IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, MTHATHA)

CASE NO: 2660/2025

In the matter between:

NONKUSELO MAZATU	1st Applicant
LINDEKA NONGQAYI	2nd Applicant
and	
OR TAMBO DISTRICT MUNICIPALITY	1st Respondent
THE MUNICIPAL MANAGER: OR TAMBO DISTRICT MUNICIPALITY	2nd Respondent
EASTERN CAPE DEVELOPMENT CORPORATION	3rd Respondent

REASONS FOR THE URGENT INTERIM ORDER

RUSI J

[1] The applicants are the occupiers of the premises known as W[...] Hotel, erven 1[...] and 1[...]2 Sutherland Mthatha (the premises), since 2023 together with various other occupiers and small businesses. The property is owned by the third respondent who has an agreement with the first respondent for the provision of municipal services. The third respondent's municipal services account fell in arrears. As at March 2025 the arrears allegedly owed to the first respondent by the third respondent were R48 742 761.62 (Forty-eight million seven hundred and forty-two thousand, seven hundred and sixty-one rands sixty-two cents).

[2] On 08 May 2025, the first respondent terminated the water supply to the premises as a result of the third respondent's failure to pay the arrears on its municipal services account. The applicants contended that that termination was unlawful and unconstitutional for failure of the first respondent to follow a fair procedure before implementing it. The applicants sought urgent interim relief pending their intended review of the decision of the first respondent to terminate the water supply to the premises.

[3] On 06 June 2025, being the date of hearing of the application, I indicated to counsel representing the parties that due to the nature of the issues that the intended review application implicated, I would only consider interim relief pending its finalization. After hearing the application, which was by then fully opposed only by the first and second respondents, I granted the following order:

1. The applicants are hereby granted leave to bring this application as one of urgency, and the Rules regarding forms and service are dispensed with.
2. A rule nisi is hereby issued calling upon the respondents to show cause, if any, on Tuesday 24 June 2025, at 09h30 an or so soon thereafter as the matter may be heard, why the following order should not be made final:

2.1 The termination of the water supply to erven 1[...] and 1[...]2, W[...] Hotel, Sutherland Street, Mthatha is hereby declared unconstitutional and unlawful.

2.2 The termination of the water supply to erven 1[...] and 1[...]2, W[...] Hotel, Sutherland Street, Mthatha, is hereby reviewed and set aside.

2.3 The respondents are hereby directed to reconnect the water supply to W[...] Hotel, Mthatha, forthwith.

2.4 The respondents are hereby interdicted and/or restrained from terminating the water supply to the said premises in an unlawful and unconstitutional manner.

2.5 The applicant's failure to exhaust internal remedies as may be provided for in any other law and as may be relevant, is condoned.

2.6 The respondents are directed to pay the costs of this application jointly and severally, the one paying the other to be absolved, including costs consequent upon the employment of two counsel.

3. Paragraphs 2.3 and 2.4 shall operate as an interim order or mandamus pending the finalization of this application.

[4] A request was made on 10 June 2025 on behalf of the first and second respondents for written reasons for the order I made. Below I give those reasons, and where I make reference to 'the respondents', it shall be to the first and second respondents.

The case for the applicants

[5] In their founding affidavit which was deposed to by the first applicant and supported by the second applicant in her confirmatory affidavit, the applicants stated that they are persons in occupation of the premises and the consumers of the water supply services that the first respondent provides to the third respondent. They occupy the premises with school-going children. The applicants further alleged that they are indigent persons who live on child support grant and odd jobs.

[6] According to the applicants, the water supply to the premises was terminated by the first respondent on 08 May 2025 without any reasons furnished for the termination. All subsequent attempts that they made with a view to obtaining further information pertaining to the termination failed. Those attempts included visiting the offices of the first respondent where they were 'sent from pillar to post'. After obtaining legal advice, they caused a letter to be written to the first respondent on 16 May 2025 requesting the restoration of the water supply. In response, they were informed by the first respondent in a letter dated 16 May 2025 that the termination was occasioned by a debt of R48 742 761.62 (Forty eight million seven hundred and forty-two thousand, seven hundred and sixty-one rands sixty two cents) that the third respondent owes to the first respondent, and that there was a subsequent illegal connection of the supply which resulted in the removal of a water meter that was allegedly illegally installed on the property.

