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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 088813/2024

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED.

SIGNATURE

DATE: 28/02/2025

In the application between:

SIBUSISIWE LORRAINE NGOMANE

Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

First Respondent

**THE MUNICIPAL MANAGER: TSHWANE METROPOLITAN
COUNCIL**

Second Respondent

JUDGMENT

LABUSCHAGNE J

[1] On 28 February I issued an order annexed marked "X" directing the reconnection of the applicant's water supply together with further relief, including directing the applicant to pay for arrears in respect of own consumption. The order states that the reasons will follow. These are the reasons.

- [2] The applicant resides at Unit [...], H[...] H[...] G[...] Estate Stand No. 2[...], B[...] Ext. 1[...], Olympus, Pretoria. She approached the urgent court on the basis of urgency for the restoration of the water supply to the premises, which water supply was disconnected by the municipality on 14 February 2025. The disconnection notice reflected an outstanding amount of approximately R70 000.00 on municipal account number 5[...]. Urgency is self-evident. Access to water is a Constitutional right and the absence thereof results in an infringement of a multitude of rights including dignity.
- [3] The parties have been at loggerheads for years. The applicant's attorneys of record wrote to the respondents' attorneys, threatening to enrol a previously launched contempt application. An attempt to arrange a round table discussion to find a way forward, met with no response.
- [4] The applicant approached the court for urgent relief seeking the restoration of the water supply, restraining the respondents from implementing any credit control measures *pendente lite*, until a proper account procedure had been adopted between the parties.
- [5] In an amended notice of motion, the applicant now moves on the basis of urgency for the following relief:
- "2. *Declaring that the respondents' disconnection of the water supply at Unit [...], H[...] H[...] G[...] Estate Stand No. 2[...], B[...] Ext. 11, Olympus, Pretoria, Gauteng Province to be unlawful and wrongful.*
 3. *Directing that the respondents reconnect the whole water supply at the residence mentioned in paragraph 2 above with immediate effect.*
 4. *Directing the respondents to pay the costs of this application on an attorney and client scale ..."*
- [6] The applicant and the respondents have had various court proceedings since 2020 all related to the water supply to the applicant's property.

[7] On 24 January 2020, the applicant obtained an order before Fabricius J in the urgent court. The following substantive relief was granted:

- “2. *The respondents’ termination of the water supply to the applicant’s property is wrongful and unlawful.*
3. *The respondent is to reconnect the water supply to the applicant’s property forthwith.*
4. *Pending finalisation of Part B of the application, the order in terms of Prayers 2 and 3 of the operator’s interim relief with immediate effect.”*

[8] On 18 June 2021 the applicant received an account for R13 203.21. In a letter of 5 July 2021, the applicant lodged a dispute. She contended that her average bill for the previous 6 months was around R1 427.00 to R1 083.00, which she had paid.

[9] She requested a reconciliation with her other payments. In that letter she refer to the municipality that she had obtained a court order of 24 January 2020 which was served on the municipality’s legal department.

[10] In the years that have passed since then, the City has given no attention to resolving this dispute.

[11] In terms of section 102(2) of the Municipal Systems Act, 32 of 2000, the municipality is precluded from implementing its debt credit control policy until the dispute for the aforesaid amount has been resolved.

[12] The City disconnected the applicant’s watwe supply again and on 8 June 2024, the applicant obtained another order before Nalane AJ. Nalane AJ directed the municipality to restore the water supply forthwith. Such order would serve as an interim interdict pending finalisation of Part B proceedings. The Part B in question was a review application for the setting aside of the decision to disconnect the applicant’s water without a court order.

- [13] The aforesaid Part B proceedings have not been finalised.
- [14] On 28 August 2024 an order was obtained by Molopa J, who issued a rule *nisi* by agreement between the parties. This rule *nisi* discharged in November 2024 due to non-compliance by the applicant's former attorneys with the directives of the Deputy Judge President.
- [15] The aforesaid agreed rule *nisi* was obtained when a contempt application would serve before court. The day before the hearing the City tendered costs and agreed to a rule *nisi*. The order of Molopa J reinforces the applicability of the order of Nalane AJ of 8 June 2024.
- [16] The applicant has not paid for her own consumption regularly. After being in arrears for 4 months, payments were made in January 2025 and in February 2025.
- [17] The City contends that its creditor control policy entitles the City to disconnect water when, despite there being a pending dispute, the property owner fails to pay interim consumption on a month by month basis (clause 13 of the policy).
- [18] The City provided advance termination notices for the disconnection of the water supply. The City contends that the water has not strictly speaking been totally disconnected. A trickle of water is left. This is disputed by the applicant, who contends that the taps are dry. She has daughters who cannot attend to their hygiene in such circumstances.
- [19] The applicant contends that the disconnection is unlawful, constitutes an infringement upon her right to water in terms of section 27 and a right to dignity.
- [20] During argument on behalf of the City, it was contended that the policy and the bylaws in terms of which it was passed are binding and empowers the

City to act as it has in disconnecting the applicant's water supply. It is for non-payment of interim consumption that her water was disconnected.

- [21] The approach of the applicant is ostensibly that, for as long as the dispute pertaining to the account for R13 203.21 in 2021 was launched, no steps can be taken to disconnect her water. She has launched contempt proceedings for non-compliance with the order of Nalane AJ and this gave rise to the rule *nisi* by agreement before Molopa J. The contempt proceedings have not been finalised.

NON-PAYMENT OF ARREARS

- [22] In **Tshwane City Metropolitan Municipality v Vresthena (Pty) Ltd and Others** 2024 (6) SA 159 (SCA), the SCA considered an interim order granted by the Court *a quo* in terms of which the City was directed to restore electricity to the body corporate of Zambezi Retail Park. The order also directed Zambezi Retail Park to pay for its consumption and, where consumption is disputed, to declare formal disputes. This relief was granted in Part A proceedings. Part B proceedings related to a review of the City's rejection of an application for a separate electricity connection.

