IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CIRCUIT LOCAL DIVISION, THEMBALETHU)

Case No: 193/25

In the matter between

GREY ELEPHANT INVESTMENTS (PTY) LTD Applicant

AND

KNYSNA LOCAL MUNICIPALITY RESPONDENT

Date of Hearing : 11 September 2025

Date of Delivering : 11 February 2026

JUDGMENT

THULARE J

ORDER

(a) the application for reconsideration is dismissed.

(b) The *rule nisi* is confirmed.

(c) The Knysna Local Municipality is to pay the costs, on a scale as between attorney and client, such costs to include the costs of two counsel on scale C.

[1] There is a longstanding dispute between Grey Elephant Investments (Pty) Ltd (GEI) and the Knysna Local Municipality (KLM) as to outstanding rates and service charges since 2022. GEI contended that KLM was overcharging them. However GEI paid what it deemed was fair and settled arrears. The dispute escalated in GEI filing a notice of motion dealing with KLM tariff policies in rates in case number 22365/24 which is pending. GEI disputed the amounts in the accounts. There were also other amounts also in dispute as well as the scope and content of a settlement. KLM contended that it was entitled to cut off electricity to Knysna Mall (the Mall), owned by GEI. KLM cut off electricity to the Mall on 25 April 2025 at around 13H45, a Friday afternoon preceding the Freedom Day long weekend, because of the dispute. When KLM switched off the electricity, it affected the whole Mall and deprived retail, commercial and residential tenants, a total of 77 including KLMs Town Planning and Building Control Department offices as well which were located in the Mall. The conduct for all intents and purposes closed business at the peak period.

[2] The notice email did not come to the attention of the Municipal Manager as he was on a flight from George en route to Johannesburg when it was served. He had left his laptop in his office in Knysna and nobody had access to the email addresses to which the notice was sent. The Municipal Manager was the brain behind the disconnection. He went ahead, despite the reservations of the Mayor, which the Mayor expressed to him, in the light of the dispute between the parties which were

known to both. The Mayor could not reach the Municipal Manager, the Chief Financial Officer and the Director of Corporate Services as their numbers were off, to intervene when the power was shut off and GEI approached him. The Head of Legal Services of KLM did not have the delegated authority to deal with the matter. GEI cannot be faltered to conclude that the conduct of the involved KLM officials was engineered to cause it maximum harm with reckless disregard for the rights of the retail, commercial and residential tenants who were not party to the dispute with KLM.

[3] GEI approached the court on an urgent basis without an opportunity to file papers, for interim relief through a *rule nisi* seeking the immediate restoration of the electricity supply to the Mall on the same day, 25 April 2025. GEI led *viva voce* evidence and after hearing it and its counsels submissions the order was granted. KLM anticipated the return date and sought that the order granting the *rule nisi* be reconsidered and set aside and GEI's application be dismissed. KLM provided accounts to GEI under three account numbers for billing assessment rates, electricity, water, sanitation services, refuse removal and interest on arrear amounts.

[4] It is common cause that GEI held the view that KLM unlawfully levied municipal charges for electricity, water, refuse and sewerage and as such GEI was incorrectly billed. The parties also had a dispute in respect of amounts owed under the name of the previous owner and whether some could be recovered at all, or from GEI . The parties are also in dispute as to whether the disconnection on 25 April 2025 related solely to the non-payment of rates and services not disputed to

be owing. The lawfulness and accuracy of the charges levied was ongoing dispute and accounted for the invoices not being paid in full as presented by KLM to GEI. What was settled by the agreement was also in dispute. GEI tendered to pay the requisite 30% of what KLM said was due as per the Customer Care Policy, despite its view that KLMs conduct was unlawful. GEI engaged dispute resolution mechanisms in the KLM Customer Care Policy to lawfully dispute the amounts it alleged KLM incorrectly levied.

