

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

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

Date: **30 September 2024** Signature: _____

CASE NO: 07251/2017

In the matter between:

QUINTAL (PTY) LTD

APPLICANT

And

CITY OF JOHANNESBURG

FIRST RESPONDENT

FLOYD BRINK N.O.

SECOND RESPONDENT

(In his capacity as the Municipal Manager
of the City of Johannesburg)

Coram: Dlamini J

Heard: 18 March 2024

Delivered: 30 September 2024 – This judgment was handed down electronically by circulation to the parties' representatives via email, by being uploaded to *CaseLines* and by release to SAFLII.

The date and time for hand-down is deemed to be 10:30 on 30 September 2024

JUDGMENT

DLAMINI J

Introduction

- [1] On 18 March 2024, I made the draft order marked X an order of court. Below, I my reasons for that order.
- [2] The application was launched by the applicant seeking relief in two parts, Part A; is a contempt application, and Part B; the Applicant seeks certain orders relating to renewed irregularities on the account (which is unopposed).

Part A

- [3] The applicant, a private company, has launched this application, alleging that the City of Johannesburg (CoJ) is in contempt of a court order that was handed down by Cowen J on 6 May 2021.
- [4] The court amongst other directives had ordered that the CoJ must within 30 days of the order remove all charges levied between 2 October 2014 and 10 June 2016 on the applicant's water meter account and reverse all interest, charges, penalties and other debits related to the above charges.
- [5] The applicant avers that the respondents have to date not removed from their account the above charges as per the court order of Justice Cowen and submit therefore that the CoJ is in contempt of the said court order.
- [6] The respondent argues that they have complied with paragraph 3 of the court order and submit that they have reversed the said amounts as per the court order. That even if it were to be found the CoJ was in contempt, the respondents argue that such contempt was not willful and mala fide.

- [7] The case made by the CoJ is that the municipal manager was not a party to the applicant's application that served before Cowen J.
- [8] Lastly, the respondent submits that the applicant did not afford the CoJ a period 10 days to comply with the order in terms of Rule 30 A.

Part B

- [9] On this score, the applicant seeks certain relief relating to new irregularities on the same account. The applicant contends that the respondents do not conduct actual readings on the applicant's water meter but rather uses estimates that result in large over- charges for water services on the applicant's account.
- [10] The respondents in their answering affidavit testified that they will file their answering affidavit in due course relating to Part B of this application. As at the hearing of this matter no such answering affidavit has been delivered by the respondent.
- [11] Consequently, this part of the order must accordingly be granted.

Analysis

- [12] The principles relating to contempt of court are trite and have been set out in a number of our court judgments.
- [13] To established contempt, the party seeking the order must establish the following elements; -
- 13.1 The *existence* of the order;
 - 13.2 *Service* of the order;
 - 13.3 *Non-compliance* with the order
 - 13.4 Non-compliance must be willful and *mala fides*. However once non-compliance is prove, the onus shifts to respondent to show that its non-compliance was not willful.

Existence / service of the order

- [14] In my view the existence and service of the court order is a common cause, it is not in dispute and nothing further need be said on this score.

Non -compliance with the order

- [15] In so far as non-compliance of the order is concerned, the respondent has simply made a bald and unsubstantiated allegation that they have complied with the order. As at the hearing of this matter the impugned charges have clearly not been removed by the respondent from the applicant water account.

Non -compliance willfull

- [16] No vaild or plausible reasons have been submitted by the respondents regarding its no compliance with Cowen J's order. The non-compliance is clearly willful.
- [17] In all the circumstances that I have alluded to above the applicant's application ought to succeed.

ORDER

1. The order marked X that I signed on 18 March 2024 is made an order of this court.



J DLAMINI

Judge of the High Court

Gauteng Division, Johannesburg

REQUEST FOR REASONS:

12 April 2024

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