

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2023-068547

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
19 September 2025	
DATE	SIGNATURE

In the matter between:

ALDOR AFRICA (PTY) LTD

Applicant

and

JOHANNESBURG WATER (SOC) LTD

Respondent

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 19 September 2025

JUDGMENT

MUDAU ADJP:

Introduction

[1] This is an application for reconsideration brought by the respondent,

Johannesburg Water (Soc) Ltd (Johannesburg Water) against the order granted on 18 July 2023 by Dhlamini J in the urgent court in favour of the applicant, Aldor Africa (Pty) Ltd (Aldor) in terms of rule 6(12)(c). The respondent also seeks costs including the costs of two counsel on Scale C.

- [2] Aldor, on the other hand, seeks dismissal of the reconsideration application and confirmation of the original order on the same Scale including the costs of two counsel. Johannesburg Water filed an affidavit with a dual purpose. First, to support the reconsideration application. Second, as an answering affidavit to Aldor's founding affidavit. Rule 6(12)(c) which offers a reconsideration application reads as follows:

'A person against whom an order was granted in such a person's absence in an urgent application may by notice set down the matter for reconsideration of the order'.

- [3] The order consistent with the notice of motion, which is the subject of this reconsideration application reads in material terms as follows:

'1. The Respondent is to provide full and complete original/official laboratory readings of the samples conducted by the Respondent on the Applicant's premises within the period of 30 days from date hereof;

2.The Applicant is to within 30 days from the date of receipt of the original laboratory results facilitate the compilation of the joint minutes and thereafter prepare written representation to the Respondent's credit control;

3. ... ;

4. The Respondent must comply with the agreement to provide the Applicant with the waiver on its charges from the period January 2020 to December 2021 including the period from January 2022 to July 2022;

5. The Respondent must comply with the agreement to reverse the punitive charges for the period of 01 July 2018 to June 2019 within a period of 30 days from the date of this order;

6. The Respondent must refrain from terminating or restricting or threatening to terminate or restrict electricity and/or water supply to the property until they

have complied fully with this court order and any/all other requirements in law relating to the giving of pre-termination notices, in relation to disputed charges; and

7. The costs of this application be paid by the Respondent on an attorney and own client scale.'

Background facts

- [4] Aldor is a South African registered company that produces sweets. It has been operating the sweet manufacturing plant for some years that was incorporated into the effluent system of Johannesburg Water. Aldor is accordingly a client of Johannesburg Water since then. As far back as September 2017, Aldor began contravening Section 62 of the Water Services By-Laws, in terms of which the respondent concluded that the applicant was disposing of industrial effluent onto a public road. Consequently, a contravention notice (Annexure JW8) was issued to the Aldor on 11 September 2017. Aldor was warned on 4 June 2018, per letter (Annexure JW9) that it will be charged punitive costs if its affluent discharge is not maintained within acceptable limits in the Water Services bylaws.
- [5] On Aldor's version leading to the granting of the order, the correctness of the penalty and or punitive charges statement, a waiver agreement, incorrect laboratory readings and analysis thereof and water charges billed to Aldor by the Johannesburg Water to its account number: 3311301 forms the basis of the *lis* between the parties dating back to 2018.
- [6] According to Aldor, what triggered the application is a letter from Johannesburg Water dated 4 July 2023 (Annexure A3). It reads in material part thus:

"RE: CUSTOMER NO :3311301 // LODGING OF DISPUTE ON PUNITIVE CHARGES

- 1. We refer to the abovementioned matter and to your letter dated 11 May 2023.
- 2. We do not, at this stage, intend to respond to all allegations set out in your letter, and we reserve our rights to do so at a later stage, should it become necessary.

3. In respect of analytical laboratory results not received by your client, we wish to place on record that analytical results during the periods of July to December 2018 and January to December 2019 were furnished in the form of a spreadsheet. You initially started to request analytical results in the form of a signed formal report during your dispute around October 2020, Effective March 2021. you were furnished with a formal analytical report from the laboratory in accordance with our standard operating procedures. As a courtesy, kindly find attached the analytical results report for the periods July to December 2018 and January to June 2019.

4. Regarding the credit for the 2018/19 punitive charges period, we hereby decline such a request for reasons already stated in our letter to yourselves dated 19 April 2023.

5. Accordingly, you are advised that the amounts reflecting in several invoices dispatched to your clients remain due and payable, and your client is hereby advised to effect immediate payment thereof, failing which, credit control measures will be commenced without further notice to your client”.

