IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED.

SIGNATURE DATE: 1 August 2023

Case No. 2023/067290

In the matter between:

VOLVO FINANCIAL SERVICES SOUTHERN AFRICA (PTY) LTD Applicant

and

ADAMAS TKOLOSE TRADING CC Respondent

Summary

Practice - Urgency - Save where a statute says so, there is no particular kind of matter that enjoys "inherent urgency" – Urgency is determined by the circumstances in which an application is brought, not the kind of right being enforced – It follows that the *rei vindicatio* is not an inherently urgent proceeding – Even if there were such a thing as inherent urgency, the *rei vindicatio* is not the sort of proceeding that would enjoy it – The contrary decision *Jacobs v Mostert* (16942/2021) [2021] ZAWCHC 213 (25 October 2021) is clearly wrong.

JUDGMENT

WILSON J:

1 The applicant, Volvo, is a financial services company. It leased two tractors to the respondent, Adamas. Adamas fell into arrears on the payments due under the lease. Volvo cancelled the lease and applied urgently to me to take possession of the tractors.

2 On 25 July 2023, I struck Volvo's application from my urgent roll. I ordered Volvo to pay the costs of the urgent hearing. I indicated that I would give my reasons for doing so in due course. These are my reasons.

3 Ms. Vergano, who appeared for Volvo, contended that the application, being vindicatory in nature, was inherently urgent. This was incorrect for at least two reasons. The first is that, save where prescribed by statute, there is no such thing as an inherently urgent claim. The second is that, even if there were such a category of claim, a vindicatory proceeding of this nature could never be part of it. I will deal first with the nature of urgency. I will then explain why vindicatory proceedings do not, in any event, enjoy privileged status in urgent court.

The nature of urgency

4 Sometimes, Parliament sets out the circumstances in which a court ought to determine a specific type of matter urgently (see, for example, section 18 (4) (iii) of the Superior Courts Act 10 of 2013 and section 5 of the Prevention of Illegal Eviction from, and Unlawful Occupation of Land Act 19 of 1998). In all other cases, urgency is determined not by the nature of the claim brought, but by the circumstances in which the applicant seeks its adjudication. Uniform

Rule 6 (12) says that a matter is urgent if the applicant will not be able to obtain "substantial redress at a hearing in due course" without at least some urgent relief.

5 It follows that, whatever the nature of the claim, there must be some reason why the applicant will not be able to protect or advance their legal rights later, unless they are given specific relief now. Most of the time, the applicant requires no more than temporary protection from harm while the process of finally determining their rights progresses. Sometimes, though, a final determination of rights is necessary on an urgent basis because those rights will have little or no practical effect if the applicant has to wait weeks or months to vindicate them in the ordinary course.

6 There is, accordingly, no class of proceeding that enjoys inherent preference. Counsel appearing in urgent court would, in my view, do well to put the concept of "inherent urgency" out of their minds. There are, of course, some types of case that are more likely to be urgent than others. The nature of the prejudice an applicant will suffer if they are not afforded an urgent hearing is often linked to the kind of right being pursued. Spoliation is a classic example of this type of claim. Provided that the person spoliated acts promptly, the matter will nearly always be urgent. The urgency does not, though, arise from the nature of the case itself, but from the need to put right a recent and unlawful dispossession. The applicant comes to court because they wish to restore the ordinary state of affairs while a dispute about the right to possess a thing works itself out. Cases involving possible deprivations of life and liberty, threats to health, the loss of one's home or some other basic essential

of daily life, such as water or electricity, destruction of property, or even crippling commercial loss, are also likely to be urgent.

