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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 24562/2024

In the matter between:

ALLEN TARGHI TAVAKOLI

First Applicant

DLX PROPERTIES (PTY) LTD

Second Applicant

and

CITY OF CAPE TOWN

Respondent

JUDGMENT

SIPUNZI AJ

Introduction

[1] This is an urgent application for *mandament van spolie*. The applicants seek an order directing the respondent to restore the water supply connection to two immovable properties, situated at 6[...] and 7[...] Kloof Road, Cape Town. On 15 November 2024, the matter served before this Court for the first time. However, the application did not proceed. It was resolved that the respondent would restore the water supply to the properties pending the final determination of the matter. During subsequent appearances, the parties agreed on a timetable that regulated the further conduct of the matter. The costs were reserved for later determination.

[2] The applicants seek relief as outlined in the notice of motion, and in the following terms:

- 1) Condoning the applicants' non-compliance with, and dispensing with the forms, time periods, and service provided for in the Uniform Rules of Court and disposing of this application as one of urgency in accordance with the provisions of Rule 6(12) at the time and in the manner set out below:
- 2) Ordering the respondents to restore the supply of water to Erf 1[...], Cape Town, also known as 7[...] K[...] Road, Fresnaye, Cape Town, and to Erf 1[...]2, Cape Town, also known as 6[...] K[...] Road, Fresnaye (herein collectively referred to as "the properties").
- 3) Ordering the Respondent to pay the costs of this application; and
- 4) Further or alternative relief.

[3] This application is opposed on the basis that the respondent contended that it was justified when it restricted and or disconnected the supply of water to the properties.

The parties

[4] The first applicant is Allen Targhi Tavakoli, a businessman and the registered owner of the property situated at Erf 1[...], Cape Town, also referred to as 7[...] Kloof Road, Fresnaye, Cape Town.

[5] The second applicant is DLX Properties (Pty) LTD, a private company with limited liability, incorporated in accordance with the company laws of the Republic of South Africa, with registration number 2000/026778/07. It is the owner of the immovable property at Erf 1[...]2, Cape Town, also known as 6[...] Kloof Road, Fresnaye. The second applicant operates as a guesthouse under the name Grande Kloof Boutique Hotel. The first applicant is the sole director and shareholder of the second applicant.

[6] The respondent is the City of Cape Town Municipality, a local government authority established in terms of the Local Government: Municipal Structures Act 117 of 1998, with its principal offices situated at Civic Centre, 12 Hertzog Boulevard, Cape Town.

Factual background

[7] On 13 November 2024, the respondent restricted and/or disconnected the water supply to the properties. Since July 2022, there has been an ongoing exchange of communication between the applicants and various officials of the respondent, occasioned by disputes over the municipal valuations and outstanding municipal utility bills of the properties. On 28 September 2022, the respondent installed a flow limiting disc to the hotel. However, due to subsequent settlement reached between the parties, this matter was resolved. The final communication prior to the implementation of the restrictions were implemented was received from the first applicant on 08 November 2024. He was detailing his financial and health conditions, essentially pleading for indulgence in the settlement of his debts or disputes with the respondent.

Issues

[8] The salient issues that arise from the discussion above are twofold. Firstly, whether the application is urgent. Secondly, the question, whether the respondent

was justified in disconnecting or terminating the supply of water to the applicants' properties on 13 November 2024.

The law

[9] The Water Services Act¹ is the legal framework that gives effect to the right of everyone to have access to sufficient food and water.² In this regard section 4 finds application and reads as follows:

Conditions for provision of water services

- 1) *Water services must be provided in terms of conditions set by the water services provider.*
- 2) *These conditions must –*
.....
(c) provide for-
.....
(iv) the circumstances under which water service may be or discontinued;
(v) procedures for limiting or discontinuing water services; and
.....
- 3) *Procedures for the limitation or discontinuation of water services must-*
 - (a) Be fair and equitable;*
 - (b) Provide for reasonable notice of intention to limit or discontinue water services and for an opportunity to make representations, unless-*
 - (i) Other consumers would be prejudiced;*
 - (ii) There is an emergency situation; or*
 - (iii) The consumer has interfered with a limited or discontinued service; and*
- 4) *Every person who uses water services provided by a water services provider does so subject to any applicable condition set by that water services provider.”*

¹ The Water Services Act, 108 of 1997

² The Constitution, section 27(1)(b)

