IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GQEBERHA)

Case No. 34/2024

In the matter between:-

ADRIAN DE VILLIERS Applicant

and

ELIZABETH DE VILLIERS First Respondent

NELSON MANDELA METROPOLITAN MUNICIPALITY Second Respondent

JUDGMENT

BANDS J:

[1] This is an urgent application brought on extremely truncated time periods by the applicant, in person. For the purposes of this judgment, I deem it appropriate to repeat the relief as set out by the applicant in the notice of motion, which reads as follows:

> *1. That the applicant's non-compliance with the court's uniform rules and practice directives regarding forms, service and time periods are condoned and that this matter be heard as urgent per sec 6(12)(a) of the uniform rules of this court and dispose of the matter at such time and place and in accordance with such*

procedure as the court deems appropriate and allow the applicant to personally serve the rule nisi one the respondents.

2. *The applicant be allowed to serve the respondents any court orders, all notices, and affidavits on the respondents via email or by hand.*

3. *Enrol this matter on the urgent roll.*

4. *That a rule nisi be issued herewith in terms of which the respondents are called upon to show cause on 19 March 2024 why an order in the following terms should not be made a final order of the above Honourable Court.*

5. *Within 1 court day of being served a copy of the rule nisi order, the first respondent give the applicant limited power of attorney or permission in writing signed by two witnesses, one of which being a commissioner of oaths to handle the municipal account of 22 F[…] C[…] (22FC), Newton Park, Gqeberha, 6001, until the applicant permanently vacates 22FC or until reviewed bythe second respondent for being in compliance with the income means test of having an income below two state pensions.*

6. *Within 1 court day of being served a copy of the applicant's power of attorney or written permission to handle the municipal account of 22FC, the second respondent be ordered regardless of what the first respondent's income is or state of health, to grant the municipal account of 22FC the subsidy to the poor per its official policy for subsidies for lights and water whilst the applicant's income remains below two state pensions, whilst the applicant is the only person living on 22FC or the combined income of all occupants living on 22FC is below two state pensions, and this can be reviewed by the municipality once every three years or per the review period policy of the second respondent or a period determined by the court.*

7. *The second respondent is ordered to grant the subsidy as set out in point 6 above to the backdated to July 2023 and all disconnections fees be credited off the account of 22FC, so there are no arrears on 22FC's municipal account or all arrears be frozen from the date of this order.*

> 8. *That prayer points number 5 to 7 above shall serve as an interim interdict against the respondents until the return date.*
>
> 9. *Alternatively if already disconnected by the time of this order being granted, the second respondent to reconnect 22FC to the electrical grid."*

[2] Whilst the applicant had originally sought an immediate hearing of the matter, without notice to the respondents, the duty judge in chambers, on 11 January 2024, having not being satisfied that the matter was sufficiently urgent to warrant such a hearing, issued the following directive:

> "*1. Having considered the certificate of urgency placed before me, I cannot find that the matter is sufficiently urgent to warrant a hearing outside normal motion court days and on an ex parte basis.*
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> *2. The matter can be set down for a hearing on Tuesday, 16 January 2024 at 09h30 or so soon thereafter. The applicant is directed to serve the papers on the respondents by Friday, 12 January 2024 at 16h00."*

[3] The matter was accordingly enrolled for hearing on 16 January 2024 and was called at the end of my motion court roll. I was advised by counsel appearing on behalf of the second respondent that an agreement had been reached in terms of which the applicant would argue, as a preliminary point, his entitlement to the order sought in terms of prayer 5 of his notice of motion, and by necessary implication the urgency of the matter. In the event of a finding in favour of the applicant, the parties had agreed to the exchange of further papers, during the course of this week, with argument to proceed on the remaining issues relevant to the second respondent on Friday, 19 January 2024. I enquired from the first respondent's attorney of record, who was

present in court,[1] whether the first respondent intended on opposing the application. I was advised that the first respondent would abide by the decision of this court.

[4] Against the above backdrop and having heard the matter in the circumstances set out above, this judgment is being prepared in haste given the urgency to which the applicant attached to the matter. This judgment is accordingly not as thorough as it could be, given the circumstances under which it is being prepared and delivered, but I have attempted to ensure that notwithstanding this, my reasoning for the decision to which I have come is clear.

[5] The applicant is the biological son of the first respondent and is currently residing, free of charge, in an immovable property owned by her ("*the premises*"). The second respondent is the electricity supplier to the premises. The municipal account, on the applicant's version, is presently five months in arrears and disconnection of the electrical services to the premises is imminent. The applicant records that he received an email from the second respondent on 27 November 2023 advising that services to the premises would be blocked. On 20 December 2023, the respondent received further communication from the second respondent, via text message, again advising that services would be disconnected. On 8 January 2024, the applicant was advised by the second respondent that no subsidy can be granted on the account given that the owner of the premises does not reside there. The application was thereafter issued on 11 January 2024.[2] Notwithstanding the aforesaid, it is apparent that the applicant, as early as 3 July 2023, was already in communication with the second respondent

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[1] *Albeit*, not formally appearing.

