



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable
Case no: 4630/2025

In the matter between:

JERRYCAR BRANDING (PTY) LTD

FIRST APPLICANT

[Registration number: 2015/043565/07]

and

MAFUBE LOCAL MUNICIPALITY

FIRST RESPONDENT

J B SELAPYANE

SECOND RESPONDENT

(In her capacity as the duly appointed
Municipal Manager of the
MAFUBE LOCAL MUNICIPALITY)

T MOTSOENENG

THIRD RESPONDENT

(In his capacity as the duly appointed
Executive Mayor of the
MAFUBE LOCAL MUNICIPALITY)

**MEC: DEPARTMENT ECONOMIC, SMALL
BUSINESS DEVELOPMENT, TOURISM
AND ENVIRONMENTAL AFFAIRS**

FOURTH RESPONDENT

**MEC: CO-OPERATIVE GOVERNANCE &
TRADITIONAL AFFAIRS**

FIFTH RESPONDENT

**MEC: DEPARTMENT OF HEALTH,
FREE STATE PROVINCE**

SIXTH RESPONDENT

**MEC: PUBLIC WORKS AND
INFRASTRUCTURE, FREE STATE PROVINCE**

SEVENTH RESPONDENT

**MEC: AGRICULTURE AND RURAL
DEVELOPMENT, FREE STATE PROVINCE**

EIGHT RESPONDENT

**MINISTER OF HUMAN SETTLEMENTS,
WATER AND SANITATION**

NINTH RESPONDENT

MINISTER OF ENVIRONMENTAL AFFAIRS

TENTH RESPONDENT

Neutral citation: *Jerrycar Branding (Pty) Ltd v Mafube Local Municipality and Others*
(4630/2024) [2025] ZAFSHC 286 (11 September 2025)

Coram: DE LA REY AJ

Heard: 8 September 2025

Delivered: Handed down electronically by circulating to the parties' representatives by email and released to SAFFLI. Date and time for hand-down is deemed to be 9h00 on 11 September 2025.

Summary: Interdict – Municipal failure to comply with its financial obligations towards Eskom resulting in electricity being suspended. Inoperable sewerage pumps, resulting in breach of its contractual obligations towards applicant and raw sewerage spilling into river. Final interdict granted.

ORDER

- 1 The application is heard as one of urgency as provided for in rule 6(12) of the Uniform Rules of Court;
- 2 The first respondent is ordered to:
 - 2.1 Within five (5) days of date of this order repair and make operational the two sewerage pumps situated in the sewerage pump house which services the Namahadi Settlement;
 - 2.2 Maintain and operate the pumps at the Namahadi pump house and the Namahadi sewerage works situated on the property;
 - 2.3 Maintain and operate the pumps situated on the property from which sewerage effluent is pumped from the Namahadi sewerage works to the pivot irrigation system;
 - 2.4 Make available to the applicant all effluent produced by the Namahadi sewerage works situated on the property;
 - 2.5 Make payment to Eskom into account number: 8145732273 in the amount necessary to have the electricity supply to the property reconnected within five days of granting of this order;
- 3 The first respondent shall pay the costs of the application on an attorney and client scale.

JUDGMENT

De la Rey AJ

Introduction

- [1] In this urgent application the applicant seeks the following relief:
- (a) that the application be heard as one of urgency as provided for in rule 6(12) of the Uniform Rules of Court;
 - (b) that the first respondent be ordered to:

- (i) within five (5) days of date of this order repair and make operational the two sewerage pumps situated in the sewerage pump house which services the Namahadi Settlement;
- (ii) maintain and operate the pumps at the Namahadi pump house and the Namahadi sewerage works situated on the property;
- (iii) maintain and operate the pumps situated on the property from which sewerage effluent is pumped from the Namahadi sewerage works to the pivot irrigation system;
- (iv) make available to the applicant all effluent produced by the Namahadi sewerage works situated on the property;
- (v) make payment to Eskom into account number: 8145732273 in the amount necessary to have the electricity supply to the property reconnected within five days of granting of this order;
- (c) directing that the first respondent pays the costs of the application as per attorney and client scale.

Background

[2] It is evident that the applicant's application although couched as an application for the greater good of the community, also relates to his own contractual relationship with the first respondent. It is not disputed that the applicant, as successor in title has a contractual right to receive on his farm all effluent produced by the Namahadi sewerage works from where he then utilised the treated effluent to irrigate crops. The sewerage works operates on a portion of the applicant's property and the user agreement in terms of which applicant is entitled to receive the treated effluent is both for the benefit of himself and the greater Namahadi settlement. The sewerage pump stations operated by the first respondent is currently not working and has been so since the 4th July 2025. The sewerage pump stations are inoperable because the first respondent has been unable to settle its financial obligations towards Eskom who in turn switched off electricity to the relevant pump stations.