Was a Rule nisi issued

[5] It was not an issue that KLM had the right to approach the court for reconsideration of the order. Ordinarily a court should not make an order against a person unless that person has received proper notice of the relief to be sought against them and they have been given an opportunity to oppose the granting of such relief. There are, however, circumstances that allow a departure from this rule and an *ex parte* application is such example, an application brought before court without any notice given to the opposite party. An *ex parte* application can only broguth in exceptional circumstances where compelling reasons exist for the party seeking relief to approach the court without notice being given to the party against whom the order is sought. Generally, there would also be no other interested third party in the granting of relief, which third party should be cited in the relief sought. The timing of the disconnection and its business implications for GEI and its tenants as well as the probably designed unavailability of people who could instruct KLM attorneys to oppose the application at the most critical time left GEI with no option but to approach the court without notice to KLM. KLM was the

author of its own misfortune and cannot be heard to complain that it was not served with the application. The impact of the disconnection on the conduct of business at the Mall was sufficient for the court to grant GEI condonation for deviation from the rules as a result of the urgency of the matter. GEI could not be afforded sunstantial redress at a hearing in due course. A Freedom Day long weekend contemporaneous with the end of the month was a unique business opportunity which could not be repeated on other days.

[6] In *Hulisani Viccel Sithangu v Capricorn District Municipality* (593/2022) [2023] ZASCA 151 (14 November 2023) the court said court orders are required to be clear and unambiguous [para 16]. In para 23 the court said:

"[23] The question is whether the full court's interpretation of the order of this Court granting leave to appeal, is correct. The basic principles applicable to construing documents also apply to the construction of a court's judgment or order. The court's intention is to be ascertained primarily from the language of the judgment or order as construed according to the usual, well-known rules. As in the case of a document, the judgment or order and the court's reasons for giving it, must be read as a whole to ascertain its intention. It is now settled, that when interpreting a document including a court order, the point of departure should be the language in question, read in context while also having regard to the purpose of its provision and the background."

The order granted by the court was granted in the absence of KLM. GEI was aware that GEI had to return to court on a date determined by the court to argue that the temporary order that GEI was granted should be made final. GEI did not apply for and was not granted a final order. It applied for and was granted an interim order which required the order to be served on KLM and for KLM to anticipate the return date if it so desired. The terminology employed in the order leaves no other understanding other than that KLM had an opportunity to give evidence and to argue why that temporary order should not be made final.

[7] The order left no doubt that it was a provisional order. The opportunity to be heard was afforded to KLM on the return date to demonstrate to the court why the provisional order should not be made final. The language and the wording of the order made it clear that there had to be return date. The context in which the order was granted made it clear that a return date had to be determined. KLM's construction of the order is opportunistic. KLM sought to exploit the friendly, helpful and cooperative feeling and attitude of the judge, when the judge allowed the parties to confer and agree on the return date, which date as agreed between the parties would then be the return date. For KLM attorneys not to engage with GEI attorneys to agree on a court date and then claim that in the absence of that date as part of the order, the order is not clear, is too close for comfort. This is not even a case where KLM needed to apply to court to get clarification on when the return date was. To know the determined return date, KLM simply needed to agree to one with GEI, as the court order envisaged the return date. Nothing suggests that the parties failed to agree on a return date. There is no absence of clarity or ambiguity. It is important, especially in extremely urgent matters like the present, for parties to exhibit honesty and contextual understanding. The Judge was faced with the urgency of the applicant having to walk away from the court building with a written court order on one hand, and the desire to ensure that especially KLM's attorneys had the benefit of an input in the return date. It is sad that KLM sought to abuse the operational courtesy from the judge. This explained why KLM anticipated it, even though opportunity overwhelmed it and it sought to pursue, find and point out minor faults in a pendentic way. The approach of KLM to the

order was flawed. The rigidity that KLM advocates may be a hurdle to efficiency in extremely urgent matters which required flexibility. To advance the interests of justice and the full participation of practitioners already involved in matters especially in the determination of suitable future dates, sometimes require proactive and creative judicial case management pronouncements.

