



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

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



SIGNATURE

DATE: 4 August 2023

Case No. 2023/046703

In the matter between:

NELMAR COURT (PTY) LTD

Applicant

and

THE CITY OF JOHANNESBURG

First Respondent

BRINK NO, FLOYD

Second Respondent

BRINK, FLOYD

Third Respondent

JOHANNESBURG WATER (SOC) PTY LTD

Fourth Respondent

JUDGMENT

WILSON J:

- 1 The first respondent, the City, seeks leave to appeal two orders I granted on urgent applications that the applicant, Nelmar Court, brought in this case. The first order directed the respondents to reconnect the water supply to a series

of properties comprising a sectional title scheme at ERF 411 Lorentzville, Johannesburg, and interdicted further disconnections pending the outcome of an application for final relief amounting to the debatement and correction of Nelmar Court's water account. I also granted an order declaring the City to be in contempt of an interim reconnection order I had made on 18 May 2023. The City seeks leave to appeal only against the interim interdict and the contempt declaration. There is no appeal against the reconnection order.

The interim interdict

- 2 Interim interdicts are not generally appealable. I have a residual discretion, however, to grant leave to appeal if it is in the interests of justice to do so. The interests of justice will favour the grant of leave to appeal against an interim interdict only where there is some exceptional feature of the case that weighs in favour of allowing an appeal against interim relief while the main case is pursued. The question in this case boils down to whether the City will suffer irreparable harm if the interim interdict is left in place while the main case is argued (see *City of Cape Town v South African Human Rights Commission* (144/2021) [2021] ZASCA 182 (22 December 2021), paragraph 11).
- 3 In this case the City has not pointed to any harm, irreparable or otherwise, that it will suffer unless an interim appeal is allowed. There is no attack on my findings, in paragraph 6 of my judgment, that Nelmar Court has raised a series of disputes in terms of section 102 (2) of the Municipal Systems Act 32 of 2002, and that it continues to pay for what it believes to be its current consumption. In these circumstances there can be no irreparable harm.

- 4 In advancing the City’s application for leave to appeal, Mr. Sithole adverted to what has been called “separation of powers harm”, which is sometimes said to follow if an organ of state is restrained from exercising its statutory powers by way of interim interdict (see *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) at paragraph 47). However, as I held in *Gibb (Pty) Ltd v Passenger Rail Agency of South Africa* [2021] ZAGPJHC 146 (26 August 2021), separation of powers harm does not arise if an interim interdict is grounded on credible allegations that the organ of state has acted in breach of its constitutional and statutory obligations (see paragraphs 24 to 26).
- 5 In this case, there is a substantially unchallenged allegation that the City had disconnected Nelmar Court’s water supply in breach of section 102 (2) of the Municipal Systems Act. The proposition that Nelmar Court’s case rests substantially on that allegation has not been challenged in the City’s application for leave to appeal.
- 6 It follows that the application for leave to appeal against the interim interdict must fail.

The contempt declaration

- 7 The only recognisable basis on which the application for leave to appeal against the contempt declaration was advanced at the hearing was that the City was not heard before I made the declaration. However, that is plainly incorrect. The City was represented by attorneys and counsel before me. It clearly had notice of the contempt application and the court order upon which the application was advanced. There was no dispute that the City was in breach of the order. No attempt was made to adduce evidence that the City’s

breach was not wilful or that it was in good faith. Given the urgency of the enforcement of the court order, declaratory relief was the least that Nelmar Court could expect in these circumstances.

- 8 For all these reasons, the application for leave to appeal is dismissed with costs.



S D J WILSON
Judge of the High Court

HEARD ON: 28 July 2023

FURTHER SUBMISSIONS ON: 1 August 2023

DECIDED ON: 4 August 2023

For the Applicant: B Bhabha
Instructed by Vermaak Marshall Wellbeloved Inc

For the Respondents: E Sithole
Instructed by Madhlopha & Tenga Inc