



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

REPUBLIC OF SOUTH AFRICA

CASE NO: 012936/2022

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

DATE: 14 MARCH 2023

SIGNATURE: *ML SENYATSI*

In the matter between:

MOKETE FELIX MOHOLI

Applicant

and

**BODY CORPORATE BORGIO DE FELICE, NO
937/2022**

Respondent

In re:

**BODY CORPORATE BORGIO DE FELICE, NO
937/2022**

Applicant

And

MOKETE FELIX MOHOLI

Respondent

Delivered: *By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered. The date for hand-down is deemed to be 14 March 2023.*

JUDGMENT

SENYATSI J:

- [1] This is an opposed application brought on an urgent basis to rescind the default judgment granted on 17 October 2022 by Matojane J, as he then was. ("Matojane J order")
- [2] The parties will be referred to as in the main application. The respondent seeks that paragraph 2 of the Matojane J Order be set aside in its entirety. The paragraph concerned stated that the electricity supply to Flat 43 Borgo de Felice, Valley Boulevard, Fourways Dainfern, owned by the respondent be terminated until all amounts including, but not limited to contributions, utilities, ancillary charges, interest and costs of the application, either taxed or agreed between the parties, is paid in full and the respondent's account with the applicant and reflects a zero balance.

- [3] The respondent was asked to address me on urgency. In his founding affidavit he contends that he is the owner of Unit 43, Borgo De Felice and that the applicant instituted legal proceedings against him under this case number.
- [4] He contends furthermore that he objects to the matter which he says he finds both questionable and adventurous because the applicant's representative has deposed to an affidavit to this matter. He further claims that that the applicant has relied on the "Practice note" to get the default judgment. I must at the outset that I reject the contention as it has no factual basis. The founding affidavit in Matojane J Order as well as the order itself has not been challenged in any appeal process.
- [5] The respondent concedes that the Matojane J Order was granted during October 2022. The reason he could not bring the application until now, he contends was because he was negotiating to try and settle the dispute on the account. He does not dispute the amount owed to the applicant.
- [6] The respondent fails to demonstrate that the application meets the requirements of Rule 6 (12) (b) which states that:
- “(b) In every affidavit or petition filed in support of any application, under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances which averred render the matter urgent and the reasons why the applicant claims that the applicant could not be afforded substantial redress at a hearing in due course.”
- [7] The founding of the respondent is silent on the circumstances that render the application urgent. More importantly, the judgment sought to be rescinded, was

granted on 17 October 2022. The respondent does not take me in his confidence what he did from that period until the launching of his application.

- [8] The respondent states in his application that he does not reside at Unit 43 but that he uses the property as a source of income through renting it out. He contends that if the electricity is terminated that makes it difficult for him to secure tenants.
- [9] There has not been a reply to contradict the proposition by the applicant that the respondent has been aware from at least the 26th January 2023 that the electricity has been disconnected from Unit 43. The respondent has not provided in his founding affidavit the steps he took between that time and the launching of the application on an urgent basis.
- [10] The respondent knew also as early as 20 January 2023 that electricity would be disconnected if no payment is made. There is patently not explanation for the delay in launching the urgent application.
- [11] Having regard to the papers and the submissions made by both parties, I am of the view that the respondent has failed to show that the application meets the requirements of urgency as required by Rule 6 (6) of the Uniform Rules of Court.
- [12] Advocate De Klerk implored on me to impose the costs on a punitive scale. The grounds for his submission are that the respondent is engaged in the abuse of the court process by creating urgency where none exists as well as ignoring the request from the legal representatives on behalf of the applicant that the

respondent withdraws his urgent application as it does not comply with the requirements for urgency.

[13] The respondent failed to withdraw the application as requested. In a letter dated 7 March 2023, the respondent was warned that if the application was not withdrawn, the applicant would apply for costs on a punitive scale.

[14] The respondent was in person and unrepresented. He was eloquent when addressing the court and I was satisfied that he understood all the proceedings.

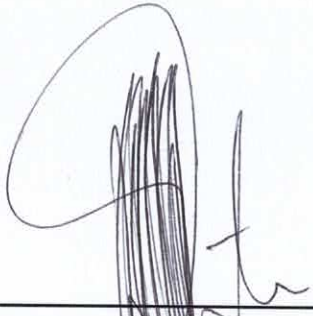
[15] I am required, when assessing the costs to exercise the discretion which must be done judicially.

[16] Having regard to the papers before me and the submissions made on behalf of the applicant, I am of the view that the costs should be imposed on a punitive scale.

ORDER

[17] It is ordered that:

- (a) The urgent application launched by Mr Mokete Felix Moholi is not urgent and is hereby dismissed;
- (b) Mr Mokete Felix Moholi is ordered to pay the costs on the scale as between attorney and client.

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a vertical line and a small flourish.

ML SENYATSI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

DATE APPLICATION HEARD: 10 March 2023

DATE JUDGMENT DELIVERED: 14 March 2023

APPEARANCES

Counsel for the Applicant: Adv C De Klerk

Instructed by: Verton Moodley and Associates Incorporated

Respondent: In Person