[8] Of importance, is the clarity and absence of ambiguity in such court orders, and in a *rule nisi* in particular, including the certainty of the return date for the party that was not at court and for everyone involved. A *rule nisi* was issued. The *rule nisi* has been favourably commented on, as regards its flexibility and utility [*NDPP and Another v Mohamed NO and Others* 2003 (4) SA 1 (CC) at para 29]. The *rule nisi* was binding until set aside [*Municipal Manager OR Tambo District Municipality and Another v Ndabeni* 2023 (4) SA 421 (CC) at para 24]. It existed in fact wih possible legal consequences [*Department of Transport v Tasima (Pty) Ltd* 2017 (2) SA 622 (CC) at para 182]. It came as no surprise that when the parties could not deal with the matter hot on the heels of the court order, KLM agreed to the extension of the *rule nisi*. The order was not an unlimited *rule nisi* with no return date. Even if the parties could not agree on a return date, which is not the case here, KLM anticipated the order on two days notice.

Was a mandament van spolie the right remedy

[9] KLM submitted that GEI could not obtain an order it did through a *mandanent van spolie*. In *Eskom Holdings SOC Ltd v Masinda* 2019 (5) SA 386 (SCA) at para 22 it was said:

“[22] As was pointed out in *Zulu*, the occupier of immovable property usually has the benefit of a host of services rendered at the property. However, the cases that I have dealt with above graphically illustrate how, in the context of a disconnection of the supply of such a service, spoliation should be refused where the right to receive it is purely personal in nature. The mere existence of such a supply is, in itself, insufficient to establish a right constituting an incident of possession of the property to which it is delivered. In order to justify a spoliation order the right must be of such a nature that it vests in the person in possession of the property as an incident of their possession. Rights bestowed by servitude, registration or statute are obvious examples of this. On the other hand, rights that flow from a contractual nexus between the parties are insufficient as they are purely personal, and a spoliation order, in effect, would amount to an order of specific performance in proceedings in which a respondent is precluded from disproving the merits of the applicant's claim for possession. Consequently, insofar as previous cases may be construed as holding that such a supply is in itself an incident of the possession of property to which it is delivered, they must be regarded as having been wrongly decided.”

In *Ngqukumba v Minister of Safety and Security* 2014 (5) SA 112 (CC) at para 21 it was said:

“[21] Possession of the vehicle by the applicant pursuant to its return in terms of a court order would be unlawful only if it were established that he did not have lawful cause to possess it. That is a conclusion that can only be reached after an enquiry into the facts surrounding the applicant's possession. Before that enquiry, one is not in a position to say the applicant's possession of the vehicle will be unlawful — it may or may not be, depending on the result that the enquiry would yield. The question that arises is: in proceedings for a spoliation order, is it proper to hold that enquiry? I say not. That would be enquiring into the merits of the lawfulness of the applicant's possession. Those merits are irrelevant in proceedings for a spoliation order: the despoiler must restore possession *before all else*. Self-help is so repugnant to our constitutional values that where it has been resorted to in despoiling someone, it must be purged before any enquiry into the lawfulness of the possession of the person F despoiled. Earlier I made the point that restoration of possession may even be to a person who might eventually be shown to be a thief or robber. The return to the applicant of the tampered vehicle, which may be possessed lawfully, is no different.”

[10] GEI was in possession and was wrongly deprived of that possession against its wishes and had a right to be restored in possession *ante omnia* [*Scoop Industries (Pty) Ltd v Langlaagte Estate and GM Co Ltd (In Vol Liq)* 1948 (1) SA 91 (W). No one is permitted to dispossess another forcibly or wrongfully and against his consent of the possession of the property and if he does so, the court will summarily restore the *status quo ante* as a preliminary to any investigation into the merits [*Nino Bonino v De Lange* 1906 TS 120]. The remedy is meant to preserve orderly judicial processes and does not secure any substantive rights. In considering the requisites of possession in the context of *mandament van spolie* as a remedy, the Court should consider *inter alia* the question whether the relationship between the person deprived and the thing was such as to require protection in the interests of public order [*Ross v Ross* 1994 (1) SA 865 (SE) at 870D]. As indicated in *Ngqukumba* the subject of the act of spoliation must be restored to the party from whom it was taken irrespective of the question as to who is entitled in law to be in possession of such property. It was not open to KLM to utilize a dispute between them and GEI as the basis on which to terminate the electricity supply to the Mall and its tenants.

