

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2023/046703

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
<div>15 August 2023</div>	
DATE	SIGNATURE <div></div>

In the matter between:

NELMAR COURT (PTY) LTD

Applicant

AND

THE CITY OF JOHANNESBURG

First Respondent

BRINK N.O. FLOYD

(In his capacity as City Manager
of the First Respondent)

Second Respondent

BRINK FLOYD

Third Respondent

JOHANNESBURG WATER SOC LTD

(Registration Number: 2000/029271/30)

Fourth Respondent

JUDGMENT

FF OPPERMAN, AJ

Introduction

- [1] On 15 June 2023 the above matter was brought before me on an urgent basis and as a result, I ordered the following interim relief:
- 1.1 That the respondents are in breach of an order by Wilson J that was granted on 19 May 2023;
 - 1.2 That the respondents install a suitable meter within one hour of the order;
 - 1.3 Allowing the respondents 15 days within which to file its answering affidavit;
 - 1.4 The prayers (2,3,4,5 and 6 of the notice of motion) pertaining to contempt were postponed *sine die*; and
 - 1.5 No order as costs.
- [2] The further prayers in the order related to service of the order and documents filed of record and nothing turns on this.

Background

Order by Wilson J of 19 May 2023

- [3] The order that was granted by Wilson J directed that the respondents reconnect the water supply to a series of properties comprising a sectional title scheme at ERF 411 Lorentzville, Johannesburg, and interdicting further disconnections pending the outcome of an application for final relief amounting to the debatement and correction of the applicant's water account.
- [4] Wilson J granted an order declaring the first respondent, the City, to be in contempt of an interim reconnection order that was made on 18 May 2023.

Application of 15 June 2023

- [5] From the papers before me and submissions made by counsel, it was common cause that the subject matter before me emanated from the same facts that were before Wilson J.
- [6] From the papers of the applicant it is evident that the water for the property was disconnected on 13 June 2023, after the applicant was served with an application for leave to appeal on 12 June 2023 against the order of Wilson J, alluded to above.
- [7] When the application for leave to appeal was lodged against the order of Wilson J, it would appear that a mistaken belief existed that the order of 19 May 2023 was suspended. From the reading of Wilson J's order, it was commonly known as an interdict *pendente lite*. It is trite that an interim order cannot be final until the *lis* between the parties in the main application has been decided upon. I will deal with this aspect below. I was not called upon to make a finding on the merits of the main application. Suffice to say that there was an order made by this Court which interdicted the respondents from disconnecting the water supply. The respondents' disconnecting the water supply on 13 June 2023 was therefore in flagrant disregard of the court order by Wilson J.

Contempt

- [8] As alluded to above, I make no finding in respect of the contempt of court prayers set out in the notice of motion and accordingly postpone those aspects *sine die*.

The Law

- [9] In *Zweni v Minister of Law and Order*,¹ it was held that a judgment is appealable if the decision was final in effect, definitive of the rights of the parties, and

¹ 1993 (1) SA 523 (A) at 532H-533A.

disposed of a substantial portion of the relief claimed. In other words, a court's mere ruling or an interlocutory order is not appealable.

[10] The Supreme Court of Appeal held² that a "judgment or order" is a decision which, as a general rule, has three attributes: (i) the decision must be final in effect and not susceptible to alteration by the court of first instance;³ (ii) it must be definitive of the rights of the parties, i.e. it must grant definite and distinct relief;⁴ and (iii) it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.⁵

[11] An order may not possess all three attributes, but will nonetheless be appealable if it has "final jurisdictional effect or is such as to dispose of any issue or any portion of the issue in the main action or suit or . . . irreparably anticipates or precludes some of the relief which would or might be given at the hearing,"⁶ or if the appeal "would lead to a just and reasonable prompt resolution of the real issue between the parties."⁷ In other words, the relevant principles (i.e. the three attributes) are neither cast in stone nor exhaustive.

[12] In *Phillips v SA Reserve Bank and Others*,⁸ the Supreme Court of Appeal stated:

"The matter was further discussed in two recent decisions of this court, *Health Professions Council of South Africa and Another v Emergency Medical Supplies and Training CC t/a EMS* 2010 (6) SA 469 (SCA) paras 14–19; and *Government of the Republic of South Africa and Others v Von Abo* 2011 (5) SA 262 (SCA) para 17, where Snyders JA (with whom the rest of the court concurred) said:

² *Zweni* n 1 above at 532J–533B; *Trope v South African Reserve Bank* 1993 (3) SA 264 (A) at 267F; *Guardian National Insurance Co Ltd v Searle NO* 1999 (3) SA 296 (SCA) at 301A–D; *South African Chemical Workers' Union and Another v African Commerce Developing Co (Pty) Ltd t/a Buffalo Tapes* 2000 (3) SA 732 (SCA) at 737I–J.

