



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

CASE NO: 35928/2022

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

---21/08/2025-----

DATE

SIGNATURE

In the matter between:

LOUIS GUSTAVUS TRICHARDT WESSELS

Applicant

(Identity Number: 3[...])

And

**THE CITY OF TSHWANE
METROPOLITAN MUNICIPALITY**

First Respondent

**THE MUNICIPAL MANAGER:
TSHWANE METROPOLITAN MUNICIPALITY**

Second Respondent

In Counter-Application

**THE CITY OF TSHWANE
METROPOLITAN MUNICIPALITY**

First Applicant

**THE MUNICIPAL MANAGER:
TSHWANE METROPOLITAN MUNICIPALITY**

Second Applicant

And

LOUIS GUSTAVUS TRICHARDT WESSELS

Applicant

(Identity Number: 3[...])

JUDGMENT

TD SENEKE, AJ

INTRODUCTION

1. The applicant brought an application to seek the following orders:
 - “1. That the first and second respondents are in contempt of the Court Order of the Honourable Justice Kooverjie J made on 21 October 2022 under case number: 35928/2022;*
 - 2. That the first and second respondents are ordered to purge their contempt of the Court Order dated 21 October 2022 within 5 days of service of this Court Order;*
 - 3. In the event the first and second respondents fail to purge their contempt of the Court Order dated 21 October 2022, the applicant may approach the Court on the same papers filed in respect of this application and seek the following relief:*

3.1 *That a fine, such as is deemed appropriate by the above Honourable Court, be imposed on the first and second respondents in regard to such contempt;*

3.2 *That a period of imprisonment, such as is deemed appropriate by this Honourable Court, be imposed on the second respondent by the above Honourable Court, such period of imprisonment to be suspended on conditions deemed appropriate by this Honourable Court;*

3. *That the cost of this application on the scale as between attorney and client be paid by the first and second respondents jointly and severally, the one paying the other to be absolved.”¹*

2. The respondents brought a counter-application to seek the following orders:

“1. *The court order granted by the Honourable Justice Kooverjie J on 21 October 2022 under case number 35928/2022 is rescinded and set aside;*

2. *It is declared that the court order is invalid, unlawful, void ab initio and unenforceable;*

3. *The delay in the filing of the rescission application is condoned;*

4. *The delay in the filing of the answering affidavit is condoned.”²*

ISSUES TO BE DETERMINED

3. Whether the first respondent (City of Tshwane) has made a case for a rescission of the order granted by Judge Kooverjie on 21 October 2022.

¹ Caseline 02-1 to 02-4

² Caseline 07-4 to 07-7

4. Should the rescission application be unsuccessful, the Court will be required to determine whether the respondents are in contempt of the order granted by Judge Kooverjie on 21 October 2022.
5. If it is found that the respondents are in contempt of court, whether the applicant is entitled to an order directing the respondents to purge their contempt of court.

BACKGROUND

Counter-Application³

6. The applicant is the registered owner of four (4) immovable properties (“Units”), namely:
 - 6.1. Unit 5[...] [Municipal Account Number: 5[...]]
 - 6.2. Unit 5[...]2 [Municipal Account Number: 5[...]]2]
 - 6.3. Unit 5[...]2 [Municipal Account Number: 5[...]]3]
 - 6.4. Unit 6[...] [Municipal Account Number: 5[...]]4]⁴
7. The units are all situated within the Sectional Title Scheme known as SS Clara-Berea with scheme number 349/1985, with address at 1[...] C[...] Street, Berea Park, Pretoria, which have been leased to tenants who currently occupy the units.⁵
8. During or about March 2019, the municipal accounts relating to the electricity consumption of the four (4) units were in arrears due to non-payment.