[10] The City of Cape Town Municipal Water By-Law, 2010, among other regulates the respondent's conduct towards its customers. In this scenario, recourse must be had to Clause 25(5) which reads as follows: *"The City must ensure that no domestic consumer is denied access to basic water services in terms of this By-law."*

Dispute of fact

[11] According to the respondent, the restrictions or disconnection of the supply of water supply to the properties was occasioned by misconduct on the part of the applicants. They averred that, notwithstanding the installation of flow limiting trickle discs (the disc) on both properties, there was anomalous volumetric consumption of water. In the case of the hotel at 6[...] Kloof Road, the disc was installed on 22 March 2024, and subsequently on 8 July 2024 at the residence of the first applicant at No. 7[...] Kloof Road. On 13 November 2024, an official of the respondent, Mr Lawrance was dispatched to conduct an inspection at the properties. Mr Lawrance found that there had been unlawful tampering or interference with the installed discs. At the hotel, the disc had been tampered with and at home of the applicant, the disc had been removed unlawfully.

[12] Following these discoveries, Mr Lawrance removed the water meter for the hotel, and at the residence of the first applicant, re-installed the flow limiting trickle disc. A pro-forma notice was issued for unlawful tampering with municipal infrastructure in the case of the hotel and the home, regarding the restriction measures imposed. The implication thereof, was that there was a complete termination of water supply to the hotel, with only a trickle flow of water at the home of the first applicant.

[13] On the other hand, the applicants maintain that the supply of water to both properties was completely cut off on 13 November 2024. The applicants deny that there were flow limiting trickle discs installed by the respondent on 22 March and 8 July 2024 at either properties. According to them, there was always consistent flow of water to both properties since 28 September 2022. On 27 September 2022, a flow limiting trickle disc was installed at the hotel located at 6[...] Kloof Road, due to arrears owed by the applicants to the respondent. However, upon reaching an agreement

with the respondent, the restriction on the supply of water was removed. Subsequent thereto, there had been no installation of restriction and or disconnection of the supply of water until 13 November 2024.

[14] The two most relevant questions that emerge from the above are whether the respondent had already implemented restrictions on the supply of water to the properties on 22 March and 8 July 2024. Lastly, the question arises as to whether the applicants tampered with the respondent's infrastructure and unlawfully re-established the water supply before the restriction was put in place on 13 November 2024, resulting in 'anomalous volumetric consumption' of water within the properties.

[15] In resolving these dispute of facts, the *Plascon-Evans Rule*³ has become trite. It states;

*'where in proceedings on notice of motion disputes of fact have arisen on the affidavits, where a final order is sought, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such order. The power of the court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances, the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact. ... If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination...and the court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks... there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers.'*⁴

³ *Plascon-Evans* 1984(3) SA 620

⁴ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

[16] In *casu*, the respondent did not have the SAP System record detailing the status of the flow limiting trickle disc that was installed on 27 September 2022, at which point an agreement was reached to remove the restriction on the following day, 28 September 2022. This remains the situation even though the dispute was resolved and payment made in terms of a settlement agreement. Instead, there is a SAP System record of the installation of another flow limiting trickle disc on 22 March 2024, on the same property. If the implementation of the restriction on 22 March 2024 was resultant of the arrears of R223 358.60⁵ in the instance of the hotel, it follows logically that a similar restriction would have been implemented at the applicant's residence because of the arrear amount of R485 154.52. However, this was not the case, and the respondent provided no explanation for this distinction as to how it addressed the outstanding arrears of these properties. No explanation is provided regarding the restriction, if it was indeed implemented on the other property, approximately three (3) months later, on 08 July 2024.

[17] It is also imperative to thoroughly investigate the events that may have triggered the inspection of the properties on 13 November 2024, as they appear to have set in motion everything that followed. The respondent proffered that they '*identified an anomalous volumetric consumption of water at the properties, notwithstanding the installation of limiting trickle discs on the water meters at the properties*'⁶ Consequently, Mr Lawrance was dispatched to the properties to conduct an inspection. The respondent fails to take the court into its confidence and does not clarify how much water it deemed a reasonable flow into these properties. Furthermore, the respondent fails to offer a credible explanation regarding what alterations occurred at what stage such changes took effect since the alleged installation of restrictions on 22 March and 8 July to the properties, respectively.