[7] Further communication was transmitted to the first respondent on 19, 22 and 28 May 2025, in which a demand was made on behalf of the applicants for the restoration of the water supply to the premises. When this attempt yielded no positive results, the applicants went to the offices of the first respondent in order to resolve the matter. There, they were informed that there was nothing the first respondent could do.

[8] The grounds on which the applicants challenge the termination of the water supply as being unlawful and procedurally unfair are that they were not informed by the first respondent of its intended termination and the reasons therefor; they were not afforded an opportunity to make representations; and they were not informed of their rights in the light of the termination. Further according to the applicants, since the first respondent was aware that they, together with various other persons, occupied the premises, it was not sufficient to only inform the third respondent of the intended termination.

[9] The termination, so the applicants contended, was therefore unreasonable in the circumstances and adversely affected their rights and legitimate expectation since they started receiving the water supply, that it would not be terminated without a fair procedure. Had they been notified of the intended termination, they would have made representations as to why the water supply should not be terminated. The applicants went further and stated that the termination rendered the premises incapable of optimal occupation and deprived them of an indispensable basic necessity of life.

[10] In substantiating the urgency with which the application was brought, the applicants stated that the termination adversely affected their right of access to sufficient water. They are dependent on water for their survival and in order to conduct daily activities such as cooking and washing clothes. The ablution facilities have become clogged in the absence of water supply as human waste cannot be flushed away. This, in turn, causes an unbearable stench and filthy conditions which expose them to health risks and unnecessary hardship. It has caused them financial distress as they cannot cook and are forced to buy take-away food daily. The right of the children's right to education and dignity is violated as the minors are forced to go to school without having taken a bath. Some occupiers have resorted to buying water from supermarkets. The applicants contended that they will not be afforded substantial redress at the hearing of the matter in due course.

[11] The applicants further asserted that the balance of convenience favoured the granting of the urgent interim relief sought. In the light of the fact that all their pleas to the first respondent to reinstate the water supply to the premises have been brought to nought, they had no other adequate alternative remedy. In this application, they asserted their right to a fair procedure before a decision that adversely affects their rights is taken. Their right to the water supply, they say, has been violated.

The case for the first and second respondents

[12] The nub of the first respondent's opposition is that in keeping with its Credit Control and Debt Collection Policy (the Policy), it exercised its right to terminate the water supply to the premises when the third respondent's municipal services account fell in arrears. The first respondent also denies that the termination was without the notice that is required by its Policy. In this regard, it states that in December 2024 it dispatched a notice to the third respondent and any person occupying the premises, by affixing such notice on the pillars that anchor the main gate of the premises, on the perimeter wall of the property along Sutherland Street, and on the main door of the premises. Its contents were also read out loud by its official to the people that she found on the property and whose names are unknown. I may mention that from the said notice the amount that was due and owing at the time, was R2 067 573.57 (Two million and sixty-seven thousand, five hundred and seventy-three rand fifty-seven cents).

[13] Ms Funeka Ngqongwa who deposed to a confirmatory affidavit which was filed with the opposing affidavit of the respondents stated that on the day she went to serve the notice at the premises in the manner alleged by the respondents, she also read the notice out in vernacular to the persons she found on the property. The said notice is annexed to the papers filed of record. It is written in English. In the notice the first respondent informs the third respondent, to whom it is addressed, inter alia, of the outstanding amount and the impending termination of the water supply if no payment was made.

[14] It is the respondents' evidence further, that, on 24 March 2025, the first respondent delivered a notice of termination dated 20 March 2025 at the business address of the third respondent. In this notice, it gave the third respondent seven (7) days to pay the outstanding arrears of R48 742 761.82 on pain of the termination of the water supply. When the seven-day period expired without any payment being made by the third respondent, the first respondent terminated the water supply to the premises.