³ Caseline 07-5

⁴ Caseline 07-14

⁵ Caseline 07-14

- Subsequently the electricity supply to the units was disconnected by the Municipality.⁶
9. Mr Schultz, an employee of the Body Corporate of SS Clara-Berea Complex illegally reconnected the electricity supply.⁷
10. As a consequence of the illegal reconnection of the electricity, the Municipality then imposed RIP charge penalties for March 2019, up to and including June 2019, in the amount of R18 819,00 excluding VAT for each month.⁸
11. Subsequent to the meeting held on 23 August 2021, the Municipality informed the applicant by email, which the applicant refers to as the administrative action/decision, of the following:
- 11.1. That the RIP penalties were fair and levied in terms of the approved tariffs as published by NERSA and the Municipal Council as gazetted;
- 11.2. The conduct of reconnection was unlawful and constituted a criminal offence;
- 11.3. The Municipality acknowledges the fact that it was Mr Schultz who caused the illegal reconnection on his own initiative, however, Mr Wessels must take legal action against Mr Schultz; and
- 11.4. That the RIP Charges remained enforceable.⁹
12. On 24 August 2021, Judge Kollapen granted an order in terms of the relief sought by the applicant to restore the utilities of the applicant, interdicting the first and second respondents from terminating the utilities until such time as the

⁶ Caseline 07-14 to 07-15

⁷ Caseline 07-15

⁸ Caseline 07-15

⁹ Caseline 07-16

- outcome has been presented to the applicant or pending any final outcome of the appeal in terms of section 62 of Act 32 of 2000.¹⁰
13. On 13 September 2021, following the decision by the Municipality, the Applicant lodged his Appeal in terms of Section 62.¹¹
14. The City did not provide the applicant with an outcome of the section 62 appeal.¹²
15. On 5 July 2022, the applicant approached this Honourable Court for the purposes of setting aside and reviewing the “*administrative decision*” taken by the first respondent on 23 August 2021 and that the Municipality removes the penalties and charges debited to the accounts for the alleged illegal consumption and reconnection of the electricity (“*the review application*”).¹³
16. The primary basis which the applicant relied on in bringing the review application is the following:
- 16.1. The municipality’s failure to take a decision in terms of section 62 of the Municipal Systems Act justifies an exemption to exhaust any further internal remedies: and
- 16.2. That the decision by the Municipality to charge RIP fees for the illegal reconnection should be set aside on the basis that he as the owner of the units should not be charged such fees, because the illegal reconnection was done by the caretaker, Mr Schultz, without his knowledge.¹⁴

¹⁰ Caseline 07-17

¹¹ Caseline 07-17

¹² Caseline 07-17

¹³ Caseline 07-17

¹⁴ Caseline 07-17 to 07-18

17. The review application was not opposed, which consequently led to an order by Justice Kooverjie thus reviewing the decision of 23 August 2021 and removing the penalties and/or associated charges, debited to the accounts for the illegal consumption or reconnection of electricity within 30 days from date of service of the Court Order.¹⁵

CASE FOR THE APPLICANTS (RESPONDENTS IN THE CONTEMPT OF COURT CASE)

Rescission Application

The City of Tshwane states that:

18. Based on the legislative prescripts referred to above, it is submitted that if the Court Order of Justice Kooverjie is allowed to persist, that this would have a direct negative impact on it to deliver on its legal mandate in respect of service delivery to its clients, to collect revenue and in general to meet its objects as provided for in section 152 of the Constitution of the Republic of South Africa.¹⁶
19. In the review application, the primary basis for the applicant denying that he is liable for the rip fees was that he is not what is termed a “consumer” as defined by the by-laws because he is not an occupier of the units. He, however, fails to demonstrate that an “occupier” in relation to any premises, in the case of the premises being subdivided and let to lodgers or tenants, the person who receives the rent payable by the lodgers or tenants, whether on his or her own account or as an agent for another person entitled to or interested in the rent.¹⁷