[2] Following a further notice of disconnection on 10 January 2024 as per para [7] below.

regarding the intended disconnection, this being some six months ago. Accordingly, the history of non-payment must, of necessity, pre-date 3 July 2023.

[6] At the core of this application is a domestic dispute between the applicant and the first respondent. It appears that whatever right the applicant may have had to reside in the premises has since been terminated by the first respondent. I say this because, according to the applicant, the first respondent has issued eviction proceedings against him in the Magistrates' Court, which are pending. The applicant explains as follows at paragraph 8 of his founding affidavit:

> "*The first respondent has filed an eviction application against me at the magistrates court as I won't vacate the premises as I don't have any alternatives as far as friends or being able to afford alternatives. As a means to force me out, the first respondent has stopped paying the municipal account in order to get the municipal account disconnected from electricity, to force my surrender and to vacate the premises as she knows I can't afford to pay the account myself nor afford off grid alternatives for cooking and powering my laptop. Estate agencies don't rent to unemployed people and very seldom do landlords rent to unemployed people, so I'm stuck here at 22FC until I find full time employment or become self sufficient from freelance work, and I'm not there yet. My mother has offered to pay rental for two years if I find rental accommodation, but I have tried and estate agencies and landlords don't rent to unemployed people, and until I get permanent employment or I'm earning a decent income from freelancing, 2 years down the line, I'll just facing another eviction application, as I won't be able to afford rent 2 years down the line, so that is not a solution.*
>
> *So I need the municipal subsidy until I get full time employment or my freelance work takes off financially. And the first respondent is refusing to give me power of attorney to handle the municipal account to prevent me from getting the municipal subsidy for 22FC for lights and water, rates and taxes.*"

[7] With this history in mind, the applicant goes on to state at paragraph 9 of his founding affidavit that:

> "*On Thursday 7 Dec 2023 I approached the court for a rule nisi, the court gave a directive for the matter 4293/2023 to be heard at the unopposed motion court on 12 December 2023, and the court ruled that I had fabricated the urgency and was unsure of being able to grant power of attorney so dismissed my application, but I have now attached an email from the municipality dated 10 January 2023 (sic) that they arrived here on 10 January 2024 to disconnect 22FC from the electrical grid, so this urgency is no fabrication and my mother instructed the second respondent to not communicate with me any further and the account will not be given the subsidy as the owner does not live at 22FC. So the court can see, this is not fabricated and very urgent and my bank balances prove I can't wait for disconnection, then try and apply to the court.*
>
> *The court on 12 Dec 2023 at the unopposed motion court also said that it was unsure as to whether it can grant power of attorney, so I have inserted legal points on it, to show the court, its merely permission that can be given to anyone suitable to handle something else on someone else's behalf, see below.*"

[8] The applicant goes on further to quote sections 17, 22 and 27 of the Constitution as well as the requirements for obtaining a power of attorney, as quoted by him from http://safacts.co.za/how-to-get-power-of-attorney-in-south-africa, which I do not intend on repeating in full. What is apparent though is that on the authority relied upon by the applicant, "*[a]nyone over the age of 18 <u>can be granted power of attorney by the principal</u>, as long as the agent is competent and trustworthy to make financial decisions and sign legal documents on the principal's behalf.*" (Own emphasis.)

[9] Having been alerted to the prior proceedings under case number 4292/2023 in the applicant's papers, but not being clear of the outcome thereof, I requested the court file to ascertain whether the application had been struck from the roll for lack of urgency or whether the court hearing the matter had dismissed the application, following a consideration of the merits.

[10] From the content of the court file, it is apparent that the application was dismissed by Judge Eksteen, who delivered an *ex tempore* judgment on 12 December 2023. In short, Judge Eksteen found that: (i) the applicant had known about the growing liability (in the form of arrears) for four months and had taken no legal steps to safeguard his position; (ii) the applicant had received notice of the intended disconnection on 22 November 2023; and (iii) urgency was self-created and did not justify the granting of the relief sought on an *ex parte* basis. Given his view on the merits, he declined to grant the usual order striking the matter from the roll without making a determination thereon. In this respect he found that as a power of attorney encapsulates a mandate, which may be given and withdrawn at any time, at the election of the principal, he did not consider himself to have the power to grant the relief sought, regardless of whether the nature of the relief was interim or final.

[11] I engaged with the applicant on the prior proceedings, which served before this court. He contended that the present application, since 12 December 2023, raises new facts, being: (i) the communication received from the second respondent on 20 December 2023 and 8 January 2024, as referred to above; and (ii) the new information provided in the papers regarding the requirements for the granting of a power of attorney. Whilst I accept that the communication was transmitted post 12 December 2023, I am of the view, for the reasons set out below, that it is of no assistance to the applicant. The purported new facts relating to the power of attorney consist of nothing more than legal argument.

[12] The principles pertaining to urgency are trite and I do not intend to give a full recount thereof in the circumstances under which this judgment is being prepared.