[18] The statements of account issued and provided by the respondent for the properties over a period of time will provide credible illustration of the water usage and may explain why the respondent focused on the properties on 13 November 2024. Each statement clearly allocates meter readings and the corresponding amount of

⁵ Answering affidavit, paragraph 68

⁶ Answering affidavit, paragraph 13

water for each period under review in that particular statement. Commencing with the hotel located at Erf 1[...]².

24 Nov 2022- 25 Jan 2023	63 days	401. 000 kl Ave usage per day 6.365kl
27/08- 26/09/2023	31 days	150. 000kl Ave usage per day 4.839kl
24/11- 27/12/2023	34 days	215.000kl Ave usage per day 6.324kl
25/01- 26/02/24	33 days	213.000kl Ave usage per day 6.455kl
27/02-26/03/2024	29 days	205.000kl Ave usage per day 7.069kl
25/04- 24/05/2024	30 days	155.000kl Ave usage per day 5.167kl
26/06- 26/07/2024	31 days	136.000kl Ave usage per day 4.387kl
27/07- 30/08/2024	35 days	175.000kl Ave usage per day 5.000kl
31/08-23/10/2024	54 days	364.000kl Ave usage per day 6.741kl

At Erf 1[...]

28/11-27/12/2023	30 days	0.833kl
25/01- 26/02/2024	33 days	5.000kl Ave usage per day 0.152kl
31/08- 27/09/2024	28 days	4.000kl Ave usage per day 0.143kl

[19] The illustration above indicates that in respect of Erf 1[...]², the hotel maintained a consistent average daily water usage from November 2022 through to October 2024. Therefore, it cannot be equally accurate to state that the supply of water

was restricted on 22 March 2024. This also holds true for Erf 1[...], which is the residence of the first applicant. The available statements indicate a comparison over 30 days from January to February 2024 and shows a daily average usage of 0.152kl. In the period of 28 days from August to September, the daily average usage is 0.143kl. The data does not support the respondent's claim that the supply of water to the hotel (Erf 1[...])2) was restricted since 22 March 2024 and that there was similar restriction implemented at the applicant's home (Erf 1[...]) since 8 July 2024.

[20] Furthermore, there was frequent exchange of correspondence between the first applicant and the officials of the respondent since July 2022 until 8 November 2024. The subject of the discussion was always about the utility bills that were in arrears, the disconnection of electricity supply to the properties, the valuation of the properties and the payment options that were explored. It is reasonable to anticipate that, if the respondent had restricted the supply of water to these properties, on 22 March and 8 July 2024, somehow this subject would likely feature in their discussions. I mention this because the hotel was operating throughout this period, logically, it would have been impossible to continue with its business operations with a flow limiting trickle disc installed to its water supply. Especially if the flow of water, evident in the utility bills provided by the respondent, did not align with the expectations at the time the flow - limiting trickle disc was installed.

[21] The applicants denied any allegations that they had unlawfully tampered or unlawfully interfered with the water infrastructure, thereby triggering the respondent to disconnect/restrict the supply of water to both properties. Upon application of *The Plascon-Evans rule*, one must take into account the available facts to be able to reach a conclusion on what is plausible and credible. The respondent stated that when Lawrance attended at the properties, he found that the disc that had been fitted on 22 March 2024 at Erf 1[...])2 (the hotel) had been tampered with, while the disc at Erf 1[...]) (the home) had been removed.

[22] A detailed examination of the statements provided by the respondent reveal that the water consumption at the properties was billed based on meter readings presumably, conducted physically by the respondent's officials. For instance, the statement on water consumption during the period starting from 26 June to 26 July

2024, indicates a total consumption of 136, 000 kl with a daily average of 4.387 kl.⁷ There is also a suggestion that this was an 'actual reading', for the period of 31 days. Logic dictates that if there was any apparent damage to the installed flow limiting discs, or blatant evidence of interference with the infrastructure, such would have been observed by the meter readers.⁸

[23] Respondent provided no indication as to when these removals or tampering with the infrastructure might have occurred. The meter readings from both properties do not provide circumstantial evidence that could establish factual basis to even infer the likely timing of such occurrences. The respondent similarly fails to present any evidence or even minimal information regarding how this tampering might have taken place and who could have engaged in these clearly unlawful activities. Furthermore, regarding the 13 November 2024 incident, when the respondent sent Lawrance to the properties, there is no indication or data that sheds light or clarifies by whom or when the interference was perpetrated. The facts presented clearly indicate that there was a consistent inspection of the water meters for meter reading at both properties leading up to 13 November 2024; however, none of the officials observed the damage caused upon the respondent's infrastructure.