[15] The respondents further alleged that after this termination, they detected an illegal reconnection which they contended was done by the third respondent or the

persons occupying the premises. The illegally installed water supply was terminated without further notice to the third respondent or the persons occupying the premises.

[16] In refuting the urgency with which the applicants brought this application, the respondents stated that since the termination on 08 May 2025, the applicants only contacted the first respondent on 16, 22 and 28 May, through their attorneys, and the urgency that they contended for was contrived. The respondents denied that the balance of convenience favoured the granting of the interdict that the applicants sought. They further denied that the applicants have no other alternative remedy, stating that they have an option of concluding separate agreements with the first respondent for the supply of municipal services. Further, according to the respondents, the applicants have not established a prima facie right 'due to the nature and effect of the relief that they seek'.

[17] In reply, the applicants denied that the notice dated December 2024 was brought to their attention, further stating that they are always present in the premises and they would have seen or heard the official of the first respondent announcing the contents of the notice. In the alternative, they contended that the affixing of the notice as alleged fell short of the required standard of service. They further stated that the premises are under guard of security officers who would also have become aware of the fact that such a notice was indeed delivered. That there was an illegal reconnection of the water supply to the premises after the termination of 08 May 2025 was denied by the applicants. They stated that there was no stage where the water supply to the premises was ever restored after the termination of 08 May 2025.

The parties' submissions

[18] As a preliminary issue, it was submitted by Mr *Matotie* who represented the applicants that the degrading and deplorable conditions in which the applicants have been made to live following the termination of water supply to the premises in the alleged unlawful and unprocedural manner made the matter urgent. Since on 16 and

again on 28 May 2025 the first respondent had made it clear that it would not come to the aid of the applicants, they were justified in bringing this application on urgent basis.

[19] It was further submitted on behalf of the applicants that their failure to approach the court as early as 16 May 2025 did not diminish the urgency of the matter as they first attempted to negotiate its resolution with the first respondent. When it became clear on 28 May 2025 that the first respondent maintained its position, they issued the application on 30 May 2025, and they have proven that they would not obtain substantial redress at the hearing of the matter in due course.

[20] On the score of the interdict that the applicants sought it was submitted they established a prima facie right that is worthy of protection in that, as the residents of the premises and consumers of the water that the first respondent supplied to the third respondent, they had a right to be notified of the decision to terminate the water supply and of their right to make representations. That the applicants live below the poverty line, so the submission continued, meant that settling a water bill of R48 742 761.62 or making arrangements to settle it, cannot be an alternative satisfactory remedy available to them.

[21] Mr *Madokwe* submitted on behalf of the respondents, that the matter is not urgent in that the applicants have failed to explicitly set out the grounds on which they rely for the alleged urgency, alternatively, that the alleged urgency was self-created, and it resulted in the violation of the 72 hour notice that the first respondent ought to have been given, in terms of section 35 of the General Law Amendment Act 62 of 1955. In this regard he submitted that the applicants were dilatory in bringing this application as the termination complained of took place on 08 May 2025, with the further termination of an illegal reconnection having taken place on 15 May 2025. According to Mr *Madokwe*, as early as 16 May 2025, the first respondent had made it stance clear that there would be no restoration of the water supply until the outstanding debt was paid.

[22] As regards the applicants' entitlement to the interdict, Mr *Madokwe* submitted that they failed to establish a prima facie right in that they failed to prove their residence in the premises. They produced no lease agreements or proof that they paid their water bills in respect of the municipal services account. Mr *Madokwe* took the view that it is the third respondent who has 'an unquestionable right' to bring this application as the one who has a contractual relationship with the first respondent. He further submitted that the applicants had an alternative remedy at their disposal in the form of making arrangements to pay the debt owed to the first respondent. According to him, the applicants did not establish that the balance of convenience favoured the grant of the interdict.