¹⁵ Caseline 07-18

¹⁶ Caseline 07-21 to 07-22

¹⁷ Caseline 07-22

20. By virtue of the above empowering provisions, it is inappropriate for the applicant to escape liability of the RIP fees on the basis that he did not specifically cause the illegal connections.¹⁸
21. It has a valid agreement with the owner and thus the applicant remains responsible for the charges on the electricity account. It follows then that it is not competent for the owner to have argued that the penalties charged should not be charged because he did not commit the offence personally.¹⁹
22. It is further submitted that given that the illegal reconnections were not disputed, and the penalty fees were imposed in compliance with NERSA and Council approved tariffs, and having not received any further internal instructions, the Credit Control and Debt Collection department did not remove the rip fees from the account.²⁰

Basis of the rescission

Reasonable explanation for the default

The City of Tshwane contends that:

23. Despite several inter-departmental communications between the Legal Department and Credit Control and Debt Collection department, no instructions to proceed to oppose the main review application was received by the Legal Department, and thus the Municipality made no appearance.²¹
24. It operates through its departments and the functionaries within the respective departments. Without the proper authorisations to proceed, the Legal

¹⁸ Caseline 07-22

¹⁹ Caseline 07-22

²⁰ Caseline 07-22

²¹ Caseline 07-24

Department which is empowered to oppose any legal action, would not have been able to appoint legal representation in order to contest the matter.²²

Bona fide defence

25. The City of Tshwane contends that the review application did not make out a proper case for the relief sought. The applicant argues that he did not illegally connect the electricity, however the by-laws makes it clear that the owner is responsible for such connections to his units, as the contract is entered into between the owner and the Municipality, and not with the tenants.²³
26. The applicant further argues that the penalties were exorbitant and as a result unreasonable. The penalties were imposed in accordance with NERSA regulation and the Municipality's Credit Control and Debt Collection Policy, and it is humbly submitted that there is no legal basis on which this argument by the applicant can be sustained.²⁴

Rule 42(1) erroneously made

The City of Tshwane contends that:

27. The applicant misled the Court in his narrow interpretation of section 30 of the by-laws that he must not be charged for the illegal connection of the electricity as he is not a "consumer using the supply" and further takes the definition of "consumer" to mean occupier but fails to provide the definition of "occupier", which has been defined above, in terms of the bylaw.²⁵

²² Caseline 07-22

²³ Caseline 07-25 to 07-26

²⁴ Caseline 07-26

²⁵ Caseline 07-27

28. The applicant did not demonstrate to that Court that the Municipality relied upon the Municipal By-laws, the Systems Act and NERSA regulations, to institute the penalties upon the Applicant.²⁶

Condonation

The City of Tshwane contends that:

29. On 14 July 2022, it allocated the application to its internal legal advisor in Group Legal and Secretariat Services and same sent to Finance Credit Control and Debt Collection for instructions to proceed with the matter.²⁷
30. On 22 July 2022, an electronic message was sent to Finance Credit Control and Debt Collection for instructions. No instructions were received.²⁸
31. It could not oppose the review application.²⁹
32. On 21 November 2022, Madam Justice Kooverjie granted the applicant the order.³⁰
33. On 25 January 2023, it received the contempt of court and sent same to Finance Credit Control and Debt Collection for instructions.³¹
34. On 26 January 2023, an instruction was given to Majang Attorneys to oppose contempt of court application. On the same day, Majang Attorneys Inc acknowledged receipt of the instructions to oppose the contempt of court

²⁶ Caseline 07-27 to 07-28

²⁷ Caseline 07-28

²⁸ Caseline 07-28

²⁹ Caseline 07-28

³⁰ Caseline 07-28

³¹ Caseline 07-28

application and briefed counsel who advised it to rescind the Order of Madam Justice.³²

35. With regards to the filing of the answering the affidavit, it is noted that the notice of intention to oppose the contempt of court application was served on the 30th of January 2023 and the answering affidavit ought to have been filed on or before the 20th of February 2023. It is anticipated that the answering affidavit should be served and filed on or before the 15th of May 2023. As such a delay of 41 days is not excessive. It is submitted that the reason for the delay is because despite several inter-departmental communications between the Legal Department and credit control it has been difficult to arrange consultations and acquiring documents necessary to substantiate the respondents' case in the answering affidavit.³³
36. It is submitted that it is appropriate and in the interest of justice that these issues be dealt with through this counter application.³⁴
37. In the event that it is found that there was an unreasonable delay, it is submitted that such delay stands to be condoned, having regard to the interests of justice and the public importance of the matter.³⁵
38. It is thus necessary that the merits of the matter be determined based on full facts and correct pronouncement of the law. This application seeks to ensure that the rule of law is upheld, and that the Municipality exercises its powers in accordance with the empowering provisions.³⁶