³ *Zweni* id at 532I–J; *Wellington Court Shareblock v Johannesburg City Council*; *Agar Properties (Pty) Ltd v Johannesburg City Council* 1995 (3) SA 827 (A) at 832H; *Cronshaw and Another v Coin Security Group (Pty) Ltd* 1996 (3) SA 686 (A) at 690D–G; *Maize Board v Tiger Oats Ltd and Others* 2002 (5) SA 365 (SCA) at 370B–E; *Avtjoglou v First National Bank of Southern Africa Ltd* 2004 (2) SA 453 (SCA) at 457G–H; *S v Western Areas Ltd* 2005 (5) SA 214 (SCA) at 224C–D.

⁴ In *Zweni* id at 535B it is stressed that while the grant of a 'judgment or order' is usually consequent upon a formal prayer or request for relief, it does not follow that once there is a formal request, the consequent decision is necessarily a judgment or order—a decision may be a ruling despite the fact that it was granted upon formal request for relief.

⁵ *Van Streepen & Germs (Pty) Ltd v Transvaal Provincial Administration* 1987 (4) SA 569 (A) at 586I–587B; *Marsay v Dilley* 1992 (3) SA 944 (A) at 962C–F.

⁶ *Jacobs and Others v Baumann NO and Others* 2009 (5) SA 432 (SCA) at 436F–G.

⁷ *Zweni* n 1 above at 531D–E.

⁸ 2013 (6) SA 450 (SCA) at para 27.

‘It is fair to say that there is no checklist of requirements. Several considerations need to be weighed up, including whether the relief granted was final in its effect, definitive of the rights of the parties, disposed of a substantial portion of the relief claimed, aspects of convenience, the time at which the issue is considered, delay, expedience, prejudice, the avoidance of piecemeal appeals and the attainment of justice.’”

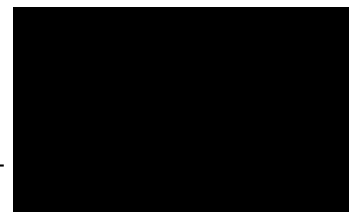
Conclusion

[13] From the facts it is quite clear the real dispute between the parties in the main application, regarding billing, remains *sub iudice*.

[14] Finally, in similar matters, leave to appeal was refused for interdicts *pendente lite* on the ground that the orders in question were interlocutory orders or rulings which are unappealable.⁹

[15] For reasons set out above and in light of the respondents’ failure to obey Wilson J’s order, their purported leave to appeal against the interim relief was no more than a ruse to not bring this matter to finality.

[16] Finally, with the respondents failing to show that it will suffer irreparable harm if the interim relief was granted, I made an order, in the interests of justice, as set out in paragraph 1 above.



FF OPPERMAN

ACTING JUDGE OF THE HIGH COURT

⁹ *African Wanderers Football Club (Pty) Ltd v Wanderers Football Club* 1977 (2) SA 38 (A) 47C–D; *Cronshaw v Coin Security Group (Pty) Ltd* 1996 (3) SA 686 (A). See also *Van Niekerk and Another v Van Niekerk and Another* 2008 (1) SA 76 (SCA) at 78G–I; *JR 209 Investments (Pty) Ltd and Another v Pine Villa Country Estate (Pty) Ltd; Pine Villa Country Estate (Pty) Ltd v JR 209 Investments (Pty) Ltd* 2009 (4) SA 302 (SCA) at 312A–D; *Cipla Agrimed (Pty) Ltd v Merck Sharp Dohme Corporation and Others* 2018 (6) SA 440 (SCA). See also *National Commissioner of Police and Another v Gun Owners of South Africa* 2020 (6) SA 69 (SCA) at paras 14–15; *Philani-Ma-Afrika and Others v Mailula and Others* 2010 (2) SA 573 (SCA) at para 20; and *Tshwane City v Afriforum and Another* 2016 (6) SA 279 (CC) at para 40.

GAUTENG DIVISION OF THE HIGH COURT

Heard On: 15 June 2023

Decided On: 15 June 2023

Reasons: 15 August 2023

For the Applicant: Adv L Peter

Instructed By: Vermaak Marshall Wellbeloved Inc,
Johannesburg

For the Respondent: Adv E Sithole

Instructed By: Madhlopa & Tenga Inc