Analysis

[23] In this discussion, I deal, first, with the urgency contended for by the applicants. A determination of urgency in application proceedings entails the question whether the applicant will be afforded substantial redress at the hearing of the matter in due course.[1] It bears re-stating that a litigant cannot be penalized for attempting to resolve the dispute before instituting court proceedings.[2]

[24] In light of the continued effects of the discontinuation or termination of water supply to the premises on the rights that the applicants asserted, it ought to follow that they would be forced to endure the indignity of the dire and unhygienic conditions that they have set out in their founding papers if this matter is not heard as a matter of urgency. This Court is clothed with the discretion to intervene and resolve a matter speedily where the circumstances of the case so demand. The present application was such a case. Put simply, form should not be allowed to trump substance. I made the finding that the matter was indeed urgent.

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[1] *Luna Meubels Vevaarrdigers (Edms) BPK v Makin* (t/a Makin's Furniture Manufacturers) 1977 (4) SA 135 (W); *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

[2] *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* 2004 (2) SA 81 (SE) at 94C-D.

The merits of the interdict sought

[25] A question that follows is whether the applicants established a right which was worthy of preservation pending the final decision on review. In *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*[3], Moseneke DCJ said:

> 'Under the *Setlogelo* test, the prima facie right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a prima facie right that is threatened by an impending or imminent irreparable harm.'[4] (footnotes omitted).

[26] Did the applicants establish their entitlement to the interdict that they sought? I attempt to answer this question in the discussion that follows.

The prima facie right

[27] From the above facts, it seems incontrovertible that the first respondent was at all times relevant to the present dispute aware that it was providing the supply of water to the third respondent for the benefit of the occupiers of the premises. It is also common cause that after the notice of termination that was allegedly delivered at the premises and allegedly brought to the attention of the occupiers of the premises, there was no termination of the water supply to the premises for some time.

[28] The further notice dated 20 March 2025 was delivered on 24 March 2025 only at the place of business of the third respondent at [...] S[...] Street, Fortgale, Mthatha. Indeed, when the seven-day period that the third respondent was afforded in the latter

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[3] *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* (CCT 38/12) [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) (20 September 2012) (*OUTA*).
[4] Id para 50.

notice to pay the arrears on its water account expired without it making the said payment, the water supply to the premises was terminated. It follows per force that this notice was not brought to the attention of occupiers, yet on the first respondent's own showing that same notice was the basis on which the termination was done.

[29] It is worth noting that the applicants merely denied knowledge of or responsibility for any illegal connection of the water supply subsequent to the termination of 08 May 2025. In this regard, the first respondent adduced proof of the meter reading in respect of the property, which the applicants did not dispute.

[30] With that said, the rights that the applicants asserted in this application are right to a fair procedure before a decision is made which adversely affected their right; the right of access to basic water; the right to an environment that is not harmful to their health and well-being; the right to dignity and their children's right to education. Although the applicants did not formulate their assertion in this selfsame manner, a reading of their founding papers permits of no other interpretation. These are the rights that the applicants contended are relevant for the purposes of the intended review. They went further and set out the conditions in which they have had to live as a result of the termination of the water supply. To this, the deponent of the respondents' opposing affidavit answered that 'he does not live on the premises and has no knowledge of the conditions that the applicants alleged.

[31] In *Vaal River Development*[5], Madlanga J who wrote for the majority, posed the following questions in relation to the reduction of electricity supply which the applicants in that case alleged was done without a fair procedure being followed:

> 'Does it not infringe one's dignity to cause them to drink water that is contaminated with faecal matter? Of course, it does. Does the real threat of loss of human life at hospitals and old age nursing homes occasioned by the

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[5] *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and Others* (CCT 44/22) [2022] ZACC 44; 2023 (5) BCLR 527 (CC); 2023 (4) SA 325 (CC) (23 December 2022) ('Vaal River Development').

reduction of electricity supply not constitute a threatened infringement of the right to life? It certainly does. If the flow of raw faeces into the Vaal River is not violative of the right to an environment that is not harmful to health or well-being, I do not know what is. Does the negative impact on schooling caused by the reduced supply of electricity not infringe the right to basic education? Surely, it does. The asserted rights have been established.'[6]

[32] I readily accept that the *Vaal River Development* case is distinguishable from the present case on the facts. However, I hold the view that the principles therein enunciated and the approach that the Court followed in assessing the nature of the rights that would entitle the applicants to the interim relief they sought, find application in the present matter. This is so by reason of the fact that, similar to the present case, the impugned conduct of a state-owned entity adversely affected the rights of the residents even though the privity of the contract for the provision of electricity supply existed between the state-owned entity and the Municipality.

