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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 094424/2023

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED: **NO**

(4) Date: 12 August 2025

Signature:

In the matter between:

AN-MARI BARKER

Applicant

And

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

First Respondent

**THE MUNICIPAL MANAGER: CITY OF
TSHWANE METROPOLITAN MUNICIPALITY**

Second Respondent

ANDRIES CHRISTOFFEL PIEK

Third Respondent

JUDGMENT

NYATHI J

A. Introduction

[1] This is an application whereby the applicant approached this Court on an urgent basis for relief that a rule *nisi* be issued declaring, amongst others, that

determination/restriction/disconnection/blocking of the water supply to the premises being occupied by the applicant and her family be declared unlawful and that the first and second respondents be directed to reconnect the water supply.

- [2] At the time of the launching of this application in 2023 before it was removed before this current enrolment, the applicant was the occupant of the property situated at No.2[...] P[...] St., Kilner Park, Pretoria [hereinafter referred to as the premises]. The applicant has since vacated the property.
- [3] Mr. Du Plessis submitted on behalf of the respondent that, under the circumstances, the applicant is not persisting with the relief to ask for the reconnection of the water, and also not asking for an interdict for the respondents to reconnect. But applicant is still persisting with the relief of the declaration that it is being unlawful conduct, together with the charging of a possible reconnection fee and the issue of costs.
- [4] It is common cause that the first respondent is entitled to disconnect or discontinue service or terminate the supply of water to households for unpaid rates and other services. However, such entitlement is governed by the 1st respondent's by-laws, more particularly section 15 thereof. Section 15 should be read with section 9 (2) of the same by-laws.

B. The parties' contentions

- [5] The applicant contends that such connection occurred without the first respondent having complied with its own by-laws, more particularly section 9 (2) and 15 (2) thereof.
- [6] The first and second respondents, on the other hand, contend that the disconnection was by virtue of the fact that the applicant had failed to make payment after she received the requisite fourteen days' notice.

- [7] Furthermore, the first and second respondents have also raised the grounds that the matter is not sufficiently urgent, and that the applicant does not possess the requisite *locus standi* to have launched the application.
- [8] Mr du Plessis's contentions were that the applicant was a tenant and not an owner of the property and the account in arrears was not in the applicant's names. Accordingly, he submitted that the occupant could not be held responsible for the payment of the account.
- [9] At the core of what remains of the applicant's complaint is that according to the applicant, the respondent has not served it with a pre-termination notice in keeping with the by-laws.
- [10] The respondents have vigorously opposed this application both on the grounds that it lacks urgency and that it has been overtaken by events and is therefore moot. I deal with each point hereunder in sequence.

C. Urgency

- [11] No cogent reasons were advanced by Mr du Plessis or an indication made to the founding affidavit as to why this matter should be deemed urgent.
- [12] The provisions of Uniform Rule 6 (12) were aptly dealt with by NOTSHE AJ in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*¹ as follows:

"The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial

¹ [2011] ZAGPJHC 196 (11/33767) (23 September 2011) in paras [6] and [7].

redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.

It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his case in that regard."

- [13] A word of caution on urgency was sounded by COETZEE J in *Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makins Furniture Manufacturers)*² in the following terms:

"Practitioners should carefully analyse the facts of each case to determine, for the purposes of setting the case down for hearing, whether a greater or lesser degree of relaxation of the Rules and the ordinary practice of the court is required. The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate with that exigency. Mere lip service to the requirements of Rule 6 (12)(b) will not do, an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down".

- [14] In a collective of cases titled **In re several matters on the urgent court roll 18 September 2012**,³ WEPENER J held:

² 1977 (4) SA 135 (W).

³ 2013 (1) SA 549 (GSJ).

"Further, if a matter becomes opposed in the urgent court and the papers become voluminous there must be exceptional reasons why the matter is not to be removed to the ordinary motion roll."

"The urgent court is not geared to dealing with the matter which is not only voluminous but clearly includes some complexity and even some novel points of law."

[15] It was submitted on behalf of the respondents that this application was enrolled in September 2023 as an urgent application. It was then removed from the Roll in order for the applicant to file her replying affidavit — assuming that the notice of removal was not on account of the fact that this matter had been resolved by then. The replying affidavit was filed in October 2023.

[16] The applicant did not enrol the matter for hearing and only did so some 5 (five) or so months after the fact. It is not open to conception that the application is urgent.

D. Mootness

[17] The issue that applicant persisted with in this application has been resolved. In *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs*⁴ the Constitutional Court found that: *"A case is moot and therefore not justiciable if it **no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law.**"* [emphasis added].

E. Conclusion

[18] It is my considered opinion that this application does not meet any of the criteria laid down by our apex courts calling upon it to exercise a discretion to

⁴ [1999] ZACC 17; 2000 (2) SA 1 (CC) para [21].

decide it notwithstanding the mootness of the issue as between the parties to the litigation.⁵

[19] As shown thus far, the matter is not urgent to start with, and the applicant urged the court to give an advisory opinion.

[20] In the result, the application is dismissed with costs.

J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 17/10/2024

Date of Judgment: 12 August 2025

On behalf of the Applicant: Mr Nico du Plessis
Instructed by: NJ Du Plessis & Associates, Pretoria

On behalf of the Respondents: Ms. Kelaotswe
Instructed by: Ncube Inc.

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 12 August 2025.

⁵ *Ruta v Minister of Home Affairs* [2018] ZACC 52 and *Centre for Child Law v Hoërskool Fochville* 2016 (2) SA 121 (SCA), [2015] ZASCA 155.

Apologies are tendered to the parties for the delay in this outcome, it is a result of the changes in staff which resulted in the matter being dealt with as closed, meanwhile the judgment was outstanding.