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IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no: 5046/2023

In the matter between:

IOULIA LOIZOU

Applicant

and

MATJHABENG LOCAL MUNICIPALITY

First Respondent

THE MUNICIPAL MANAGER

MATJHABENG LOCAL MUNICIPALITY

Second Respondent

CORAM: MB NEMAVHIDI AJ

HEARD ON: 25 APRIL 2024

DELIVERED ON: 27 JUNE 2024

***JUDGMENT BY:** MB NEMAVHIDI AJ

Introduction

[1] The applicant is the registered owner of the property situated at [...] J[...] Court, 1[...] B[...] Street, Virginia, Free State. The property is occupied by the applicant who resides in and conducts business from the premises. She has several tenants who rent the property for both residential and commercial purposes. These tenants include persons who are vulnerable and fragile and in desperate need of water, a supply of which is

provided by the first respondent (municipality) in terms of a contractual agreement between itself and the applicant.

[2] A dispute arose between the parties as to the amount due in respect of water consumption at the property, and in her endeavour to settle the matter, three formal disputes had been declared with the municipality, the relevant dates being: 2 May 2023, 14 August 2023 and 15 August 2023. The applicant indicated that she is not indebted to the first respondent as she makes monthly payment of her account and is desperately attempting to have the dispute resolved; she made numerous attendances at the first respondent's office in an attempt to have the dispute resolved.

[3] On the 21 September 2023, the municipality unlawfully disconnected the water supply to the property by the removal of a water meter regulating flow to the property. This prompted the applicant to institute urgent proceedings in an attempt to have the municipality ordered to restore water to the property. However, subsequent to the issuance of the application but before the application was heard, the municipality reconnected the water supply to the property.

[4] The court issued a rule *nisi* calling upon the municipality to show cause why the following order should not be made final:

'That the 1st respondent be interdicted and restrained from reducing or disconnecting the water supply to the property, pending the final adjudication of this application and the internal dispute resolution process of the 1st respondent'.

The court furthermore ordered that the parties should engage in a dispute resolution process meeting on 20 October 2023 at 1st respondent's office. The applicant and respondent met as ordered by the court, but the dispute remains unresolved as no formal outcome has been issued by the municipality.

The Application of the Law

[5] Section 33 of the Constitution of the Republic of South Africa provides that:

'(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally

fair.

- (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

...'

Section 34 of the Constitution continues by providing that '[e]veryone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.' Furthermore, Section 151(3) of the Constitution provides that '[a] municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.'

[6] Chapter 7 of the Constitution discusses the realm of local governance. Section 151(1) makes provision for the establishment of a local government structure, namely a municipality and proceeds to set out the purpose and powers of this governmental structure. Section 152(1)(b) and (d) provides that the objects of the municipality or local government include *inter alia*: 'to ensure the provision of services to communities in a sustainable manner' and 'to promote a safe and healthy environment;' while s 156(2) authorizes the administering of by-laws for the effective administration of matters which it has the right to administer. Such by-laws should not conflict with national or provincial legislation as it would be invalid.

[7] The Local Government: Municipal Systems Act 32 of 2000 (the Act) is the legislation enacted to give effect to the provisions in the Constitution pertaining to municipalities. This Act describes and assigns the purpose, functions and powers of a municipality and s 102 provides as follows:

'(1) A Municipality may–

(a) ...

(b) ...

(c) 'Implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person'.

It is important to bear in mind that subsection (c) does not apply where there is a dispute between the municipality concerned and a person referred to in that subsection concerning any specific amount claimed by the Municipality from that person.

[8] Section 96 of the Act requires that, in its quest to recoup the costs involved in delivering services to residents within its jurisdiction, a municipality must adopt, maintain and implement a credit control and debt collection policy. Section 29 of the Municipality's Debt Collection and Credit Control Policy provides as follows:

'(1) The municipality may, immediately on the expiry of the 7 (seven) working day period allowed for payment in terms of the final demand notice limit or disconnect the municipal services specified in subsection 28(1)(c) provided that a domestic customer's access to basic water supply services and sanitation services may not be disconnected.

(2) The municipality may only limit a domestic customer's access to basic water services by-

- (a) Reducing water pressure; or
- (b) limiting the availability of water to a specified period or periods during a day; or
- (c) disconnecting in-house and yard connections and making an alternative water supply services available to the domestic consumer, which alternative service may consist of a basic water supply services as prescribed by the Minister of Water Affairs and Forestry in terms of Water Services Act, 1997 (Act No 108 of 1997).'

Condonation

[9] The second respondent, the municipal manager of the Municipality, raised a point *in limine* which related to the non-joinder of the applicant's tenants. The respondents seek condonation for the late filing of this issue of non-joinder. However, their special plea is baseless and devoid of merit. In this matter there is no need to join the applicant's tenants as they all depend on the water supplied by the Municipality to the applicant. Condonation is therefore not granted as it is not in the best interest of justice to do so.¹

The Remedy Sought by Applicant

[10] It is common cause that the respondents did not comply with the legislation as well as their Municipalities Credit Control and Debt Collection Policy. The fact that the

¹ *Brummer v Gorfil Brothers Investments (Pty) Ltd and Others* [2000] ZACC 3; 2000 (5) BCLR 465.

respondents denied the applicant her Constitutional right to access water is an unfair administrative action. It is an indication of the respondents' *mala fides*. The applicant harbours a reasonable apprehension of irreparable and imminent harm to her right if an interdict is not granted; the balance of convenience favours the granting of the interdict, as the applicant has no other remedy.²

[11] In *National Council of Societies for Prevention of Cruelty to Animals v Openshaw*,³ the SCA reiterated that:

'[A]n interdict is not a remedy for past invasion of rights but is concerned with present or future infringements. It is appropriate only when future injury is feared. Where a wrongful act giving rise to the injury has already occurred, it must be of a continuing nature or there must be a reasonable apprehension that it will be repeated.'⁴

The granting of the interdict is discretionary in the sense that a court may not grant an interdict in circumstance where there is an alternative remedy available to an applicant for an interdict and which may satisfactorily safeguard the right sought to be protected.⁵

In the result, I make the following order:

1. The interim interdict granted on the 17th October 2023 is made final.
2. The respondents are ordered to pay the costs of this application jointly, and severally, the one paying the other to be absolved. Such costs to be on Rule 67B scale.

MB NEMAVHIDI AJ

Appearances

For the Applicant:

Adv J Ferreira

Instructed by:

Roma Badenhorst Attorneys

² *Setlogelo v Setlogelo* 1914 AD 221.

³ *National Council of Societies for Prevention of Cruelty to Animals v Openshaw* [2008] ZASCA 78; [2008] 4 All SA 225.

⁴ *Ibid* para 20.

⁵ *Transvaal Property Investments Co v SA Townships Mining and Finance Corp* 1938 TPD 521. See also *Hotz and Others v University of Cape Town* [2016] ZASCA 159; 2017 (2) SA 485 (SCA) para 36.

Virginia

C/O Noordman Attorneys

For the Respondents:

Instructed by:

Adv KP Moholo

Kemi Akinbohun Attorneys

Welkom

C/O Tshangana and Associates INC

Bloemfontein