[3] As a result of the pump stations not working as aforesaid, it is the applicant's contention that not only is he unable to receive the treated effluent as he is entitled to in terms of the user agreement, raw sewerage is also overflowing and entering the Wilge

River from where it will eventually flow into the Vaal River and the Vaal Dam. Furthermore, applicant does not receive any treated affluent to irrigate his crops and is facing imminent financial damages should the electricity not be restored to the sewerage pumps. Besides the environmental health disaster unfolding which needs to be attended to immediately, the possible financial damages that applicant might suffer renders the application urgent.

[4] Besides raising a number of points *in limine* the essence of the opposing papers filed is that the sewerage pumps are in a working condition and the only reason why it is inoperable now is because of the first respondent's inability to service its Eskom account. The contention is that the first respondent is simply not in a financial position to pay the outstanding amount owed to Eskom which is currently in the region of approximately R1 million and that the Municipality is in such financial stress that it does not even know how it would service its payroll of approximately R9.5 million at the end of September 2025.

[5] The first respondent furthermore argues that the applicant has, in terms of the contractual relationship with the first respondent no clear right to the relief sought, should have joined Eskom in the matter and that the urgency of the application was entirely self-created. From the correspondence attached to the founding affidavit it is clear that applicant sought continuous engagement with the first respondent prior to launching the application. Urgency was not self-created. Eskom has no interest in this matter save for the possible settlement of its debt owing by first respondent and there is no merit in the non/mis joinder point. As stated, before from both an environmental and health perspective as well as contractual perspective, the applicant, as all the applicants before him has a clear right to the relief sought. The continuous failure to comply with its financial obligations to Eskom resulting in the inoperable sewerage pumps and spilling of raw sewerage clearly establish an injury actually and continually committed. In the circumstances, this Court is satisfied that no similar protection is available to applicant. Regarding the first respondents' contention that it did not receive the required 14-day notice, the applicants letter dated 4 July 2025 clearly stands as proper notice. It has been recognised that an arbitration clause does not necessarily

outs a court's jurisdiction.¹ There is no application by first respondent in terms of s 6(1) of the Arbitration Act 42 of 1965 before this Court.

[6] Much was furthermore made of certain clauses in a notarial lease agreement based on which the first respondent contends that applicant is allowed to draw water from the Wilge River himself as alternative and that the applicant's right to receive the treated effluent is conditional upon the availability thereof. The applicant made it clear in its founding affidavit that its right to receive the treated effluent is based on and has always been based on the user agreement. The notarial deed of lease was never registered and was therefore void. Save for a bold denial of the applicant's characterisation of the notarial deed of lease, first respondent proffers no evidence as to its legality. This document is thus irrelevant to these proceedings.

[7] The first respondent seems to be a perpetual offending municipality. The relief sought in this application formed the subject matter of numerous applications and interdicts granted by this Court. The history is illustrated by the following quote where Daffue J in *Mafube Business Forum and Others v Premier of the Free State Province and Others (Mafube)*,² held:

'The Mafube Local Municipality (Mafube) is not a strange litigant to proceedings in the Free State High Court. The learned judge Van Rhyn dealt with the history of litigation relating to Mafube in some detail. I have no reason to doubt the correctness of the facts set out in the judgment. It is apposite to mention some. On 9 June 2004 this court ordered Mafube to repair sewerage pumps servicing the Namahadi Township situated at Frankfort. A similar order was issued on 2 August 2008. On 20 February 2014 this court found Mafube in contempt of its orders of 9 June 2004 and 2 August 2008. On 16 October 2015 a further order was issued by this court pertaining to sewage spillage. Less than a year later, on 1 September 2016, yet another order was granted, compelling Mafube to take action and to rectify the problems at the sewerage works. On 20 January 2017 this court again found that Mafube had not complied with its order relating to sewage spillage caused by the improper operation and maintenance of the

¹ *Universiteit van Stellenbosh v J A Louw* 1983 (4) 321 (A) at 333G-H. See also *Foize Africa (Pty) Ltd v Foize Beheer BV and Others* [2012] ZASCA 123; [2012] 4 All SA 387 (SCA); 2013 (3) SA 91 (SCA) para 21.