Prospects of Success

³² Caseline 07-29

³³ Caseline 07-29

³⁴ Caseline 07-29

³⁵ Caseline 07-29

³⁶ Caseline 07-29 to 07-30

39. The City of Tshwane contends that it has good prospects of success in this matter, particularly having regard to the legislative scheme and the absence of legal foundation for the orders made in the court order by justice Madam Justice Kooverjie.³⁷

Prejudice

The City of Tshwane states that:

40. It will suffer great prejudice if the late filing of the rescission application and the late filing of the answering affidavit are not condoned whereas the applicant will not suffer any prejudice.³⁸
41. By condoning the late filing of the rescission application and the answering affidavit, the court will ensure that all the issues pertaining to this matter are placed before it and are properly ventilated based on the correct legal principles, thus the interests of justice served.³⁹
42. This matter relates to important matters relating to the powers and authority of a Municipality and how Municipalities are required to exercise their constitutional authority and to use their resources.⁴⁰
43. It is submitted that it would result in a miscarriage of justice if the course and scope of the Municipality's powers were to be determined without having the benefit of its submissions.⁴¹

CASE FOR THE RESPONDENT IN RESCISSION (APPLICANT IN THE CONTEMPT OF COURT CASE

³⁷ Caseline 07-30

³⁸ Caseline 07-30

³⁹ Caseline 07-30

⁴⁰ Caseline 07-30

⁴¹ Caseline 07-30

44. The only explanation provided by the respondents for their default to oppose the Review Application is that notwithstanding several *“inter-departmental communications between the legal department and the credit control and debt collection department”* no instruction was provided to oppose the Review Application.⁴²
45. The respondents’ entire explanation for their default to oppose the Review Application relates to the respondents’ own internal departments’ failure to provide any instructions to oppose the Review Application. The explanation is not sufficient for the purposes of the relief sought.⁴³
46. First of all, a decision to institute or defend litigious proceedings should be taken by the Municipal Council of the first respondent, alternatively, the person/committee to whom such authority has been delegated in terms of the Systems Act.⁴⁴
47. A Municipal entity, such as the respondents, constitutes a separate and single legal entity. The respondents can therefore not blame its own internal departments for their failure to timeously oppose the Review Application.⁴⁵
48. When considering the explanation provided by the respondents holistically, the only inference that can be drawn is that the Judgment granted by the Honourable Judge Kooverjie was granted in the absence of the respondents, and by default, as a result of the wilful default, alternatively, gross negligence of the respondents.⁴⁶

⁴² Caseline 08-12

⁴³ Caseline 08-12

⁴⁴ Caseline 08-13

⁴⁵ Caseline 08-13 to 08-14

⁴⁶ Caseline 08-14

49. If the relief sought by the applicant in the Review Application was such a large cause of concern for the respondents, they should have timeously opposed the Review Application.⁴⁷
50. Furthermore, if the respondents were truly concerned by the content of the Order granted by the Honourable Judge Kooverjie, they should have instituted the Rescission Application as soon as reasonably possible after the Order was served on them on 2 November 2022.⁴⁸
51. It is further noteworthy to mention that the respondents did not take any steps to rescind the Order before the applicant instituted the Contempt Application.⁴⁹
52. The only reasonable inference that can be drawn is that the only purpose of the Rescission Application is to frustrate the applicant in the prosecution of the Contempt Application.⁵⁰
53. The respondents further allege that the Standard Electricity Supply By-laws empowers the first respondent to charge penalties on the applicant's municipal accounts on the basis that he is the owner of the subject properties (ie the owner of the properties to which the electricity supply had been unlawfully reconnected), alternatively, have entered into an electricity supply agreement with the first respondent.⁵¹
54. In terms of section 30(2) of the Electricity Supply Bylaw, the first respondent may hold a "consumer liable for the payment of all penalties and charges for electricity consumed between the date on which the electricity supply to a

