

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 15437/15

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
1/2/2020	
DATE	SIGNATURE

In the matter between:

CONCERNED RESIDENTS OF FLAG BOSHIELO WEST	First Applicant
SMAKELENG JACOB BALOYI	Second Applicant
KLAAS BAPELA	Third Applicant
SELLO FREDDIE PHEFADI	Fourth Applicant
MARIA MOKOMANE	Fifth Applicant
ELSIE LETAGENG	Sixth Applicant

And

SEKHUKHUNE DISTRICT MUNICIPALITY	First Respondent
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EPHRAIM MOGALE LOCAL MUNICIPALITY	Second Respondent
MEC, DEPARTMENTG OF WATER AFFAIRS, LIMPOPO	Third Respondent
MINISTER OF WATER AND SANITATION	Fourth Respondent
MINISTER OF BASIC EDUCATION	Fifth Respondent
MINISTER OF HEALTH	Sixth Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA: ACTING MUNICIPAL MANAGER: SEKHUKHUNE	Seventh Respondent
DISTRICT MUNICIPALITY: MPH O JOSEPH MOFOKENG	Eighth Respondent

JUDGMENT

RANCHOD, J

[1] The applicants seek on an urgent basis, joinder of the eighth respondent in his personal capacity; that the first to eighth respondents be interdicted from committing any act which is in violation of or prejudicial to the order of Fabricius J dated 17 August 2017 in this matter; that first to fourth and eighth respondents be interdicted from “instructing or effecting or causing any employee, or staff member or official [presumably of the first respondent] to violate or prejudice the Court Order.” That prayers 2 – 4 are to serve as an interim order against the respondents until the return date.

[2] The first respondent delivered a notice of intention to oppose but did not file an answering affidavit.

[3] At the hearing of the matter I was informed by first respondent's counsel that first respondent intended to raise three points of law and a notice in terms of Rule 6(5)(d)(iii) of the Uniform Rules of Court was also delivered. The points raised are: -

1. That there was non-compliance with the Practice Directive of this Court in that the setting down of the application was premature;
2. That there was a failure to give 72 hours' notice to the respondents in terms of the General Law Amendment Act 62 of 1955; and
3. That there was no urgency in the bringing of the application before the Urgent Court.

[4] The genesis of the present application stems from the main application which was launched in February 2015 and concerns the applicants' rights of access to water.

[5] On 21 July 2015, by agreement between the parties, an interim court order was obtained in terms of which the first respondent (the Municipality) would provide the applicants with water on a specified basis as set out in the order.

[6] The first respondent failed to comply with the agreement hence applicants launched a contempt application. A further agreement was then reached and made an order of court on 29 September 2015.

[7] Part B of the main application was set down for hearing before Fabricius J on 17 August 2017 when a further interim agreement was reached to ensure that the applicants were provided with water in accordance with the previous orders and the matter was postponed *sine die*. It was also provided in the order that the first respondent provide monthly reports to the court on the attainment of its obligations as per the court order.

[8] Fabricius J was appointed case manager and the learned Judge served as such until December 2019.

The present application

[9] The applicants say that the Municipality has constantly failed to honour the court orders.

[10] The applicants accordingly obtained an order on 29 November 2019 holding the Municipality in contempt. The order was granted by Fabricius J.

[11] Immediately prior to the contempt application the applicants became aware that the previous Municipal Manager had been replaced by the present

Acting Municipal Manager who is sought to be joined in these proceedings by the applicants.

[12] As the Acting Municipal Manager had been in that position for only about two months at the time of the contempt application, the applicants abandoned seeking personal sanctions against him.

[13] The applicants say the Acting Municipal Manager continued with the offending conduct of his predecessor hence the present application.

[14] I turn then to the points of law raised by the first respondent.

[15] The submission that the applicants set the matter down prematurely and accordingly did not comply with the Practice Directive of this Court is without merit. The applicants seek an interim order pending final relief in regard to an alleged failure by the Municipality to provide the applicants with potable water in accordance with the previous court order of Fabricius J of 20107. I do not think the application is premature.

[16] The second argument was that the applicants failed to give the first respondent adequate notice of 72 hours of their intention to apply for an interim interdict as provided for in the General Law Amendment Act 62 of 1955 as amended.

[17] The application was served on the Municipality and the Acting Municipality Manager's attorneys on 30 January 2020 at 09:00 am and on the State Attorney (for the third to seventh respondents) on the same day at 09:30 am. The application was set down for Tuesday 04 February 2020 at 10:00 am – after the lapse of 72 hours. The submission cannot be sustained.

[18] Lastly it was submitted that the matter lacked urgency. In my view the application is inherently urgent as it relates to the applicants' constitutioned right of access to water. I accordingly deem it to be an urgent matter.

[19] The applicants seek that the Acting Municipal Manager be joined in these proceedings in his personal capacity. In my view that would be improper. The correct procedure would be to join him in his official capacity as the Acting Municipal Manager.

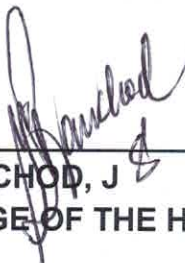
[20] Prayer 3 cannot be granted for three reasons. Firstly, Fabricius J previously directed that any papers in this matter insofar as the fourth respondent is concerned must be served on the fourth respondent personally. That directive has not been complied with. Secondly, the founding affidavit does not explicitly state what acts of the first to eighth respondents are in violation of the court order of Fabricius J of 17 August 2017. Thirdly, no basis has been set out for the order as sought against the fifth, sixth and seventh respondents.

[21] Prayer 4 of the notice of motion cannot be granted as there is no or insufficient evidence in the founding affidavit showing or alleging that the first to

fourth and eighth respondents are instructing or effecting or causing any employee, staff member or official to violate or prejudice the court order.

[22] In the circumstances, the following order is made:

1. The forms and service as prescribed by the Uniform Rules of Court are dispensed with and the matter is enrolled as an urgent matter.
2. The Acting Municipal Manager, Mr Mpho Joseph Mofokeng is joined as such in these proceedings in his official capacity.
3. There is no order as to costs.



RANCHOD, J
JUDGE OF THE HIGH COURT

Appearances:

Appearance for applicants:

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