

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE PROVINCIAL DIVISION

Case No.: 4949/2021

REPORTABLE: YES/NO
OF INTEREST TO OTHER JUDGES: YES/NO
CIRCULATE TO OTHER MAGISTRATES: YES/NO

In the matter between:

BRANDFORT FORUM

First Applicant

INA BEUKES N.O.

Second Applicant

FRANS BESTER POSTHUMUS N.O.

Third Applicant

JOHAN ALBERTUS FOURIE N.O.

Fourth Applicant

(The second to fourth applicants are cited in their capacities
as the trustees of the Masilonyana Brandfort Forum Trust:

IT001914/2021(T))

and

MASILONYANA LOCAL MUNICIPALITY

First Respondent

MAFUMU CONSULTING (PTY) LTD

Second
Respondent

LUNGILE MOKOTELI

Third Respondent

MIKE MANYIKE

Fourth Respondent

Coram: Opperman, J

Date of hearing: 9 June 2022

Order Delivered: 11 August 2022

Reasons for Judgment: The reasons for judgment were handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 11 August 2022. The date and time for hand-down is deemed to be 11 August 2022 at 15h00.

Summary: Contempt of Court

JUDGMENT

[1] The core of this case is based on the one issue and the one issue only; the legality of the conduct of the Municipality. The alleged illegality of the conduct of the Municipality includes the contract with Mafumu Consulting (Pty) Ltd to install pre-paid electricity meters and the tariffs fixed.

[2] The legality of the conduct of the Municipality is on review. All the parties involved; including the legal practitioners of all the respondents, were and are well aware of this fact.

[3] Pending the review, the following order was made in the interim against Masilonyana Local Municipality, Lejweleputswa District Municipality and Mafumu Consulting (Pty) Ltd on 5 November 2021:

1. That the first, second and third respondents are interdicted and restrained with immediate effect from installing any pre-paid electricity meters in the town and municipality of Brandfort, Free State Province pending an application for review by the applicants of the first and/or second respondent's decision to install pre-paid electricity meters and/or to determine the tariffs/charges for the distribution and sale of electricity on pre-paid basis and/or to appoint the third respondent as service provider to install pre-paid electricity meters on the basis of the principles of legality, alternatively fair administrative action basis, alternatively both the sources of review; alternatively, pending an application for a declaration that the first and/or second respondents' conduct is unconstitutional and to be set aside.
2. The applicants must institute the intended application(s) in paragraph 1 above within fifteen (15) court days from the date of this order. The calculation of the fifteen (15) days period to exclude the day on which this order is granted; being 5 November 2021.
3. The interdict will lapse if the intended application(s) referred to in paragraph 1 above is not instituted within fifteen (15) court days from the date of this order and will be operative until judgment has been handed down in the application(s). The calculation of the fifteen (15) days period to exclude the day on which this order is granted; being 5 November 2021.
4. The costs of this application are reserved for consideration in the intended application for review/application for declaratory relief.

[4] Notwithstanding the order that the first, second and third respondents were interdicted and restrained with immediate effect from installing **any** pre-paid electricity meters in the town and municipality of Brandfort, Free State Province, the respondents continued in flagrant contempt of the order to install the meters. It is important to note

that leave to appeal the 5 November 2021 – order was denied by this court and the Supreme Court of Appeal.¹

[5] On 31 March 2022 Daffue, J made the following order:

1. A rule *nisi* is issued returnable on Thursday, 12 May 2022 at 09h30 or as soon thereafter as the applicants' legal representatives may be heard, calling upon the first, second, third and fourth respondents to show cause, if any, why the following orders should not be made final:

1.1

1.1.1 That the first respondent is in contempt of the court order granted on 5 November 2021 under civil case cover number: Case number: 4949/2021.