- [7] Aldor alleges in its founding affidavit that the charges and penalties charges are based on wrong readings or readings which are mulcted with discrepancies. It is alleged that the parties agreed in a meeting that the 2018 to June 2019 period of charges must be reversed as procedures were not followed by Johannesburg Water, which was reduced to writing. Aldor further alleged that, Johannesburg Water, in a meeting held between the parties requested a waiver of the punitive charges while it secures a water plant from overseas, which was granted.
- [8] In support thereof, Aldor attached “Annexure A4” of minutes dated 13 December 2019, headed: “Discussion and decision on COD punitive charges levied against Aldor Africa for the period of 01 July 2018 to 30 June 2019” as proof of what it purports to be an agreement of waiver of charges and penalties by Johannesburg Water. In attendance were 3 officials from Johannesburg Water, which included a Mr. Derrick Kgwale, apparently, its Chief Operating Officer (“COO”) and 3 from Aldor.
- [9] The above minutes were signed by Mr Paul Wepener, MD, Aldor but not signed by Mr Kgwale. Of relevance to Aldor is a recordal which reads: “*Agreed that*

billing will be corrected and that COD DK punitive charges for the period of 01 July 2018 to June 2019 will be reversed and corrected" as a basis for its claimed waiver. It was on the very same day, the Johannesburg Water's Mr Mike Stassen sent out an email with the purported minutes of the meeting in which he indicated the calculations of the punitive costs to be reversed and requested revised calculations from the respondent per email marked Annexure "A5".

- [10] On Aldor's version, during September and October 2020 the credit note was discussed, and Mr Mike Stassen was assured that the matter was being attended to. Further emails were sent to Aldor requesting a credit note but with no positive results. Johannesburg Water made several follow ups but received no response until the attorney of record sent correspondence to Aldor.

- [11] Aldor alleges that, on or about the 7 October 2020, Mr Mike Stassen had a meeting with Mr Mike Motau of Johannesburg Water wherein Aldor requested a waiver of the punitive charges from a period between 2020-2021, inter alia, because of the ongoing dispute between the parties regarding the laboratory results of samples and the alleged failure of Johannesburg Water to provide the Aldor with official laboratory results.

- [12] According to Aldor, Mr Motau verbally agreed to waive the charges subject to certain conditions being met by Aldor. These conditions are not detailed. Subsequently, On 5 November 2020, after the Aldor made several follow-ups as it had been waiting for a formal confirmation of the waiver, Mr Motau requested that the Aldor make the application for waiver in writing, which Aldor did on two occasions.

- [13] In July 2021, Aldor requested a further extension as there was a delay in arrival of the plant and its installation. The request was forwarded to Mr Ariel Mafejane of Johannesburg Water who did not respond to the request. On Aldor's version, despite several follow-ups by Mr Mike Stassen, the last communication Aldor received was from Mr Mafejane on 18 January 2022, who advised that the matter has been escalated to the COO for a ruling.

- [14] Aldor relies on this email (Annexure A9) communication in its contention that a waiver agreement exists. Annexure A9, which is addressed to Mr Motau of

Johannesburg Water is dated 15 January 2021, reads in relevant parts as follows:

"We have now requested your written confirmation on this numerous times and also have re-submitted officially this request to Ariel without any response. We please need to further investigate the readings and measurements for 2020 as we were closed for an extensive period and ran the factory after that at only 50% capacity so we just cannot understand the consumption leave alone the penalties you have agreed to waive. This situation is now becoming a major concern and a frustration to us as you agree to things within meetings and our emails confirming this gets ignored and even deleted without being read".

- [15] On Aldor's version, Johannesburg Water and in terms of paragraph 3 of their letter dated 19 April 2023 recorded that "in respect of discrepancies with the analytical laboratory results we wish to place on record that your Mr Stassen was furnished with a formal report from the laboratory. Moreover, it should be noted that the issue pertaining to the discrepancies was closed on or about 20 October 2020. In this regard, your client will recall that in meetings with Johannesburg Water on 29 September 2020 and 20 October 2020, our Mr Ariel Mafejane made comprehensive presentations to your client, in which he detailed the scientific process followed to arrive at the punitive charges for COD". Aldor contends that the analytical laboratory results remain in dispute.
- [16] Aldor bemoans the fact that Johannesburg Water, on 7 July 2023, sent Aldor a PRE-TERMINATION NOTICE, whilst knowing that "there is an ongoing lis between the parties, one which requires proper ventilation and resolution. Aldor now fears that Johannesburg Water may then invoke its Credit Control By-Laws and disrupt supply of water to Aldor, this if allowed to happen will cause a severe prejudice, affecting innocent employees". (My emphasis.)
- [17] Johannesburg Water contends that, as far back as February 2019, Aldor began falling behind on the payment of fees required from it in terms of the discharge of its industrial effluent. On 8 February 2019, 12 March 2019, 4 April 2019 and 7 May 2019 Johannesburg Water issued contravention letters to the applicant upon discovering that, the COD levels were too high than permissible. Consequently, it confirms that, between December 2019 and October 2020,

