

ATTORNEYS)

FOR RESPONDENT: L. R. MAMBA (L. R. MAMBA &

ASSOCIATES)

R U L I N G - 09/03/06

[1] This is an application brought before the court by the Applicant on a Certificate of Urgency.

[2] The Applicant is seeking an order staying the execution of this court's judgement which was granted against it on the 8th December 2005.

[3] The Respondent's attorney raise a point of law stating that the Applicant has failed to show in its papers that the matter is urgent, and prayed that it be dismissed with costs.

[4] The court is therefore presently called upon to make a ruling on the point of law raised.

[5] It was argued on behalf of the Respondent that the Founding Affidavit lacks the necessary averments from which the court may find that the test in such matters is irreparable prejudice to the Applicant.

[6] On behalf of the Applicant it was argued that urgency has been established by the Applicant. The court was asked to read the Applicant's papers as a whole in order to make a finding that urgency does exist.

[7] From the Founding Affidavit it does appear that the question of

urgency was not addressed by the deponent. In paragraph 8 the deponent stated that the Applicant has good and reasonable prospects of success. In paragraph 11 it is stated that the Respondent does not have funds in its budget to repay the Applicant in the event the review application is successful.

[8] All these averments however are issues that the court must consider when making its ruling whether or not to grant the order for stay of execution. They are not grounds that can be relied upon to found urgency.

[9] The judgement of the court was delivered on the 8th December 2005. There is no averment in the Applicant's papers stating why it was bringing the matter to court on an urgent basis almost three months later.

[10] There is no allegation that the Respondent has already sued out a writ of execution and is about to attach the Applicant's properties.

[11] When reading the court papers filed by the Applicant as a whole, it is clear to the court that urgency has not been established.

[12] The application that the matter be heard on an urgent basis is accordingly dismissed and it is ordered that it should take its normal course.

[13] There is no order for costs made.

The members agree

NKOSINATHI NKONYANE
INDUSTRIAL COURT