



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE Number: **114156/2023**

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: YES/ NO
2025 <u>22/09</u>	



In the matters between: -

**CASTING, FORGING AND MACHINING
CLUSTER OF SOUTH AFRICA NPC**

FIRST APPLICANT

SCAW SOUTH AFRICA (PTY) LTD,

SECOND APPLICANT

DUNROSE TRADING 57 (PTY) LTD,

THIRD APPLICANT

ABRACON PROPERTY 1 (PTY) LTD

FOURTH APPLICANT

INTERNATIONAL WIRE CONVERTORS (PTY) LTD

FIFTH APPLICANT

And

**CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

FIRST RESPONDENT

CITY POWER SOC LTD

SECOND RESPONDENT

JUDGMENT

BAQWA, J

Introduction

[1] This is an application for leave to appeal by the applicants (collectively "COJ") against the judgment and order handed down by this Court on 26 November 2024 (the order) and the COJ's application to condone the late filing of its application for leave to appeal (the condonation application).

[2] In the order, this court granted inter alia the following relief in favour of the respondent (collectively "CFMC").

2.1 The COJ is interdicted from disconnecting the electricity supply of CFMC, pending the outcome of the dispute raised by them in terms of section 102 of the Local Government: Municipal Systems Act 32 of 2000 (Systems Act); and

2.2 In the alternative to the interdict, this court ordered that if the COJ intends disconnecting the electricity supply of CFMC in the future, a specific process prescribed in the order must be followed.

Grounds of Appeal

3.1 The applicants state that the order is unclear and ambiguous in that it contains two irreconcilable orders. The order prohibits and unables the COJ from disconnecting CFMC's electricity.

3.2 There are conflicting judgments in relation to the issues decided by the court.

3.3 There are conflicting legal interests relating to the court's findings, which should be properly considered for the purpose of deciding the application which include

3.3.1 COJ's statutory powers and constitutional mandate to implement debt control measures, including disconnecting electricity supply.

3.3.2 CFMC's reciprocal duty to pay the COJ for the supply of electricity;

3.3.3 Whether the rights claimed by CFMC warrant or justify restricting COJ's rights to implement debt control measures;

3.4 The issues in this matter and the rights claimed by CFMC raise important questions of law and are issues of public importance which impact future disputes.

The Test

[4] The “standard” test to be applied is set out in section 17(1)(a)(i) of the Superior Courts Act,¹ namely whether there is a reasonable possibility that another court would find differently from the court a quo.

[5] An alternative pathway to leave to appeal is set out in section 17(1)(a)(ii) of the Act, namely whether there are other compelling reasons why leave ought to be granted.

¹ 10 of 2013 (the Act).

Condonation

[6] It is common cause that the COJ failed to lodge its application for leave to appeal timeously. I propose to determine that issue before I consider the grounds proffered in respect of the application for leave to appeal.

[7] The application was due on or before 19 December 2024, 15 days from the date of the judgment, but the COJ only noted its appeal (6) weeks later on 30 January 2025.

[8] There are two requirements for an applicant seeking leave to appeal.

8.1 The first is to file an affidavit explaining satisfactorily the delay and furnish an explanation for the default sufficiently to enable the court to understand how it happened and to assess the COJ's conduct. In *Grootboom v National Prosecuting Authority and Another*²

[9] The COJ's explanation is as follows:

9.1 The matter was allocated to the municipal legal advisor, one Mr. Maxwell Makutsi, and outsourced to Patel Inc attorneys who represented COJ in the main application.

9.2 At the time of handing down of the judgment, Makutsi left the employment of the COJ. The COJ does not explain when exactly Makutsi left and why the matter was not reallocated.

² (CCT 08/13 [2013 ZACC 37] para 23.

9.3 When Patel Inc brought the judgment to the COJ's attention, the matter was referred to a new legal advisor, and the COJ had decided during the first week of December to apply for leave to appeal and instruct its representatives to proceed with the application.

9.4 Counsel was instructed, but as counsel's fees had not been settled, he refused to accept instructions. Rather than settle the counsel's fee, a new counsel was instructed during the second week of December 2024.

9.5 Despite the instruction of a new counsel, the application was not launched for another seven (7) weeks. The purported explanation is that the counsel could not locate the matter on CaseLines. There is no explanation whether the attention of COJ or Patel Inc was drawn to this omission and when it was resolved. It is simply stated that the relevant officials went on leave; no details provided.

9.6 Consultation only took place during the second week of January, and the application for leave was ready on 2 January 2025. There is no explanation why it took some two weeks for the application to be produced after the consultation.

9.7 The application was only launched on 30 January 2025.

9.8 From the above narration, it would appear that the COJ fails to provide a reasonable explanation for the delay or to explain the full period of the delay.

[10] Needless to say, the COJ is an organ of state, and it is no ordinary litigant, and it is under a "higher duty" to respect the law. As Cameron J put it in *Member of the*

*Executive Council for Health, Eastern Cape v Kirkland Investments (Pty) Ltd t/a Eye & Laser Institute*³,

"There is a higher duty on the state to respect the law, to fulfil procedural requirements, and to tread respectfully when dealing with rights." Government is not an indigent or bewildered litigant, adrift on a sea of litigations uncertainty, to whom the courts must extend a procedural-circumventing lifeline. It is the Constitution's primary agent. It must do right, and it must do it properly."

[11] Having considered the COJ's explanations and the law, I am not persuaded that its failure to comply with the rules and the timeframe and its unexplained delays justifies its non-compliance with the relevant requirements. And I hold the view that on this ground only, the application for leave to appeal fails and is dismissed.

Good Cause and Prejudice

[12] The COJ's affidavits have not addressed good cause and merely state:

12.1 That there is no prejudice to the applicants as they continue to receive services and are "not paying the full amount charged by the municipality for the consumed services".