⁴⁷ Caseline 08-15

⁴⁸ Caseline 08-15

⁴⁹ Caseline 08-15

⁵⁰ Caseline 08-16

⁵¹ Caseline 08-16

- property has been disconnected and the date on which the electricity supply to the property has been illegally reconnected.⁵²
55. The applicant has throughout his initial dispute, the Urgent Application, the Section 62 Appeal, and the Review Application indicated that he did not reconnect, instruct any person to reconnect or allow any person to reconnect the electricity supply to the subject properties.⁵³
56. Since the inception of the matter, the applicant informed the first respondent that the electricity supply to the Subject Property was in actual fact reconnected by Mr Schultz, being the caretaker/manager of the subject properties, without his knowledge or consent.⁵⁴
57. In light of the aforementioned, in the Review Application, the applicant unequivocally stated that he is not the “consumer”, for purposes of Section 30 of the Standard Electricity Supply Bylaw, and that the first respondent’s decision to charge penalties on his municipal accounts should therefore be reviewed and set aside.⁵⁵
58. The first respondent acknowledged and accepted the fact that the applicant did not attend to the unlawful reconnection of the electricity supply to the subject properties.⁵⁶
59. Notwithstanding the aforementioned, the first respondent persists with its skewed interpretation of section 30, the definition of a “consumer”, and the

⁵² Caseline 08-16 to 08-17

⁵³ Caseline 08-18

⁵⁴ Caseline 08-19

⁵⁵ Caseline 08-19

⁵⁶ Caseline 08-19

- definition of an “occupier”, as contained in the Standard Electricity Bylaw, to attribute the liability for the payment of penalties to him.⁵⁷
60. The respondents failed and/or refused to timeously oppose the Review Application. Thereafter, the respondents failed and/or refused to comply with the order granted by the Honourable Judge Kooverjie.⁵⁸
61. Notwithstanding the aforementioned, as already indicated above, section 30 of the Standard Electricity Supply Bylaw, read with the definition of an “occupier” and “consumer” informs that a consumer includes a “person in charge of the premises” which includes a caretaker or a manager.⁵⁹
62. In light of the fact that the applicant did not instruct any person/entity to reconnect the electricity supply to the subject properties, had no knowledge of the fact that the electricity supply to the properties had been disconnected or illegally reconnected, including the fact Mr Schultz (the caretaker/manager of the subject properties) admitted to illegally reconnecting the electricity supply to the subject properties, Mr Schultz is the “Consumer” for purposes of Section 30 of the Standard Electricity Supply Bylaw.⁶⁰
63. The respondents should therefore have instituted proceedings against Mr L. Schultz to procure payment of any penalties imposed pursuant to the provisions of Section 31 of the Standard Electricity Supply Bylaw.⁶¹

LEGAL FRAMEWORK

The Constitution of the Republic of South Africa

⁵⁷ Caseline 08-19

⁵⁸ Caseline 08-21

⁵⁹ Caseline 08-21 to 08-22

⁶⁰ Caseline 08-22

⁶¹ Caseline 08-22

64. The Municipality is an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”).
65. Section 151(3) of the Constitution provides that a municipality has the right to govern, on its initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution. The Municipality’s duty to provide services to communities is subject to its financial and administrative capacity.

The Municipal Systems Act 52 of 2000

66. Section 4(1) of the Municipal Systems Act 52 of 2000 also provides that the Council has the right to govern on its own initiative and exercise the municipality’s executive and legislative authority.
67. Section 96(a) places a responsibility on the municipality to collect all money that is due and payable to it, subject to this Act and any other applicable legislation.