various meetings were held between the parties to address the applicant excessive COD levels imploring Aldor to bring its industrial effluent within the parameters of the Bylaws. This was in contravention of section 62 of the Water Services By-Law that has been ongoing since 2017.

- [18] Johannesburg Water contends that to the extent that the written minutes appear to suggest an alleged concession by it that proper processes were not followed in measuring Aldor's COD levels; and an agreement by Johannesburg Water that Aldor's punitive charges for its COD levels for the period 1 July 2018 to June 2019 would be reversed, this is disputed.

- [19] Johannesburg Water contends that, on or about October 2020, Aldor conducted its own tests on effluent samples taken from its premises. The results of the Aldor's tests differed from the results of tests conducted by Johannesburg Water during the same period on samples taken from Aldor's premises. Consequently, the discrepancy in the results from the respective tests resulted in Aldor seeking to test its sample at ERWAT at Johannesburg Water's own cost, which retest was conducted on 28 September 2020. The results of the retest produced results like the results which Johannesburg Water originally got from testing on its own samples taken at Aldor's premises. These reports were provided to Aldor and discussed with Aldor in detail at the meetings held between the parties on 29 September 2020 as well as 20 October 2020.

- [20] Johannesburg Water put the veracity of minutes relied upon by the applicant in dispute. In this regard, they point out that the minutes were for that reason, not countersigned by any of its officials. Aldor was aware from as early as June 2018 what was required from it in terms of the disposal of its industrial effluent, and what the consequences would be if it exceeded the limits set forth in the By-Laws. According to Johannesburg Water, the allegation that the Aldor's punitive charges for its COD levels for the period 1 July 2018 to June 2019 would be reversed is incorrect as no such concession or agreement took place. By February 2023, Aldor was indebted to Johannesburg Water in the amount of R23 033 693.26 in respect of levies and penalties for industrial effluent discharge. Over a period, Aldor was served with contravention notices after it was found that it had contravened the Water Services By-Laws in that its Fat, Oil

and Grease ("FOG") levels were excessive. Aldor has received no less than 6 contravention letters from Johannesburg Water following its failure to comply with the effluent discharge limits set out in the By-Laws.

- [21] On 19 April 2023, Johannesburg Water, forwarded a letter to Aldor ("JW25") in which it confirmed that It confirmed that there was no agreement to waive any of Aldor's charges for the period 2020 to 2021; and also that, there was no agreement to reverse the punitive charges due by Aldor for the period 2018 to 2019. In a separate letter, (JW26) declined Aldor's request for a reversal of the charges.

Analysis

- [22] In a lengthy replying affidavit, Aldor was constrained to concede that some of the issues raised were not addressed in the founding papers and were mostly legal matters. It is so that an applicant is entitled to introduce further corroborating facts by means of a replying affidavit should the contents of the answering affidavit call for such facts.¹ It is trite, however, that a replying affidavit should not be unnecessarily prolix or repetitive.

- [23] Schutz JA stated in *Minister of Environmental Affairs and Tourism v Phambili Fisheries (Pty) Ltd; Minister of Environmental Affairs and Tourism v Bato Star Fishing (Pty) Ltd*² that:

"There is one other matter that I am compelled to mention — replying affidavits. In the great majority of cases the replying affidavit should be by far the shortest. But in practice it is very often by far the longest — and the most valueless. It was so in these reviews. The respondents, who were the applicants below, filed replying affidavits of inordinate length. Being forced to wade through their almost endless repetition when the pleading of the case is all but over brings about irritation, not persuasion. It is time that the courts declare war on unnecessarily prolix replying affidavits and upon those who inflate them."

¹ See *eBotswana (Pty) Ltd v Sentech (Pty) Ltd* 2013 (6) SA 327 (GSJ) at 336G–H.

² 2003 (6) SA 407 (SCA) at 439G–H.

[24] As Sutherland DJP puts it in *Industrial Development Corporation Of South Africa V Sooliman and Others*³ “it is axiomatic, on well-established principles, that a reply is not a place to amplify the applicant’s case — its function is limited to refutation of the respondent’s answer”.