[24] The discussion above emphasises clear facts that strongly support the conclusion that, when applying the Plascon Evans Rule, the applicants' version, as illustrated above, is both credible and plausible and therefore, it ought to prevail. The version of events provided by the respondent, regarding the circumstances that lead to the disconnection of the water supply of to the properties is clearly untenable and can only be false. Therefore, the facts upon which the issues *in casu* shall be determined are as set out in the applicants' notice of motion, and to the extent that they relate to the *status quo before* and at the time Lawrance was dispatched to the properties on 13 November 2024.

The Spoliation

⁷ Replying affidavit, RA 2.4, Page 214 of the bundle of documents.

⁸ Similar pattern can be seen in the Replying affidavit, RA 2.5, and RA 2.6 Page 217-222 of the bundle of documents

[25] On the basis of *City of Cape Town v Strumpher*⁹, counsel for both parties were *ad idem* that *mandament van spolie* serves as a competent remedy when the dispute relates to the restriction or dispossession of access to the supply of water. It was also common understanding that the respondent, as a water service authority, had the legal obligation to provide water services, and in exchange, the applicants were required to pay for the said service.¹⁰ Further thereto, it was common cause that this relationship was regulated by the Water By-Law (2010) and that, in the context of the dispute *in casu*, clauses 4 and 25 found application, as shall be traversed below.

[26] In the context of spoliation, the specific attributes of the relief of *mandament van spolie* are articulated in *Van Rhyn and Others NNO v Fleurbaix Farm (Pty) Ltd*,³ as paraphrased hereunder;

‘It is a robust remedy directed at restoring the status ante quo, irrespective of the merits of any underlying contest concerning entitlement to possession of the object or right in issue; peaceful and undisturbed possession of the thing concerned and the unlawful despoilment thereof as all that an applicant for a mandament van spolie has to show. Deprivation is unlawful if it takes place without due process of law, or without a special legal right to oust the possessor. The fundamental purpose of the remedy is to serve as a tool for promoting the rule of law and as a disincentive against self-help. It is available both in respect of the dispossession of corporeal property and incorporeal property. In a case of a quasi-possession, the dispossession of a right will always entail the taking away of the use in the right concerned.’

[27] In the case of the applicants, it became common cause that there was dispossession of the right to the supply of water on 13 November 2024. The applicants bear the onus to demonstrate that at the time of dispossession, they were in peaceful and undisturbed possession of the of the right to access water supply, and that the deprivation was unlawful, without due process of law, as per *Van Rhyn (supra)*.

⁹ *City of Cape Town v Strumpher* (104/2011) [2012] ZASCA 54 (30 March 2012) paragraphs 9-11

¹⁰ The Water services act, 108 of 1997, section 11(1) and 11(2)(b)

Were the applicants in peaceful and undisturbed possession?

[28] The response to this question can be found in the preceding discussion. The fact that the applicants have been continuously receiving a consistent flow of water since 28 September 2022, sufficiently supports their claim that they had enjoyed an uninterrupted supply of water until Lawrance arrived on 13 November 2024. It is common cause that following the agreement to restore water on 28 September 2022, there have been ongoing discussions aimed at resolving the issues concerning the applicants' outstanding arrears. It makes sense that there was never a need to discuss the water situation because the parties were occupied with addressing the matter through correspondence and meetings. Since then, they were engaged in ongoing discussion regarding the resolution of the outstanding issues.

[29] The scientific evidence presented in the form of utility bill statements from the respondent further augment the applicants' claim that their supply of water to the properties was uninterrupted and undisturbed until the disconnection on 13 November 2024. From April to May, the daily average usage was 5.167kl, June to July it was 4.387kl with an increase to 5.000kl in July to August and finally reached 6.741kl from August to October. By any standards, this demonstrates that the respondent's claim that there was restriction *status ante quo*, was untrue and could not be relied upon. Therefore, the applicants established that they indeed had uninterrupted and undisturbed possession of the supply of water when the disconnection/dispossession was implemented on 13 November 2024.

Was the conduct of the respondent unlawful?