² *Mafube Business Forum and Others v Premier of the Free State Province and Others* [2025] ZAFSHC 93 (*Mafube*) para 10.

pumps at the sewerage plant. In submissions to the South African Human Rights Committee, Mafube was described as the main culprit, causing pollution of the upper Vaal River system.’

[8] Less than six months later this court is again confronted with the first respondent’s failure to adhere to even the most basic of its constitutional³ and legislative⁴ responsibilities.

[9] It cannot be denied that the applicant, and for that matter all residents living in the greater Mafube Municipal area, is entitled to a safe environment, proper service delivery and constitutional accountability. There is no reason not to accept the evidence of raw and untreated sewage flowing directly into the Wilge River. The respondents’ contention that the sewage works is functioning, notwithstanding the fact that the sewage pumps are not operational (because of the lack of electricity) by treating the raw sewage with bio-chemicals is clearly refuted by the photographs depicting what is evidently raw, or very close to raw sewage flowing to the Wilge River. Even if one accepts the averment that the raw sewage is treated with bio-chemicals the end-product is clearly not properly treated effluent.

[10] The first respondent’s duty to ensure that its sewage system, including the two sewage pumps referred to in this application, are maintained and kept operational has been reaffirmed numerous times as set out above. It is simply unthinkable that the first respondent can state that it cannot pay a long overdue Eskom account of approximately R1 million rand considering that it might not be able to pay its salary bill of approximately R9.5 million rand.

[11] In *Eskom Holdings SOC Limited v Letsemeng Local Municipality and Others*⁵ Plasket JA stated as followings:

‘I am not aware of any general principle of the law of contract, or any other branch of the law for that matter, that absolves a debtor from liability, if they are unable to pay. As Phatshoane AJA

³ Sections 24(a), 152(1)(b) and 153 of the Constitution of the Republic of South African, 1996.

⁴ Section 28(1) National Environmental Management Act 107 of 1998 and section 151 National Water Act 36 of 1998.

⁵ *Eskom Holdings SOC Limited v Letsemeng Local Municipality and Others* [2022] ZASCA 26; [2022] 2 All SA 347 at para 70.

explained in her judgment, at best for Letsemeng, its plea of poverty – perhaps, more accurately, of prodigality – could, if generously viewed, have been intended as some sort of a tacit, but inadequate, reliance on impossibility of performance. The evidence did not come close to establishing the requirements of this defence. The fact that many other municipalities display disdainful attitudes to their obligations does not help Letsemeng.’

[12] Also in *Mafube*,⁶ Daffue J held:

‘Although financial difficulties must be considered, it would be a sad day if organs of state would be allowed to use this as a general defence when they fail to carry out their constitutional obligations.’

[13] The applicant sought costs on an attorney client scale. The first respondent’s continuous disregard for its obligations towards applicant and the greater municipality’s residents warrants such an order. Clearly the first respondent simply continues from one court loss to another without any attempt to govern responsibly.

[14] It follows that applicant has made out a case for the relief sought on an urgent basis and, in the result, the following orders are granted:

- 1 The application be heard as one of urgency as provided for in rule 6(12) of the Uniform Rules of Court;
- 2 The first respondent is ordered to:
 - 2.1 Within five (5) days of date of this order repair and make operational the two sewerage pumps situated in the sewerage pump house which services the Namahadi Settlement;
 - 2.2 Maintain and operate the pumps at the Namahadi pump house and the Namahadi sewerage works situated on the property;
 - 2.3 Maintain and operate the pumps situated on the property from which sewerage effluent is pumped from the Namahadi sewerage works to the pivot irrigation system;
 - 2.4 make available to the applicant all effluent produced by the Namahadi sewerage works situated on the property;
 - 2.5 Make payment to Eskom into account number: 8145732273 in the amount necessary to have the electricity supply to the property reconnected within five days of

⁶ *Mafube* para 21.

granting of this order;

3 The first respondent shall pay the costs of the application on an attorney and client scale.

A handwritten signature in dark ink, appearing to be 'H E De La Rey', is written over a solid black rectangular redaction box.

H E DE LA REY
ACTING JUDGE OF THE HIGH COURT

Appearances

For the applicant:

Instructed by:

PC Ploos van Amstel

Corne Boshoff Attorneys

c/o Phatshoane Henny Incorporated

Bloemfontein

For the first to third and fifth respondents:

Instructed by:

M Froneman

State Attorney

Bloemfontein.