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

**Case No: 079326/2023**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

**DATE: 22/08/2023**

SIGNATURE

In the matter between:

**BODY CORPORATE OF SS COUNTRY VIEW**

Applicant

and

**THE CITY OF JOHANNESBURG  
METROPOLITAN MUNICIPALITY**

First Respondent

**THE MUNICIPAL MANAGER:  
CITY OF JOHANNESBURG**

Second Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 22 August 2023.

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## JUDGMENT

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**PHOOKO AJ**

### INTRODUCTION

- [1] This is an unopposed application that came before me sitting in an urgent court on 11 August 2023 seeking relief against the First Respondent to *inter alia* reconnect the water supply and be interdicted and restrained from disconnecting the water supply to the sectional title scheme pending resolution of a dispute lodged in terms of sections 95(f) and 102(2) of the Local Government: Municipal Systems Act, 32 of 2000 (the Systems Act).
- [2] After considering the Applicant's written and oral submissions, I granted the relief sought as per the notice of motion on the same day. These are therefore my reasons for the granting of the aforesaid order.

### THE PARTIES

- [3] The Applicant is the Body Corporate of SS Mountain View, a body corporate established Under Scheme No: 785/2008, in terms of section 36 of the Sectional Titles Act 95 of 1986 read with section 2 of the Sectional Titles Schemes Management Act 8 of 2011, with its chosen address situated at Block [...], Ground Floor, Fourways Office Park, Corner of R[...], C[...] and G[...] Street, Witkoppen, Sandton, Gauteng Province.
- [4] The First Respondent is the City of Johannesburg Local Municipality, a local municipality established in accordance with the provisions appearing in Chapter 7 of the Constitution of the Republic of South Africa, 1996 read with the relevant provisions appearing in the Local Government: Municipal Structures Act 117 of 1998.
- [4.1] The First Respondent supplies municipal services including water, electricity, and domestic waste removal services to the public residing within

the geographical boundaries of the City of Johannesburg including the Applicant and its members and the approximately 235 homes situated on the sectional title of Country View.

- [5] The Second Respondent is the Municipal Manager: City of Johannesburg and is cited in these proceedings in his/her capacity as the accounting officer and head of the administration of the First Respondent.

[5.1] The Second Respondent *inter alia* implements and enforces the First Respondent's credit control and debt collection policy and any by-laws, in accordance with the credit control and debt collection policy and any such by-laws, establish effective administrative mechanisms, processes, and procedures to collect money that is due and payable to the First Respondent, at such intervals as may be determined by the Municipal Council.

[5.2] The Second Respondent is responsible to oversee the implementation of court orders against the First Respondent.

## **BACKGROUND AND FACTS**

- [6] The First Respondent supplies water services to the Applicant's sectional title scheme which comprises 235 homes. The units are occupied by different families some of whom own pets.
- [7] On 10 August 2023, at about 12:00 pm, the First Respondent disconnected the water supply to the Applicant's sectional title scheme. The disconnection took place without prior notice. In addition, the disconnection occurred even though there is a pending dispute that was lodged by the Applicant with the office of the First Respondent on 23 February 2023.
- [8] According to the Applicant, the disconnection is unlawful interference by the First Respondent with the Applicant's right to water supply for which it has paid. Further, the Applicant's version is that the account is up to date.
- [9] Aggrieved by the First Respondent's conduct, the Applicant instituted these

proceedings on an urgent basis for the restoration of water supply to the sectional title scheme.

## **THE ISSUES**

[10] The issues to be determined are:

[10.1] whether the matter should be heard on an urgent basis, and

[10.2] whether the Applicant would not be afforded substantial redress in the matter at a later hearing.

## **APPLICABLE LEGAL LAW**

### Urgency

[11] Rule 6(12) of the Uniform Rules deals with urgent applications wherein a case for urgency has been made out, a court may condone non-compliance regarding the forms and service and hear the matter without delay if the applicant would not be afforded substantial redress at a later hearing. Rule 6(12) also confers a general judicial discretion on a court to hear a matter urgently.<sup>1</sup>

[12] The rules relating to urgency are well established in that the Applicant seeking urgent redress from the court, must make out a case for urgency in its founding affidavit. As was correctly held in *Luna Meubelvervaardigers (Edms) Bpk v Makin & Another t/a Makin Furniture Manufacturers*<sup>2</sup> that:

‘The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith. Mere lip service to the requirements of Rule 6 (12) (b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down.’

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<sup>1</sup> *Mogalakwena Local Municipality v The Provincial Executive Council, Limpopo and others* (2014) JOL

32103 (GP) at para 63.

<sup>2</sup> 1977 (4) SA 135 (W) at 137E-F.

[13] The test for urgency was eloquently formulated in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley G[...] (Pty) Ltd and Others*<sup>3</sup> where Notshe AJ (as he was then) held that:

‘The import thereof is that 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’.

[14] It is evident from the foregoing that the Applicant’s case ought to be heard on an urgent basis because if it were to be enrolled on a normal roll, the Applicant would not be afforded substantial redress. Furthermore, it can be deduced from precedent that the issue of urgency is interconnected with the aspect of substantial redress. In other words, urgency must be considered together with the issue of whether there will be substantial redress at a later hearing if the matter is not heard on an urgent basis.