[33] Therefore, I dare say that if, as it has been shown in the present case, having to live in premises which are engulfed by the stench from human waste that cannot be disposed of owing to lack of water does not violate the applicants' dignity and their right to an environment that is not harmful to health or well-being, I do not know what does.

[34] I must interpose to state that clause 7.16 of the Policy provides as follows:

3. Notice of limitation, disconnection and discontinuation

I If the customer fails to pay any account within the period prescribed in section 22(2)(a) of this policy, the municipality shall notify the debtor of the intention to limit, disconnect or discontinue the supply of water,

i. Seven (7) days after final letter of demand is given to business consumers and government customers to reply and,

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[6] Id, para 288.

ii. Fourteen (14) days after final letter of demand is given to domestic consumers, churches and NGO’s to reply.

4. Limitation, Disconnection or discontinuation of supply

I. An account rendered to a customer by the municipality in respect of municipal services, including the rendering of sewer services, shall be paid on the due date.

II. If the customer fails to pay any account within a period of forty-seven (47) days for business and government customers and sixty (60) days for domestic, churches, NGO customers after the expiry of the due date, then –

i. without further notice, the municipality may limit, disconnect or discontinue the supply of water to the immovable property in question;

ii. . . .

III. The limitation, disconnection or discontinuation of the supply of water shall be effected in the manner that is customarily used or by taking <u>such reasonable</u> and lawful steps as may be necessary.

IV. . . .

V. The municipality must permit the customer to make arrangements prior to the limitation, disconnection or discontinuation of the supply of water, unless,

i. other users will be prejudiced

ii. there is an emergency situation; or

iii. the customer has interfered with a limited, disconnected, or discontinued water supply

VI. The limitation, disconnection or discontinuation of water shall not result in a customer being denied access to basic water services for non-payment, where the customer proves, to the satisfaction of the municipality, that he or she is unable to pay for basis water services.

[35] From the above provisions of the Policy of the first respondent, it must be accepted that after the notice of termination dated December 2024, the first respondent was entitled, at the expiry of 47 days, to terminate the supply of water without further notice to the third respondent where it had not paid its debt within the time specified.

[36] Apart from the fact that on the respondent's own showing the termination of the water supply to the premises followed the notice dated 20 March 2005, herein lies my discomfort with the notice dated December 2024 which the respondents would have the court believe was served on the applicants – on the face of it no proof appears of the manner in which it was served upon the occupiers of the premises in particular, and indeed no proof of such service was adduced in evidence in these proceedings. This Court only had the says-so of the first respondent's employee, Ms Ngqongwa, that the said notice was served on the residents of the property by affixing it as aforementioned, and by the reading out loud of its contents which she translated to vernacular. Notably, the notice is addressed to the third respondent whom it also invited to make the necessary arrangements to settle the account. It makes no mention of the residents of the premises.

[37] Although the applicants contended that the manner of service of the notice dated December 2024 did not, in any event, meet the required standard, I have not been told by any of the parties what the Policy provides concerning the manner of service of documents and notices. This is an important matter. Be that as it may, Bodlani AJ, in *Barker and Another v Nangu and Another*[7] once remarked that 'it is not optional for municipalities to attend to their duties with insight and a sense of humanity'. The approach that the learned Acting Judge adopted in that case concerning the service of documents or process on parties that would be adversely affected by the relief that was sought in the matter is instructive. In that case, the learned Acting Judge said:

[7] *Barker and Another v Nangu and Another* (EL2049/2023) [2024] ZAECELLC 37 (9 July 2024), at para 7.