Standard Electricity supply By-laws

68. Section 30 of the Standard Electricity Supply By-Laws prohibits unauthorised reconnections and states the following:

“No person other than a person whom the Municipality specifically authorises in writing to do so may reconnect, attempt to reconnect or cause or permit the reconnection of the supply mains or service connection of an electrical installation that has been disconnected by the Municipality.

Where an electricity supply that was previously disconnected is found to have been reconnected illegally, the consumer using the supply is liable for all charges for electricity consumed between the date of disconnection and

the date on which the supply was found to be reconnected and for any other charges levied in this regard. Such a reconnection of the electricity supply is deemed to be an offence in terms of section 27(2) and (3) of the Electricity Act, 1987 (Act 41 of 1987), and makes the perpetrator guilty of an offence and liable on conviction to a fine and/or imprisonment.”

69. Rule 31(2)(b) provides that:

“A defendant may within 20 days after acquiring knowledge of such judgment apply to court upon notice to the plaintiff to set aside such judgment and the court may, upon good cause shown, set aside the default judgment on such terms as it deems.”

Reasonable explanation for default

70. In *Harris v ABSA Bank Ltd Volkskas*,⁶² the court stated that:

“[8] Before an applicant in a rescission of judgment application can be said to be in “wilful default” he or she must bear knowledge of the action brought against him or her and of the steps required to avoid the default. Such an applicant must deliberately, being free to do so, fail or omit to take the step which would avoid the default and must appreciate the legal consequences of his or her actions.

[9] A decision freely taken to refrain from filing a notice to defend or a plea or from appearing, ordinarily will weigh heavily against an applicant required to establish sufficient cause. However, I do not agree that once wilful default is shown the applicant is barred; that he or she is then never entitled to relief by way of rescission as he or she has acquiesced. The Court’s discretion in deciding whether sufficient

⁶² 2006 (4) SA 527 (T).

cause has been established must not be unduly restricted. In my view, the mental element of the default, whatever description it bears, should be one of the several elements which the court must weigh in determining whether sufficient or good cause has been shown to exist. In the words of Jones J in De Witts Auto Body Repairs (Pty) Ltd v Fedgen Insurance Co Ltd 1994 (4) SA 705 (E) at 708G,

‘ . . . the wilful or negligent or blameless nature of the defendant's default now becomes one of the various considerations which the courts will take into account in the exercise of their discretion to determine whether or not good cause is shown’.”

71. In *casu*, the City of Tshwane has explained that despite several inter-departmental communications between the Legal Department and Credit Control and Debt Collection department, no instructions to proceed to oppose the main review application was received by the Legal Department, and thus the Municipality made no appearance.
72. It operates through its departments and the functionaries within the respective departments. Without the proper authorisations to proceed, the Legal Department, which is empowered to oppose any legal action, would not have been able to appoint legal representation in order to contest the matter.
73. As the City of Tshwane is an organ of state that operates through its officials, the miscommunication between the two departments was the main cause for the failure of the City of Tshwane to defend the review proceedings. This is not unusual with the organs of state which are run by layers of bureaucracy as has been demonstrated in this case. The Court in particular is inundated with many cases where the state organs have for one reason or another failed to defend

adverse litigation proceedings. Where an organ of state has good prospect of success such bureaucratic mishaps should not be used to unduly preclude the organ of state from presenting a case before court.

74. According, I find that the City of Tshwane was not in wilful default.

Bona fide defence

75. In the *Harris v ABSA Bank*,⁶³ Moseneke J stated as follows:

“[10] A steady body of judicial authorities has held that a court seized with an application for rescission of judgment should not, in determining whether good or sufficient cause has been proven, look at the adequacy or otherwise of the explanation of the default or failure in isolation.

“Instead, the explanation, be it good, bad or indifferent, must be considered in the light of the nature of the defence, which is an important consideration, and in the light of all the facts and circumstances of the case as a whole”. ”

76. The City of Tshwane’s defence is based on the by-laws which provides that the owner is responsible for such connections to his units as the contract is entered into by and between the owner and the Municipality and not tenants.