[15] Urgency will depend on the circumstances of each case. *In re: Several Matters On Urgent Roll 18 September 2014*<sup>4</sup>, the court held that:

‘Urgency is a matter of degree. ... Some applicants who abuse the court process should be penalised and the matters should simply be struck off the roll with costs for lack of urgency...’.

[16] Furthermore, it was emphasised in *Chetty v Chetty and Another*<sup>5</sup> “that while an application may be urgent, it may not be sufficiently urgent to be heard at the time selected by the applicants”.

[17] Considering the above legal framework, I proceed to consider the Applicant’s

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<sup>3</sup> (11133767) [2011] ZAGPJHC 196 at paras 6 and 7.

<sup>4</sup> (2012) 4 All SA 570 (GSJ) 8 at para 15.

<sup>5</sup> (1362/20) [2020] ZAMPMHC 30 at para 4.

submissions to ascertain whether this matter ought to be heard on an urgent basis and whether the Applicant would not be afforded substantial redress if the matter were to be enrolled in the normal court roll.

### **APPLICANT'S SUBMISSIONS**

- [18] The Applicant argued that the disconnection of water supply to approximately 235 sectional title schemes that are mostly occupied by young families is a serious health concern for all those affected as they cannot *inter alia* cook or conduct ordinary cleaning in their houses.
- [19] Furthermore, counsel argued that many families have domestic pets which are also deprived of water.
- [20] Counsel further argued that at the time the application was lodged, the Applicant's residence has been without water for a few hours. Counsel contended that "if the matter were to be enrolled on the normal court roll, as estimated 235 families will have been without water for at least five calendar days due to the unlawful actions of the first respondent".
- [21] Consequently, counsel argued that this application "cannot stand over until the normal roll" as it would violate the rights enjoyed by occupants of the sectional title schemes.
- [22] The Applicant further contended that the disconnection of the water supply was unlawful because it was done outside procedural fairness as there was no 14-day pre-termination notice as per the ruling in *Joseph and Others v City of Johannesburg and Others*.<sup>6</sup>
- [23] Finally, counsel argued that section 102(2) of the Systems Act prohibits the implementation of debt collection and credit control measures including disconnection of utilities when there is a pending dispute declared by the Applicant.

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<sup>6</sup> 2010 (4) SA 55 (CC).

## EVALUATION OF APPLICANT'S EVIDENCE AND SUBMISSIONS

[24] Regarding urgency, I am satisfied that the Applicant has made out a case for urgency. The disconnection of the water supply will have dire consequences if the matter is not heard on an urgent basis. This aspect is in my view also connected with the second leg of the test in that there would be no substantial redress at a later hearing. I say so because:

‘Cultures in all parts of the world acknowledge the importance of water. Water is life. ... Human beings need water to drink, to cook, to wash ... Without it, we will die.’<sup>7</sup>

[25] In light of the above, people cannot stay without water for a day and/or an extended period of time.

[26] Concerning interdictory relief, the Applicant continues to pay for water services and is not in arrears. The rights of several families to water supply have been violated by unlawful termination that took place whilst there is a pending outcome of the dispute lodged with the First Respondent. The Applicant tried to engage with the First Respondent not to terminate the water supply without success. Consequently, granting an interdict is the only remedy to restore their water supply. The Applicant has *inter alia* shown a clear right, a well-grounded apprehension of irreparable harm.<sup>8</sup>

[27] The First Respondent's conduct to disconnect the water supply is a blatant disregard of the law. The First Respondent is resorting to self-help something that is impermissible in our constitutional democracy. This is contrary to section 102(2) of the Systems Act which provides that section 102(1) of the Systems Act does not apply where there is a dispute between the municipality and a consumer of services about any specific amount claimed by the municipality from that person.

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<sup>7</sup> *Mazibuko and Others v City of Johannesburg and Others* 2010 (3) BCLR 239 (CC) at para 1.

<sup>8</sup> *Knox D'Arcy Ltd and others v Jamieson and Others* 1995 (2) SA 579 (W) at 592H–593D.

[28] Ultimately, counsel for the Applicant correctly relied on *Joseph and Others v City of Johannesburg and Others*<sup>9</sup> in that disconnection of municipal services must be within the ambit of the law (i.e. the municipality must give a 14-day pre-termination notice to the consumer).

## **COSTS**

[29] From the onset, it was clear that there is a pending dispute between the parties. The Systems Act prohibits debt collection measures where there is a pending dispute. Notwithstanding this, the First Respondent resorted to self-help. This is unacceptable. I do not think that the Applicant should be out of pocket because of the Respondent's disregard of the provisions of the Systems Act.

[30] Accordingly, there is no basis as to why the costs should not follow the results on a punitive scale.<sup>10</sup>

## **ORDER**

[31] I, therefore, make the following order:

- (a) The order as prayed for is granted as per the draft marked "X".

**M R PHOOKO**  
**ACTING JUDGE OF THE HIGH COURT,**  
**GAUTENG DIVISION, PRETORIA**

## **APPEARANCES:**

Counsel for the Applicant: Adv R van Schalkwyk

Instructed by: Rabie Attorneys

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<sup>9</sup> Supra n6.

<sup>10</sup> *Neuhoff v York Timbers Ltd* 1981 (1) SA 666 (T).



Counsel for the Respondent:	n/a
Instructed by:	n/a
Date of Hearing:	11 August 2023
Date of Judgment:	22 August 2023