that court procedures are not exploited.

In closing, applications lacking genuine urgency should be struck from the roll, with the applicant ordered to pay the respondents' legal costs—often on a punitive scale. This will protect the integrity of the legal system and ensure fairness for all litigants.

September 21, 2024