12.2 That the appeal has good prospects of success.

[13] Neither of the above submissions are correct or sustainable.

[14] It is not true or correct that the CFMC continues to receive services in circumstances where they are "not paying the full amount charged by the municipality".

³ 2014 (5) BLLR 547 (CC) at para 82.

CFMC members are paying the charges levied per month (bar interest charges) and they are not withholding any amounts in relation to the current amount levied by the COJ. There is therefore no prejudice to the COJ.

[15] While this was pointed out in the initial answering affidavit, in its supplementary affidavit the COJ simply repeats the same error and again reiterates that the judgment of this court authorises CFMC to receive electricity without paying for it. Nothing could be further from the truth.

[16] The judgment does not interfere with the COJ's obligation to collect revenue from the CFMC as alleged by the COJ. It merely confirms that, in terms of the Municipal Systems Act 32 of 2000, "until NERSA determines the lawful tariffs at which the applicants are to be charged, the respondent cannot disconnect electricity from the applicants."

[17] The correct position is therefore that the order confirms the established principle that the COJ is entitled to charge tariffs that are lawfully imposed but in relation to those tariffs that were declared unlawful or are the subject of a bona fide dispute, in relation to the unlawful or disputed amount, it may not exercise the credit control and debt collection powers accorded the COJ under Chapter 9 of the Local Government Municipal Systems Act 32 of 2000 ("the Systems Act"). It is therefore erroneous to attempt to read any ambivalence into the order as the COJ tries to do.

[18] In the circumstances, the application for condonation falls to be dismissed.

Prospects of Success

[19] In *MEC for Health, Eastern Cape v Mkhitha and Another*⁴, the SCA said:

"An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or a realistic chance of success on appeal. A mere possibility of success, an arguable case, or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

[20] In *S v Smith*, Plasket AJA (as he then was) had this to say about reasonable prospects:

"What the test of reasonable prospects of success postulates is a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has a prospect of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal."

[21] None of the grounds raised by the COJ demonstrate any prospects of success. The judgment was an uncomplicated application for interim relief granted on established principles of law. The result was an interim interdict, pending the

⁴ (1221/2015) [2016/ ZASCA 176 (25 November 2016)].

finalisation of the disputes lodged by the CFMC in terms of section 102 of the Systems Act pertaining to the 2019/20, 2020/21, 2021/22, 2022/23, and 2023/24 financial years.

[22] The resolution of the disputes is in the hands of the COJ, which may approach CFMC for an engagement in alternate dispute resolution such as mediation or arbitration. The COJ may also issue summons and have the matter resolved by a court of law, even though Kubushi J had already indicated how to approach that route. It is a matter for regret that the COJ never attempted to implement that option. Another option would be to approach NERSA and make submissions about determining lawful tariffs, and in that way resolve the dispute. The COJ is obliged to implement the provisions of the Intergovernmental Relations Framework Act 13 of 2005 in relation to NERSA's failure to determine the dispute.

[23] The judgment clearly demonstrates that CFMC has a prima facie right and a proper legal basis for the same, and that the termination of their electricity services would result in catastrophic consequences.

[24] The judgment also deals adequately with the counterclaim by COJ, where they attempted to have CFMC declared vexatious litigants. The court in its judgment showed all the applications COJ attempted to rely on had been brought on reasonable grounds. I mention this even though it is not clear whether COJ seeks leave to appeal against this finding.

[25] The judgment is fortified by the section 102 right, the order right, and the undertaking right.

[26] The COJ attempts to obfuscate issues by suggesting that the judgment creates "confusion and "leaves the municipality with a choice on which order it is to comply

with". This submission has no merit. The judgment makes it crystal clear that CFMC had made out a case under paragraph 1, which was the main order granted, without creating any "choice" or "uncertainty" for the COJ.

[27] Regarding the interpretation of section 102 of the Municipal Systems Act, the judgment adequately deals with the issue from paragraphs 22 to 28, and specifically distinguishes the authorities relied on by COJ, including the Fourie J judgments and Bam J judgment.

No Compelling Reasons to Grant Leave

[28] COJ argued that even if prospects of success are weak there are compelling reasons to grant leave as the matter raises "important questions" of law and "discrete issues of public importance that will have an effect on future disputes". These submissions have no merit. As alluded to earlier, the application by CFMC was an uncomplicated application for interdictory relief granted on established principles of law.

[29] Notably, the Kubushi Judgment which the respondents have repeatedly requested COJ to implement or to utilise mediation mechanisms as indicated in paragraph 22 above, has not appealed against that decision. For some reason the COJ lacks the will to have the matter resolved to the benefit of all as directed by Kubushi J. This is an added reason not to unnecessarily burden the SCA by passing the matter on to that court by granting leave to appeal

Conclusion

[30] The respondent submits, and I accept, that the administration of justice is not served by granting condonation for a meritless appeal against an interim interdict. The

issues are not of such public importance or legal novelty to warrant consideration on appeal. The application has other more efficacious means of resolving the matter.

[31] Having considered all of the above, I have come to the conclusion that COJ has failed to show good cause for condoning the late filing of its application for leave to appeal.

Order

[32] In the result, I make the following order:

The application for leave to appeal is dismissed with costs.

A handwritten signature in blue ink, appearing to read 'Selby Baqwa', is written over a large black rectangular redaction box. A horizontal line extends from the right side of the box.

SELBY BAQWA

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Date of hearing: 09 September 2025

Date of Judgment: 23 September 2024

APPEARANCES:

For the Applicants

Matthew Chaskalson SC,

Adv Sarah Pudifin-Jones

Instructed by

MC Botha Inc

For the Respondents

Adv M Coovadia

Instructed by

Patel Inc Attorneys