77. On the other hand, the respondent in the rescission application contends that he was not responsible for the reconnection. He contends that Mr Schultz, the caretaker of the body corporate where his four rental units are located, must take responsibility for the illegal reconnection.

⁶³ 2006 (4) SA 527 (T).

78. If one has regard to annexure COT1, the role of Mr Schultz is properly explained. During the meeting held on 23 August 2019, it was explained that Mr Shultz visited the credit control office at Tramshed, 1st floor. He met acting accountant, Dikeledi Nyamane on several occasions and pleaded for the reversal of the RIP fees and acknowledged in writing that it was he who reconnected for he felt sorry for the tenants being without electricity in winter.
79. Ms Dikeledi Nyamane informed Mr Sterfontein that this matter was responded to in 2019 upon the complaint logged by Mr Schultz for the transgression fees.
80. Two of the tenants settled and five refused to pay for the illegal reconnection fees. Out of the five tenants, two of the same tenants were reconnected illegally more than once.
81. Despite the imposition of RIP fees, illegal reconnections continued while the accounts were on an arrear service accounts.
82. It was suggested that the applicant/owner rather take legal action against the tenants/occupants. The tenants had the benefit of having services while the accounts were in arrears and the owner benefited by receiving the monthly rent from his tenants.
83. The contents of COT1 were dealt with at paragraph 25 of the counter-application by the City of Tshwane. The contents of paragraph 25 do not accurately reflect the contents of annexure COT1.
84. In his replying affidavit, the respondent in the rescission application completely avoids dealing with the pertinent issue of the meeting held on 23 August 2019.

85. In annexure COT3,⁶⁴ the respondent attempts to shift the blame to his tenants. In this regard, I refer to paragraph 8. However, in his answering affidavit he does not persist with contention. Instead, he shifts the claim to Shultz.
86. It is common cause from COT1 that Schultz approached the City of Tshwane and owned up to his role in the illegal reconnection of the electricity supply. Ms Nyamane assisted two of the tenants to resolve the issue of the illegal reconnection. Five other tenants refused to pay for the illegal reconnection fees. The five tenants who refused to pay for the illegal reconnection compounded the situation by illegally reconnecting the electricity supply even after the City of Tshwane had imposed RIP penalties.
87. It follows that the shifting of the blame to Mr Schultz cannot be sustained as the sequence of the events point to the fact that after Mr Schultz took responsible for the illegal reconnection which was resolved by Ms Nyamane. The tenants of the respondent in the rescission application brazenly took the law into their own hands and illegally reconnected the electricity supply despite the fact that RIP penalties were already in place. The conduct of the tenants amount to acting with impunity and disregard to the orderly running of the City of Tshwane.
88. Accordingly, I come to the conclusion that the City of Tshwane has a bona fide defence.
89. With the benefit of the full record and proper ventilation of the review, the court of review might find that the respondent in the rescission application is a consumer and an occupier in terms of section 30 of the by-laws.
90. The court held in *Mkontwana v Nelson Mandela Metropolitan Municipality*⁶⁵ that (paragraph 41):

⁶⁴ Caseline 07-42 to 07-45

“It is self-evident that the exact character of the relationship between the owner and the consumption charge will vary depending on whether the property is occupied by the owner, a tenant, a usufructuary, a fiduciary or an unlawful occupier. However, there is a level at which the owner and the debt are usually connected or related regardless of the nature of the relationship between the owner and the occupier and of whether the property is lawfully occupied. This is because the owner is bound to the property by reason of the fact of ownership which.... entails certain rights and responsibilities. Both the owner and the consumption charge are closely related to the property and the property is always the link between the owner on the one hand and the consumption charge in respect of water and electricity provided by the municipality on the other.”