[23] Mindful that there is a tenant in the property. . ., so that if granted the reach of the eviction order would go beyond the Nangu family, I issued another directive in the following terms:

> ‘ [S]hould, at the time of service, the Sheriff find no one in the property willing to accept service or, no one at all, the Sheriff is authorized after satisfying himself that there is no one who is willing to accept service, to affix this directive in 3 (three) most prominent features of the property including but not limited to the main door, the main gate and/or the perimeter wall using an adhesive tape and if the method of service has been to affix, to take photos of this directive after affixing; and to thereafter render a return of service which explains fully how service was effected.

[38] The learned Acting Judge continued and said:

> [24] For I did not know who else lives in the property, other than the Nangu Family and the tenant, and what their standard of education is, I also issued the second directive in IsiXhosa, and in the following terms. . .’

[39] Although the case of *Barker* related to the eviction of the respondents from a certain property, the aspect of service of documents or process that the court dealt with in that case is equally fundamental in the present matter as it would have a bearing on the rights of those affected by the intended decision as the notice heralded.

[40] I make the finding that the notice dated December 224 is manifestly bereft of the of kind of sensitivity, reasonableness and consideration that the Court in *Barker* upheld, of ensuring that the persons who would be affected by the adverse decision that was impending, were given proper and adequate notice thereof. This is apart from the fact that the December 2024 notice was directed to the third respondent to the exclusion of the occupiers of the premises.

[41] Furthermore, if it is accepted then, as it ought to, that the first respondent knew that the water supply to the premises was consumed by the residents thereat, does the fact that it had no direct or contractual relationship with those residents prevent the residents from asserting the rights I have enumerated above? In *Vaal River Development*, Madlanga J, dealt with a similar question and said:

> '[i]t is so that there is contractual privity between Eskom and the municipalities, and not between the residents and Eskom. That matters not. The lack of contractual privity does not stand in the way of the residents asserting other rights protected by the Bill of Rights, which have been infringed by the decision to reduce electricity supply substantially.'[8]

[42] At paragraph 293, the learned Judge went further and said:

> 'The threshold for an interim interdict in terms of a breached right or in terms of a threat of breach is not showing the *certain* existence of the right. You need only show a right, though at the level of interim relief it may be "open to some doubt". In my view, the residents, who also demonstrate bases for seeking a review, have done more than this test requires.'

[43] On the issue of the importance of the pre-termination notice, the learned Judge further as said:

> 'The importance of notice and an opportunity to make representations cannot be overemphasised. The opportunity is so important that authority says it must not be denied, even where it is thought the affected person cannot possibly have anything to say or that whatever they may say is not likely to influence the decision. . .'[9]

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[8] Id, at para 265.
[9] At para 207.

[44] In the present case, the applicants contended that after the termination, their attempts to make representations to the first respondent failed as they were informed by the first respondent's official that there was nothing the first respondent could do. The result would be that the door to making representations was shut to them.

[45] It is my finding that through the aforegoing, the applicants established a prima facie right that must be preserved by way of an interdict, pending the review application. I turn to consider whether the applicants established that they would suffer irreparable harm as a result of the impugned conduct of the first respondent if the interdict was not granted.

Irreparable harm

[46] At the time of launching these proceedings, the first respondent had made it abundantly clear that no restoration of the water supply would take place until the third respondent settled its debt. The harm that its conduct of terminating the water supply in the alleged unprocedural manner caused, was still continuing. Should the applicants be expected to endure the indignity and the health risk that emanates from the consequences of the first respondent's conduct? This question must be answered with a resounding 'no'. Therefore, the applicants would suffer irreparable harm if the interdict that they sought was not granted for no repair to a person's violated dignity is conceivable.

[47] At this juncture I must hasten and state that I should not be taken as saying that the first respondent has no right to implement its Credit Control and Debt Collection Policy. It has every right to do so. I place emphasis, instead, on the duty of the first respondent to respect the rights of the applicants by following a fair procedure before making a decision that would adversely affect their rights.