7 It is sometimes said that contempt of court proceedings are inherently urgent (see, for example, *Rustenburg Platinum Mines Limited v Lesojane* (UM44/2022) [2022] ZANWHC 36 (21 June 2022) at paragraph 7 and *Gauteng Boxing Promotors Association v Wysoke* (22/6726) [2022] ZAGPJHC 18 (28 April 2022) paragraph 14). I do not think that can be true as a general proposition. I accept that the enforcement of a court order may well qualify as urgent, in situations where time is of the essence, but it seems to me that contempt proceedings entail the exercise of powers which often demand the kind of careful and lengthy consideration which is generally incompatible with urgent proceedings. For example, it cannot be sound judicial policy to commit someone to prison, even where the committal is suspended, or to impose a fine, on an urgent basis, simply because that might be the only way to enforce a court order. There must, in addition, be some other feature of the case that renders it essential that the court order be instantly enforced, such that the penalties associated with contempt require immediate imposition.

8 The fundamental point is that a matter is urgent because of the imminence and depth of harm that the applicant will suffer if relief is not given, not because of the category of right the applicant asserts.

Vindicatory proceedings

9 Even if there were special classes of urgent claims, I do not think that the *rei vindicatio* would be one of them. Every day people buy, sell, lease and use each other's property. If an urgent application were justified every time one of

these transactions went awry to the detriment of an owner who then sought to retake the property concerned, High Court Judges would seldom do anything other than handle urgent vindicatory claims. Anyone familiar with the daily work of the High Court knows that vindicatory claims are generally and effectively dealt with on the ordinary motion and trial rolls, often in very high volumes.

10 This is, of course, not the same as saying that a vindicatory claim could never be urgent. Where there is an imminent threat that property will be destroyed, lost, hidden or otherwise placed permanently beyond the reach of the owner, then a case of urgency may well be made out. But that depends on the circumstances in which the claim arises, not the vindicatory nature of the claim itself.

11 All of this may seem self-evident, but for Ms. Vergano's reliance upon the decision of the Western Cape High Court in *Jacobs v Mostert* (16942/2021) [2021] ZAWCHC 213 (25 October 2021). In that case, the court held that "inherent urgency underlies a claim for the return of property (a vindication claim)". Such urgency "is inferred from the importance our law attributes to this remedy" (paragraph 14). In addition, the court expressed the view that "our law supports an approach that in respect of a claim where a litigant pursues vindication then the proceedings always have an element of inherent urgency to it" (paragraph 15).

12 It is not clear to me where the court in *Jacobs* found support for such far-reaching statements. None of the authorities cited in the decision support the view that vindicatory claims are inherently urgent, and it appears to me that

the concept of the inherent urgency of vindicatory claims was something the court fashioned on its own. The *Jacobs* court itself appeared to appreciate the extraordinary nature of its pronouncements when it suggested, later on in the decision, that the inherent urgency of vindication did not mean absolving a litigant "from complying with the general accepted principles of urgency" (paragraph 16). I cannot say how that remark is to be reconciled with the court's earlier, bolder pronouncements on the inherent urgency of vindicatory proceedings.

13 In any event, for the reasons I have given, there can be no such inherent urgency. *Jacobs* is clearly wrong, and I declined to follow it.

Volvo's claim to urgency

14 Aside from the stillborn proposition that vindicatory claims are inherently urgent, Ms. Vergano pressed the argument that Volvo had no guarantee that it would be able to recover its property if it had to pursue a *rei vindicatio* in the ordinary course. However, Ms. Vergano was constrained to accept that there were no facts on the papers to support such an apprehension.

15 Ms. Vergano did, though, suggest that the wear and tear to which the tractors will continue to be subjected while the claim is heard in the ordinary course will prejudice Volvo as the owner of the vehicles. However, it is in the nature of contracts of lease that the thing let out will be worn and torn. That is taken into the bargain when the parties agree on the rent payable, which Volvo is entitled to recover in an action on the contract. Volvo did not allege that the damage to the tractors goes beyond fair wear and tear. Even if it does, there

was no indication that Volvo's rights cannot be fully vindicated by an action for damages brought at a later stage.

16 It was for all these reasons that I struck the application from the roll, and directed Volvo to pay Adamas' costs.

S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 1 August 2023.

HEARD ON:	25 July 2023
DECIDED ON:	25 July 2023
REASONS:	1 August 2023
For the Applicant:	V Vergano Instructed by Sennekal Simmonds Inc
For the Respondent:	J Magayi Instructed by Magayi Attorneys Inc