- [23] In criticising the or order of the Court *a quo* (which was set aside) the court stated the following at paragraph [13]:

“The orders that were granted by the high court have a number of shortcomings. First, the order does not make reference the application for an additional electricity service connection as sought by Vresthena in paragraph 1 of Part B of the notice of motion. Second, the duration of the order is indefinite, which means that it shall endure until such time that the legal process in Part B is completed. This leaves all the parties in a state of uncertainty. Third, there is no causal link between the order granted by the court in Part A and Part B of the notice of motion. Part A directs the City to continue to supply electricity and water to the entire Retail Park pending the resolution of Part B. However, Part B is directed only at a possible review of a possible decision by the City to refuse Vresthena's application for a separate supply to the units or sections owned by it. What is more, there is

no time frame laid down for the anticipated review or for Vresthena to file its application with the City for a separate electricity supply as contemplated in s 7 of its By-laws. Therefore, the court order does not set out steps to regulate Part B of the application. Fourth, the restoration of electricity without the provision for the payment of arrears creates an anomaly in that the City is forced to provide electricity to the property where payment is not being made. Lastly, the chilling effect of the order is that it compels the City to act contrary to the prevailing law and its constitutional mandate: it must continue to supply electricity to users who are in arrears and have a history of non-payment for the foreseeable future, and at the same time the City is denied the statutory power to terminate services without approaching a court to obtain leave to do so. These characteristics of the order demonstrate that its effect is final in nature. At the very least, for reasons I traverse below, this is one of those cases where the relief sought ought to have never been granted, and the order is appealable on this basis too.”

- [24] The SCA in the aforesaid **Vresthena** judgment has expressed the countervailing considerations of parties to a dispute pertaining to an account for provision of water and electricity. In the face of a declared dispute, the City is precluded from implementing its credit control policy. However, the mere declaration of dispute does not have the effect of permitting the account holder to obtain water and electricity without paying for subsequent consumption.
- [25] If this were a matter to be determined purely with reference to the City’s credit control policy, then the City would be acting within its rights to terminate water supply due to non-payment of consumption after a dispute as envisaged in section 102(2) of the Systems Act has been declared.
- [26] What complicates the City’s position is that there is a court order by Nalane J directing it to reconnect pending finalisation of proceedings in Part B.
- [27] It may very well be that the order of Nalane J may be subjected to the same criticism vocalised by the SCA in **Vresthena** supra. However, that judgment

stands until set aside. It is binding on the City in terms of sec 165(4) of the Constitution

[28] The same parties in **Vresthena** were in a similar dispute before me in **Vresthena (Pty) Ltd v Tshwane City Metropolitan Municipality and Others** 2023 (JDR) 2741 GP in which I stated as paragraph [35] etc:

“[35] In this instance the applicant has had electricity cuts since 12 August 2022. It has disbursed R19 million on diesel to keep generators going. These expenses were incurred in the face of at least three court orders directing the City to restore the electricity connection.

[36] The City contends that the applicant has substantial arrears for rates and taxes, and contends that there has been tampering by means of illegal electricity connections. The City’s bylaws entitle it to terminate electricity supply immediately.

[37] There is clearly a protracted and unsavoury history between the parties. Nevertheless, the court orders granted need to be complied with and it is not within the City’s power to disregard them on the basis of its own contentions that it would be incompetent in law. Until set aside, such orders are valid and need to be adhered to. This is more so in the case of an organ of state, in light of its obligations under Sec 165(4) of the Constitution.

[38] Much of the debate from the City related to implementation of the order compelling the City to be involved in unlawful conduct. None of the arguments are persuasive. The court’s order would clothe the conduct of the City with the legality that it requires, particularly where the relief flows from what the court has assessed as being just and equitable in the circumstances. The current application has been brought about because of the recalcitrance of the City in complying with a court order pending an appeal. The powers and obligations of municipalities are constitutional matters, and the enforcement of court orders is a constitutional issue as well. I am therefore satisfied that the matter before me attracts sufficient constitutional interests to trigger the court’s powers under Sec 172(1) and (a). The declarator that is sought in Prayer 2 is aimed at endorsing and confirming the

effectiveness of the full court order. By implication the granting of the declarator would flow from what is clearly unlawful conduct on the part of the City in not complying with the full court order.”

[29] In light of the Nalane AJ order being in existence, and in light thereof that the City has not assailed it or sought to have it set aside, it is binding on the City of Tshwane.

[30] In light thereof, the City is obliged to adhere to the court order and to restore electricity supply pending finalisation of Part B as envisaged in those proceedings.

[31] The applicant as *dominus litus* has become supine upon obtaining an interim order for restoration. But it is within the powers of the City to have Part B enrolled for the purposes of finalising those proceedings.

[32] The applicant has deliberately not advanced Part B proceedings, having obtained the benefit of the interim order to reconnect electricity. It is also opportunistic on the part of the applicant to seek to rely on the Nalane AJ order as a shield against disconnection while she has accrued arrears since the declaration of the dispute which she has not serviced or made the subject of a payment arrangement in respect of the arrears.

[33] The order I granted aimed at achieving three things. Firstly the reconnection of the applicant's water supply. Secondly, to provide for the payment of arrears by the applicant and for the resolution of the 2021 dispute. Thirdly, to bring the Part B proceedings in the order of Nalane AJ to finalisation.

[34] In light thereof that both parties are at fault, neither of them will obtain a cost order in their favour.

[35] In the premises I made the aforesaid order.

BY ORDER OF COURT

LABUSCHAGNE J