[25] The Constitutional Court in *Democratic Alliance in re Electoral Commission of South Africa v Minister of Cooperative Governance and Others*⁴ stated the following with regard to what has become known as the ‘Plascon Evans rule’:

“The Plascon-Evans rule is that an application for final relief must be decided on the facts stated by the respondent, together with those which the applicant states and which the respondent cannot deny, or of which its denials plainly lack credence and can be rejected outright on the papers.”

[26] It is well established that, the court will dismiss an application if the applicant should have realized when launching his application that a serious dispute of fact, incapable of resolution on the papers, was bound to develop.⁵ Thus, the court should dismiss the application where there are fundamental disputes of fact on the papers and the applicant failed to make out a case for the relief claimed.⁶

[27] It is trite that the overriding purpose of the subrule under consideration in this matter is to afford an aggrieved party a mechanism designed to redress imbalances in, and injustices and oppression flowing from an order granted as a matter of urgency in his absence.⁷ In *ISDN Solutions (Pty) Ltd v CSDN Solutions CC* this court per Farber AJ stated the following:

“It affords to an aggrieved party a mechanism designed to redress imbalances in, and injustices and oppression flowing from, an order granted as a matter of urgency in his absence. In circumstances of urgency where an affected party is not present, factors which might conceivably impact on the content and form of an

³ 2013 (5) SA 603 (GSJ) at para 9. See also *Standard Bank of SA Ltd v Sewpersadh and Another* 2005 (4) SA 148 (C) at para 21.

⁴ 2022 (1) BCLR 1 (CC) at footnote 15.

⁵ See *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1162 and 1168.

⁶ See *Transnet Ltd t/a Metrorail v Rail Commuters Action Group* 2003 (6) SA 349 (A) at 368C–D and 368G–H.

⁷ See *Lourenco v Ferela (Pty) Ltd (No 1)* 1998 (3) SA 281 (T) at 290E–H; *National Director of Public Prosecutions v Braun* 2007 (1) SA 189 (C) at 194B and 197C–D.

order may not be known to either the applicant for urgent relief or the Judge required to determine it".⁸

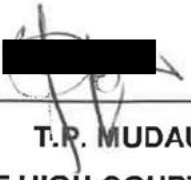
- [28] Its rationale is obvious: it is to address the actual or potential prejudice because of an absence of *audi alteram partem* when the order was made in the absence of the respondent.⁹
- [29] A court that reconsiders any order in terms of this subrule should do so with the benefit not only of argument on behalf of the party absent during the granting of the original order but also with the benefit of the facts contained in affidavits filed by all the parties.
- [30] Turning to the facts of this case, the allegation that there was a written agreement is not supported by the facts. Johannesburg Water denied material allegations made in the applicant's founding affidavit and further produce positive evidence to the contrary in the answering affidavit, which was not materially challenged in reply. The minutes relied upon are not signed by any of the officials who represented the respondent in the meeting. This is amplified by Annexure A9 referred to above in which return confirmation of the said agreement was requested. The agreement in this regard was in dispute then and continues to be. On its own version and as indicated above, Aldor had an ongoing dispute regarding its alleged indebtedness to the Johannesburg Water. In view of the foregoing, I am satisfied that the respondent is entitled to have the order of Dlamini J set aside. The application for reconsideration is meritorious. There is no reason why the costs should not follow the results on the scale prayed for.

Order

- [31] 1. The order granted by Dlamini J on 18 July 2023 is set aside.
2. The Applicant (Aldor Africa (Pty) Ltd) is to pay the costs on an attorney and client scale including costs of two Counsel as per scale C.

⁸ 1996 (4) SA 484 (W) at 486H-I.

⁹ *Industrial Development Corporation of South Africa v Sooliman* 2013 (5) SA 603 (GSJ) at para 10; *Farmers Trust v Competition Commission* 2020 (4) SA 541 (GP) at para 23.



T.P. MUDAU

**ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

DATE OF HEARING: 20 August 2025

DATE OF JUDGMENT:

FOR THE APPLICANT: ADV G I HULLEY SC

ADV N RALIKHUVHANA

INSTRUCTED BY: KATLEGO RALIKHUVHANA MOKGOLA
INC. ATTORNEYS

FOR THE RESPONDENT: ADV T SEBOKO SC

ADV N LOOPOO

INSTRUCTED BY: SIBUSISO MASONDO INC. ATTORNEYS