1.1.2 That the first respondent be found guilty of contempt of the court order granted on 5 November 2021 under civil case cover number: 4949/2021;

1.1.3 That the first respondent be sentenced to payment of a fine of R50,000.00, alternatively such sentence as the Court deems meet, the sentence to be suspended for 36 months on condition that the first respondent comply without delay with the court order granted on 5 November 2021 under civil case cover number: 4949/2021 and is not convicted of contempt of court committed during the period of suspension.

1.1.4 That the first respondent complies, without delay, with the court order granted on 5 November 2021 under civil case cover number: 4949/2021.1.2

1.2

¹ See order and judgment dated 7 December 2021 and 30 December 2021 respectively in this court and the order of the Supreme Court of Appeal in case number 048/2021 on 17 March 2022.

1.2.1 That the second respondent is in contempt of the court order granted on 5 November 2021 under civil case cover number: Case number: 4949/2021.

1.2.2 That the second respondent be found guilty of contempt of the court order granted on 5 November 2021 under civil case cover number: 4949/2021.

1.2.3 That the second respondent be sentenced to payment of a fine of R50,000.00, alternatively such sentence as the Court deems meet, the sentence to be suspended for 36 months on condition that the second respondent comply with the court order granted on 5 November 2021 under civil case cover number: 4949/2021 without delay and is not convicted of contempt of court committed during the period of suspension.

1.2.4 That the second respondent comply, without delay, with the court order granted on 5 November 2021 under civil case cover number: 4949/2021.

1.3

1.3.1 That the third respondent is in contempt of the court order granted on 5 November 2021 under civil case number: Case number: 4949/2021.

1.3.2 That the third respondent be found guilty of contempt of the court order granted on 5 November 2021 under civil case cover number: 4949/2021.

1.3.3 That the third respondent be sentenced to 6 months imprisonment, alternatively the payment of a fine of R50,000.00, alternatively such sentence as the Court deems meet, the sentence to be suspended for 36 months on condition that the third respondent comply without delay with the court order granted on 5 November 2021 under civil case cover number: 4949/2021 and is not convicted of contempt of court committed during the period of suspension.

1.3.4 That the third respondent comply, without delay, with the court order granted on 5 November 2021 under civil case cover number: 4949/2021.

1.4

1.4.1 That the fourth respondent is in contempt of the court order granted on 5 November 2021 under civil case number: Case number: 4949/2021.

1.4.2 That the fourth respondent be found guilty of contempt of the court order granted on 5 November 2021 under civil case cover number: 4949/2021.

1.4.3 That the fourth respondent be sentenced to 6 months imprisonment, alternatively payment of a fine of R50,000.00, alternatively such sentence as the Court deems meet, the sentence to be suspended for 36 months on condition that the fourth respondent comply without delay with the court order granted on 5 November 2021 under civil case cover number: 4949/2021 and is not convicted of contempt of court committed during the period of suspension.

1.4.4 That the fourth respondent comply, without delay, with the court order granted on 5 November 2021 under civil case cover number: 4949/2021.

1.5 That the first, second, third and fourth respondents pay the costs of the application on attorney and client scale, jointly and severally, the one paying the other to be absolved.

2. This order and the notice of motion with all annexures shall be delivered to the respondents' Bloemfontein attorneys by the applicants' attorneys not later than 1 April 2022 and this order and the notice of motion and all annexures shall be served forthwith by the sheriff on all the respondents in terms of the rules of court.

[6] On 12 May 2022 I ordered, in their absence and by default, that the first (Masilonyana Local Municipality) and third (Lungile Mokoteli) respondents are in contempt of court and convicted them accordingly and a suspended sentence followed. This order was subsequently rescinded by agreement between the parties and set aside on 30 June 2022 by Van Rhyn, J. The case of Mafumu Consulting (Pty) Ltd and Mr. Mike Manyike was postponed to 9 June 2022 to hear argument from counsel on their behalf.