91. At paragraph 53 of *Mkontwana*:

“The relationship between the owner and the consumption charge is so close as to justify a reasonable expectation that the owner would choose a responsible tenant, monitor payment by the tenant of consumption charges that are due and ensure that the agreement of tenancy is appropriately crafted. An agreement could provide, for example, that the consumption charges must be regularly paid by the tenant, that proof of payment is given to the owner and that eviction or other consequences would follow if there is non-payment. There is therefore no basis to suggest that it would be unreasonable for the owner to bear the risk.”

Condonation for late filing of answering affidavit and counter application of rescission

⁶⁵ *Mkontwana v Nelson Mandela Metropolitan Municipality* (CCT 57/03) [2004]21 ZACC 9; 2005 (1) SA 530 (CC); 2005 (2) BCLR 150 (CC)

92. Based on *Brummer v Gorfil Brothers Investments (Pty) Ltd and Others*⁶⁶ and *V.B v Van Wyk and Others*,⁶⁷ the standard for considering an application for condonation is the interests of justice. As the two cases demonstrate, it includes:
- 92.1. the nature of the relief sought;
 - 92.2. the extent and cause of the delay;
 - 92.3. the effect of the delay on the administration of justice and other litigants;
 - 92.4. the reasonableness of the explanation for the delay;
 - 92.5. the importance of the issue to be raised;
 - 92.6. and the prospects of success.⁶⁸
93. The Court further emphasised, with reference to the Constitutional Court's decision in *Grootboom*, that even where a delay is excessive or inadequately explained, the merits should not be entirely overlooked — unless the conduct is flagrant and prejudicial. As Zondo J held: “*Where the delay is unacceptably excessive and there is no explanation for the delay, there may be no need to consider the prospects of success.*” However, even in such cases, the prospects remain relevant unless the circumstances render the application “obviously unworthy of consideration.”⁶⁹
94. The Municipality sought condonation of late filing of its answering affidavit to the contempt application and to the late filing of the rescission application.⁷⁰

⁶⁶ *Brummer v Gorfil Brothers Investments (Pty) Ltd and Others* (CCT45/99) [2000] ZACC 3; 2000 (5) BCLR 465 ; 2000 (2) SA 837 (CC) (30 March 2000)

⁶⁷ *V.B v Van Wyk and Others* (JS43/22) [2023] ZALCJHB 109 (17 January 2023)

⁶⁸ Caseline 04-65

⁶⁹ Caseline 04-65

⁷⁰ Caseline 04-64

95. The Municipality's answering affidavit in respect of the contempt application is thus 41 days late.⁷¹
96. It is crucial to reiterate that the ultimate determination of what is in the interests of justice must reflect due regard to all the relevant factors but it is not necessarily limited to those mentioned above. The particular circumstances of each case will determine which of these factors are relevant.⁷²
97. The Court in *Government Printing Works v Public Service Association and Another*⁷³ reaffirmed the balancing approach that must be adopted when assessing whether condonation ought to be granted. At paragraph 27, the Labour Appeal Court summarised the now-settled principle that "*the various factors are to be considered collectively, and not mechanically, in determining the interests of justice.*" While no single factor is decisive, the prospects of success remain a critical component of the inquiry.⁷⁴
98. The period of delay in bringing the rescission application is just over six months. I do not regard this period of delay as unduly excessive. The defense raised by the City of Tshwane and the interpretation of section 30 of the by-laws raise an important issue which requires further scrutiny by the review court. I deem the issue of the interpretation of section 30 to be in the public interest and the interest of justice.

In the result, I make the following order:

1. The application for rescission of judgment is granted.
2. The cost will be cost in the cause of the application for review.

⁷¹ Caseline 04-64

⁷² Caseline 04-65

⁷³ *Government Printing Works v Public Service Association and Another* (JA35/24) [2024] ZALAC 63; [2025] 2 BLLR 112 (LAC); (2025) 46 ILJ 915 (LAC)

⁷⁴ Caseline 04-66

TD SENEKE AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

Appearances

For applicant : Advocate FJ Nel

Instructed by : EW Serfontein & Associates Inc

For respondents : Advocate TM Makola

Instructed by : Majang Inc Attorneys