[13] I have previously had occasion to recount these principles in *Ascon Trading CC Trading as Ascon Civil Engineering v Wilson and another,*[3] which must be judged against the background of Rule 6(12) of the Uniform Rules of Court. Pertinently, the question is whether an applicant, in urgent proceedings, has set out objective grounds, why the matter is urgent and whether he or she has established that substantial redress cannot be obtained at a hearing in due course. The fact that an applicant wishes to have a dispute adjudicated upon urgently;[4] alternatively, is subjectively of the view that a matter is urgent, does not render it as such.

[14] Moreover, an applicant cannot content itself to merely sit back and delay the assertion of his or her rights, and by doing so, create his or her own urgency. Such conduct does not amount to urgency justifying the determination of the matter in accordance with Rule 6(12).[5]

[15] If regard is had to the grounds relied upon by the applicant underpinning his contention of urgency, it is clear that the municipal account has been in arrears for many months, with the threat of disconnection already arising in July of last year. Some five months passed before launching the first urgent application in this court.

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[3] [2022] JOL 57361 (ECP); and *Ascon Trading CC t/a Ascon Civil Engineering v Wilson and Another* (3387/2022) [2023] ZAECQBHC 2 (17 January 2023), and the authorities cited therein.

[4] *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011) at paragraph [9].

[5] *Lindeque and Others v Hirsch and Others, In Re: Prepaid24 (Pty) Limited* (2019/8846) [2019] ZAGPJHC 122 (3 May 2019); and *Masipa and Another v Masipa* (23224/2020) [2020] ZAGPPHC 214 (4 June 2020).

Following the lapse of another five weeks, the applicant has launched the present application in reaction to the correspondence received on 20 December 2023 and 8 January 2024. The correspondence on 20 December 2023 is no more than a repeat of the second respondent's notification of disconnection, which was first communicated to the applicant during November 2023. The correspondence on 8 January 2024, takes the matter no further. The applicant has known since 29 November 2023 that in the absence of a power of attorney granted in the applicant's favour by the first respondent, he would not be eligible for the subsidy since the first respondent does not reside at the premises.

[16] For the reasons stated, I am of the considered view that any urgency which may have existed, if any at all, was self-created by the substantial delay in the launch of these proceedings.

[17] As intimated above, it is trite that in the event of a finding that the matter is not of sufficient urgency to warrant being entertained in accordance with Uniform Rule 6(12), the appropriate order is generally to strike the matter from the roll without the court making a determination on the merits.[6] I find myself in the same position as Judge Eksteen, who presided over the first urgent application, in that I too am constrained to consider the merits of the present dispute, given my view thereon.

[18] Fatal to the applicant's claim is that he has fundamentally misconstrued the nature of a power of attorney. The granting of a power of attorney falls squarely within

[6] *Commissioner for South African Revenue Service v Hawker Air Services (Pty) Ltd; Commissioner for South African Revenue Service v Hawker Aviation Services Partnership and Others* 2006 (4) SA 292 (SCA).

the ambit of the law of agency. The term agency refers to the performance of a juristic act on behalf of (or in the name of) one person (the principal) by another (the agent), who is authorised by the principal to act, that creates, alters or discharges legal relations between the principal and a third party.[7] Generally, no formalities are required for an agent's authorisation and an oral authorisation will suffice.[8] Where written authorisation is given, it usually takes the form of a power of attorney, which in turn, sets out the powers conferred on the agent by the principal, whether special or general. A principal may summarily revoke an agent's authority.[9] It is axiomatic that the granting of a power of attorney and the revocation thereof, falls within the domain of the principal. I can find no legal authority which suggests otherwise. I am of the view that the reason for this is self-evident.

[19] The applicant's application is bad in law. He has accordingly failed to meet the requirements for the granting of an interdict, whether interim (as contended for by the applicant) or final in nature (as I so find).

[20] Further and in any event, without making a finding in respect thereof, I am of the view that the application is *res judicata*. Given that the issue was not raised by either of the respondents in these proceedings, I deem it inappropriate to deal with this aspect further.

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[7] Du Bois, F., *et al. Willie's Principles of South African Law*, 9th Edition, 2007, Juta & Co, Ltd. at p 984, read together with the authorities cited at fn 1.

[8] In certain instances, written authorisation is required by law or by established practice.

[9] Du Bois, F., *et al. Willie's Principles of South African Law*, 9th Edition, 2007, Juta & Co, Ltd. at p 1002.

[21] Neither the first nor second respondent requested an order as to costs in the event of a finding against the applicant. In the circumstances of the present case, there shall be no order as to costs.

[22] In the result, the following order is issued:

1. The application is dismissed.

I BANDS
JUDGE OF THE HIGH COURT

Date heard:	16 January 2024
Date of judgment:	17 January 2024
For the applicant:	Mr Adrian de Villiers
Instructed by:	Appearing in person
For the 2nd respondent:	Adv Cetwayo
Instructed by:	Joubert Galpin Searle Inc.