[30] In this regard, the applicants emphasised that the deprivation by the respondent on 13 November 2024 were both unlawful and unjustified. The applicants submitted that the conduct of the respondent constituted a violation of the rights of the applicants, as the respondent acted without prior notice and or due process, which would have allowed for an opportunity for engagement between the parties.¹¹

¹¹ The Water Services Act, 108 of 1997, section 3 and Clause 25(5) of the City By-Laws, 2010

[31] On the other hand the respondent argued that upon discovering the applicants had unlawfully tampered with the infra structure, resulting in the reconnecting its water supply, it acted in accordance with its procedures by disconnecting the supply and providing written notice.¹² The respondent further submitted that, as a water service provider, it was empowered to develop conditions that, inter alia, regulated the circumstances and procedures under which water services may be restricted or discontinued.¹³ Therefore, the respondent's conduct was not a contravention of its own legal framework which required it to ensure that no domestic consumer is deprived of access to basic water services as stipulated by this by-law.¹⁴

[32] The force and effect of the provisions outlined above must be considered in the context of the circumstances of the applicants at a particular time and situation. There were domestic consumers in both properties. The property located at Erf 1[...] serves as the residence of the first applicant, while Erf 1[...]2, operate as a boutique hotel. There were also employees of the second applicant who resided permanently on the hotel premises. No one from amongst the residents from either properties had been found to be responsible for the allegations of tampering or violation of the applicable By-Laws. The respondent's argument that an inference should be drawn regarding their role as perpetrators is unfounded and primarily relies on speculation.

[33] Given the background facts traversed above and the relationship established between the respondent and the first applicant, it seems improbable that the applicant would allow his properties to remain without water supply for several months. In the case of a hotel and the nature of its operation, it is untannable that it would operate since 22 march 2024 without water. Furthermore, if the flow of water was contrary to the amount it would have been expected since the restriction, the respondent would have noticed and engaged the first applicant. That is, if there was any reason to believe that he or his employees were involved. The lack of a definitive connection between the residents of the properties and the purported damage to the respondent's infrastructure does not support the respondent's case in any way.

¹² The City of Cape Town By-Law 2010, Clause 25(4)

¹³ The Water Services Act, 108 of 1997, section 4

¹⁴ The City of Cape Town Water-service By- Law, Clause 25(5)

[34] In *Van Rhyn*, the court also clarified that ‘deprivation remains and is considered unlawful if it takes place without due process of law, or without a specific legal right to oust the possessor. This is especially important because *mandament van spolie* remedy seeks promote the rule of law and serves as a deterrent against self-help. In the scenario where it is believed that there was tampering or removal of the respondent’s infrastructure, indicating unlawful conduct by the applicants, it would have been essential to follow due process of law prior to any deprivation being enacted. This would have provided the involved parties with the chance to investigate and arrive at a definitive conclusion regarding the situation.

[35] Mr van Aswegen for the respondent submitted that the respondent relied on this provision when Mr Lawrance made the discovery of tampering or interference with the infrastructure. However, on his own admission, the respondent relied on inference that it would have been the applicants who committed that unlawful interference or tampering. He was unable to point out whether there was any evidence to suggest when this interference or tampering was perpetrated. Thus, they could not establish a factual foundation for drawing such inferences, other than to simply attribute it to the applicants.

[36] The respondent is empowered to disconnect any user who has unlawfully reconnected the water supply after being restricted or disconnected.¹⁵ However, there is a requirement that such disconnection must be done ‘on written notice’. Which brings one to the next consideration as to whether the applicants were given written notice when the supply was disconnected. When engaging as to how the respondent ought to have exercised its powers regarding the disconnection of water service, it is imperative to also have due regard to the procedure set out in section 4(3)(b) of the Water Services Act. Among other considerations, there is a requirement that the disconnection is conducted in a fair; equitable and must provide reasonable notice of intention to limit or disconnect water service. Furthermore, it must provide for the opportunity to make representations, unless the customer has interfered with a limited or discontinued service. The respondent lacked any evidence to link the applicants to

¹⁵ City of Cape Town By-Laws, Clause 25(4)

the alleged interference with its infrastructure, thus it was not entitled to invoke the provisions of Section 4(3)(b)(iii).

[37] A closer reading of this section indicates that the respondent would require to possess definite evidence that it was the customer who interfered with the limited or discontinued service. Which remains a gap in the procedure that the respondent sought to follow. In short, regardless of the approach taken to assess whether the respondent acted lawfully when it restricted or disconnected the supply of water to the properties, the respondent's conduct fails to pass muster. Therefore, the conduct of the respondent was unlawful when it dispossessed the applicants of the supply of water to the properties.