[7] On his own admission Mr. Manyike states that he has gone on and installed over 80 pre-paid electricity meters after the court orders and explicit warnings by the court because the residents of the town of Brandfort requested him to do so.² *The citizens of Brandfort cannot overrule a court order.* Mr. Manyike, as continually assisted by his legal representatives, realised that he may not install any pre-paid meters. He displays a contempt for the court that is shocking.

[8] It is trite that he is being imbursed for the installation of the meters on the very process that is the core of the review and that caused the interdict. The tariffs on the meters are at issue. No number of excuses or defences that the residents asked him to install the meters will legalise his conduct. He and his legal representatives were warned and cautioned; over and over. Non compliance of this nature cannot be tolerated.

[9] The process employed to achieve the installation of the meters and the contract with the second and fourth respondents are alleged to be improper, illegal and might be to the detriment of the residents of Brandfort and the administration of justice.

[10] The law as applied in *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* [2021] ZACC 18 that was followed by the case of *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State*

² Bundle dated 30 May 2022 at paragraph 21 page 217.

Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021) is applicable here.

[11] It has been proven beyond any doubt that Mafumu Consulting (Pty) Ltd and Mr. Mike Manyike deliberately, intentionally (i.e., willfully) and without any justification, disobeyed the order granted by this court on 5 November 2021.

[12] ORDER

1. The second respondent: **Mafumu Consulting (Pty) Ltd**

1.1 The second respondent is in contempt of the court order granted on **5 November 2021** under civil case cover number: **4949/2021**;

1.2 The second respondent is found guilty of contempt of the court order granted on **5 November 2021** under civil case cover number: **4949/2021**;

1.3 The second respondent is sentenced to payment of a fine of **R50,000.00 (fifty thousand rand)**; the sentence is wholly suspended for **36 (thirty-six) months** on condition that the second respondent complies with the court order granted on **5 November 2021** under civil case cover number: **4949/2021** and is not again convicted of contempt of court committed during the period of suspension;

1.4 The second respondent is ordered to comply with the court order granted on **5 November 2021** under civil case cover number: **4949/2021** to, with immediate effect, desist from installing any pre-paid electricity meters in the town and municipality of Brandfort, Free State Province pending an application for review.

2. The fourth respondent: **Mr. Mike Manyike**

2.1 The fourth respondent is in contempt of the court order granted on **5 November 2021** under civil case cover number: **4949/2021**;

2.2 The fourth respondent is found guilty of contempt of the court order granted on **5 November 2021** under civil case cover number: **4949/2021**;

2.3 The fourth respondent is sentenced to **6 (six) months** imprisonment or payment of a fine of **R50,000.00 (fifty thousand rand)**; the sentence is wholly suspended for **36 (thirty-six) months** on condition that the fourth respondent complies with the court order granted on **5 November 2021** under civil case cover number: **4949/2021** and is not again convicted of contempt of court committed during the period of suspension;

2.4 The fourth respondent is ordered to comply with the court order granted on **5 November 2021** under civil case cover number: **4949/2021** and to, with immediate effect, desist from installing any pre-paid electricity meters in the town and municipality of Brandfort, Free State Province pending an application for review.

3. The second and fourth respondents are ordered to pay the costs of the application on an attorney and client scale, jointly and severally, the one paying the other to be absolved.

M OPPERMAN, J

APPEARANCES

For the first, second, third and fourth applicants

ADVOCATE W GROENEWALD

T O'REILLY

SYMINGTON & DE KOK

ATTORNEYS

169B Nelson Mandela Drive

Westdene

BLOEMFONTEIN

051 505 6600

jaucamp@symok.co.za

For the second and fourth respondents

ADVOCATE S GROBLER SC

GN STRAUSS

KRUGER VENTER INC

68B Kellner Street

WESTDENE

BLOEMFONTEIN

051 011 2323

reception@krugerventerinc.co.za

Ref: SK/TL/MB0139 Ref:

FXM3327/O'Reilly.ja