[11] Unresolved disputes are pending and the substance of the dispute forms part of the review application in which the parties were involved. KLM cannot use disconnecting electricity as a strategy to enforce payment notwithstanding yet to be determined disputes. The disputes between KLM and GEI are to be determined by the review pending review application which includes the application of the Tariff Policies of KLM. Disconnection cannot be used to gain some undue tactical or strategical advantage to pending litigation. KLM did not complain about urgency

or that there was no imminent harm. The established principle is that in order to justify a spoliation order the right must be of such a nature that it vests in the person in possession of the property as an incident of their possession [*Masinda* para 15]. Depending on the circumstances, the supply of electricity may be recognized as an incorporeal right, the possession of which is capable of protection under the *mandament van spolie* [*Masinda* para 14]. KLM was obliged to provide electricity to GEI [*Mkontwana v Nelson Mandela Metropolitan Municipality and Another; Bisset and Others v Buffalo City Municipality and Others; Transfer Rights Action Campaign and Others v LEC, Local Government and Housing, Gauteng and Others (KwaZulu-Natal Law Society and Msunduzi Municipality and Amici Curiae)* 2005 (1) SA 530 (CC) at para 38; *Joseph and Others v City of Johannesburg and Others* 2010 (4) SA 55 (CC)].

[12] In *Joseph* at para 34 was said:

“The 'right' to receive electricity as a basic municipal service

[34] The provision of basic municipal services is a cardinal function, if not the most important function, of every municipal government. The central mandate of local government is to develop a service delivery capacity in order to meet the basic needs of all inhabitants of South Africa, irrespective of whether or not they have a contractual relationship with the relevant public-service provider. The respondents accepted that the provision of electricity is one of those services that local government is required to provide. Indeed they could not have contended otherwise. In *Mkontwana* Yacoob J held that 'municipalities are *obliged* to provide water and *electricity* to the residents in their area *as a matter of public duty*'. Electricity is one of the most common and important basic municipal services and has become virtually indispensable, particularly in urban society.”

The court in *Joseph* made it clear that the obligations of local government, like KLM, includes to provide basic municipal services including electricity and that those obligations derived from the objects of local government in section 152 of the Constitution and the developmental duties of municipalities set out in section 153 of the Constitution rad with the relevant provisions of the Municipal Systems Act. GEI is also correct to draw in the Electricity Regulation 4 of 2006 (the ERA) into the equation, as containing provisions that give effect to the constitutional duty of municipalities to supply electricity to their residents. From the statutory and constitutional provisions, GEIs right to electricity is not based solely on the contractual right but is also underpinned by the constitutional and statutory provisions [In *City of Cape Town v Strumpher* 2012 (4) SA 207 (SCA) at para 10]. At para 15 in *Strumpher* the court held that the insistence of a Municipality on payment when a debtor was involved in a dispute with the Municipality over the amounts allegedly due, flew in the face of fairness and equity. The *mandament van spolie* was the appropriate remedy under the circumstances.

[13] KLM cannot be allowed to wield its power and force its residents to pay contested accounts, without following statutory provision to resolve those disputes. KLM must deal with the underlying disputes and resolve them. Where the processes are already underway and litigation is pending, KLM must respect judicial proceedings instead of taking obfuscatory approaches. It's taking of spurious and rejected arguments as jurisprudence relied upon is worrying. KLM must trad carefully when it deals with rights and cannot be a bewildered litigant. For these reasons I make the order.

DM THULARE

JUDGE OF THE WESTERN CAPE