Urgency

[38] It is common cause and a widely recognised fact that water is a basic necessity for day to day survival. The applicants submitted that on 13 November 20024, as soon as they became aware that there was disconnection of water supply to the properties, they alerted the official of the respondent, Mr Siboniso, with whom he had already engaged in an exchange of correspondence regarding the various issues. The applicants also expressly requested Mr Siboniso to ensure that the matter received urgent attention. Following an exchange of emails that yielded no positive outcomes, the litigation process was commenced.

[39] The respondent bemoaned that when the application was served, there was only a four-hour notice period. Within that brief period, the respondent had to consult and prepare a meaningful reaction to the claim of the applicants. In protest, the applicants submitted that a demand was communicated to the respondent on at least two occasions and the respondent was non responsive to the demands. However, the issue remains unresolved until the matter served before the court.

[40] When an allegation of urgency is made, *'the correct approach in the determination is to first understand that harm alone does not establish urgency. The applicant must additionally also demonstrate that they cannot obtain timeous redress for that harm through normal legal processes. The court must objectively evaluate the*

*circumstances in order to conclude whether the urgency is genuine and not self-inflicted.*¹⁶ The questions to be answered must also be guided by Rule 6(12) (b) of the Uniform Rules of this Court.

It provides that:

“In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly. The circumstances which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.”

[41] On the question of urgency, the respondent did not refute the substance of the applicants’ assertion that they met the requirements of urgency. Save to confirm that when the matter served before court on 15 November 2024, the parties agreed that the respondent should restore the water supply to the properties, pending the finalisation of the litigation process. Certainly, this may have been in appreciation of the harm that may have been caused and that it was not possible for the applicants to obtain timeous redress through the normal legal processes.

[42] The Courts have settled that deprivation of water supply by a water service authority is inherently an urgent matter that ought to be resolved by means of a *mandament van spolie*. As it was described in *Ngqukumba v Minister of Safety and Security and Others*, spoliation as a remedy is widely accepted to be an inherently urgent relief to the possessor who was unlawfully spoliated aiming to restore them before all else of unlawfully deprived possession.¹⁷ In the case of the applicants, the disconnection of the supply of water to the properties was erratic, when attempts were made to have it restored, the officials of the respondent were not responsive.

¹⁶ East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Another (11/33767) [2011] ZAGPJHC 196 (26 September 2011)

¹⁷ *Ngqukumba v Minister of Safety and Security and Others* (CCT 87/13) [2014] ZACC 14; 2014 (7) BCLR 788 (CC); 2014 (5) SA 112 (CC) (15 May 2014) para 10

[43] The approach adopted by the applicants when they discovered that the water supply was disconnected, without a positive response from the respondent's officials cannot be faulted. On a conspectus of all the relevant facts, I am satisfied that the applicants have demonstrated their application was urgent, and that in the absence of immediate redress, they would have sustained irreparable harm to their rights, livelihood and basic needs.

[44] Urgency has been established and the matter is indeed urgent.

Costs

[45] Both Counsel submitted no reason why the costs should not follow the results, and on Scale B. From my assessment of the conduct of the proceedings from the time the matter first appeared on 15 November 2024 and the subsequent postponements, I share their sentiment.

Order

[46] The order below is made:

1. The applicants' none compliance with and dispensing with the forms, time periods and service provided for in the Uniform Rules of Court and disposing of this application as one of urgency in accordance with the provisions of Rule 6(12)(b) is condoned;
2. Respondent shall restore the supply of water to Erf 1[...], Cape Town, also known as 7[...] Kloof Road, Fresnaye, Cape Town, and to Erf 1[...]2, Cape Town, also known as 6[...] Kloof Road, Fresnaye forthwith;
3. The respondent to pay the costs of this application and all costs that stood over at Scale B.

SIPUNZI AJ
ACTING JUDGE OF THE HIGH COURT

Appearances

For the Applicants: Adv Z Haffejee
Instructed by: Nirenstein Attorneys Inc.

For the respondent: Adv A van Aswegen
Instructed by: Timothy and Timothy Attorneys

Date of Hearing: 12 May 2025
Date of Judgment: 23 May 2025

This judgment was handed down electronically by circulation to the parties' representatives by email.