Balance of convenience

[48] I can do no better on this aspect, than borrow from Madlanga J[10] as I pose these questions: will the skies fall if, purely in the interim, the first respondent continues to provide an appropriate supply of water to the premises pending the finalization of the intended review? Is it not just, instead, to allow the applicants in the interim, to live a life that is as near as possible to dignified pending the finalization of the review?

[49] It must be noted that from the termination notice dated 20 March 2025, the first respondent was amenable to payment arrangements being made by the third respondent towards paying off its debt. From this it must necessarily follow that even if the third respondent's debt was not immediately paid in full, with an acceptable payment arrangement in place, the first respondent would have restored the supply of water to the premises. For these reasons, the balance of convenience favoured the granting of the interim interdict pending the review.

Do the applicants have an alternative remedy?

[50] The existence of another remedy will only preclude the granting of an interdict where the proposed alternative will afford the injured party a remedy that gives it similar protection to an interdict against the injury that is occurring or is apprehended. The alternative remedy must be a legal remedy, that is, a remedy that a court may grant and, if need be, enforce, either by the process of execution or by way of proceedings for contempt of court. The fact that one of the parties, or even the judge, may think that the problem would be better resolved, or can ultimately only be resolved, by extra-curial means, is not a justification for refusing to grant an interdict.[11]

[51] At the time the applicants approached this Court for relief, the first respondent had been firm on its position that a restoration of water supply to the premises would only take place once the debt owed by the third respondent had been paid. I make the observation, though, that from the first respondent's own accounting, that debt went

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[10] *Vaal River Development*, foot note 5 supra, at para 306.
[11] *Hotz and Others v University of Cape Town* (730/2016) [2016] ZASCA 159; [2016] 4 All SA 723 (SCA); 2017 (2) SA 485 (SCA) (20 October 2016); para 36

from R 2 067 573.57 in December 2024, to R48 742 761.62 in March 2025. The applicants have stated that they are indigent persons who live below the poverty line and survive on child support grant. Unsurprisingly, this would not have come to the attention of the respondents for the simple reason that on the applicants' version, which I accept as being plausible, they never afforded them the opportunity to make representations before the termination.

[52] For all the aforegoing reasons, I granted the following order:

1. The applicants are hereby granted leave to bring this application as one of urgency, and the Rules regarding forms and service are dispensed with.
2. A rule nisi is hereby issued calling upon the respondents to show cause, if any, on Tuesday 24 June 2025, at 09h30 am or so soon thereafter as the matter may be heard, why the following order should not be made final:

2.1 The termination of the water supply to erven 1[...] and 1[...]2, W[...] Hotel, Sutherland Street, Mthatha is hereby declared unconstitutional and unlawful.

2.2 The termination of the water supply to erven 1[...] and 1[...]2, W[...] Hotel, Sutherland Street, Mthatha, is hereby reviewed and set aside.

2.3 The respondents are hereby directed to reconnect the water supply to W[...] Hotel, Mthatha, forthwith.

2.4 The respondents are hereby interdicted and/or restrained from terminating the water supply to the said premises in an unlawful and unconstitutional manner.

2.5 The applicant's failure to exhaust internal remedies as may be provided for in any other law and as may be relevant, is condoned.

2.6 The respondents are directed to pay the costs of this application jointly and severally, the one paying the other to be absolved, including costs consequent upon the employment of two counsel.

3. Paragraphs 2.3 and 2.4 shall operate as an interim order or mandamus pending the finalization of this application.

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L. RUSI

JUDGE OF THE HIGH COURT

Appearances:

For the applicants	:	*Adv. L Matotie*
		Adv. N Gwele
(Instructed by	:	S R Mhlauli & Associates, Mthatha
For the first and second respondents	:	*Adv. V Madokwe*
		Adv. H Miya
Instructed by	:	T. L. Luzipho Attorneys Mthatha
Date heard	:	06 June 2025
Date reasons requested	:	10 June 2025
Date of given	:	27 June 2025