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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number 2024-103925

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE 24 March 2026

SIGNATURE

In the matter between:

FIREFLY INVESTMENTS 288 (PTY) LTD

Applicant

and

**THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

First Respondent

JOHANNESBURG WATER (SOC) LTD

Second Respondent

JUDGMENT

AMIEN AJ:

Introduction and Background

[1] This is an application for leave to appeal against the order that I made on 15 September 2025, which provides:

- “1. The Applicant is granted leave to file its Supplementary Affidavit dated 5 September 2025;
2. In relation to municipal account 5[...] (“the Account”):
 - 2.1. The Respondents are, within 14 (Fourteen) days of service of this order, [to] take the necessary action to ensure that adjustments are made to the Account, which include but are not limited to the following:
 - 2.1.1. Reverse the water consumption and sewer charges for the period July 2018 to April 2024;
 - 2.1.2. Rebill the water consumption and sewer charges for the period July 2018 to April 2024, by applying the mixed-use tariff;
 - 2.1.3. Attend to the Property known as Erf 8[...], Kew situated at 1[...] T[...] Road, Kew (“the Property”) to install a residential water meter for the residential component of the Property, and implement the split meter for the reading of water consumed at the Property;
 - 2.1.4. Rebill the water consumption and sewer charges for the period April 2024 to date of rebill using the commercial tariff in relation to the commercial meter, and the residential tariff in relation to the residential meter; and
 - 2.1.5. Reverse any/all ancillary charges, interest, and legal fees (or miscellaneous fees where these were charged for legal work done or notices sent out) ... from the Account, in respect of charges that stand to be written off.
 - 2.2. The Respondents are to furnish the Applicant with a detailed statement of account showing that the above adjustments have been attended to, with suitable notations appearing on the fact of the Account, such that it is possible for the Applicant to verify the accuracy thereof.
 - 2.3. The First Respondent and its subsidiaries may not terminate/restrict or

threaten to terminate/restrict the supply of electricity or water to the Property, in respect of purported arrears on the Account, until this dispute is finally resolved by the account having been adjusted as aforesaid.

3. The costs of the application be borne by the Respondents on the scale as between attorney and client.”

[2] For the purpose of this application, I hereafter refer to the Respondents as the “Applicants”, and the Applicant as the “Respondent”.

[3] At the hearing of 15 September 2025, Mr Sihawu, appearing for the Applicants, informed the Court that an Answering Affidavit containing a request for condonation had been filed on 12 September 2025, one court day before the hearing. He advised that the reason for the delay in filing the Answering Affidavit was that the Applicants thought the matter would be settled out of court and requested that the matter be removed from the unopposed roll and placed on the opposed roll.

[4] Mr Paige-Green, appearing for the Respondent, objected to the Applicants’ request and advised that the Applicants had defied a previous court order to timeously file their Answering Affidavit with a substantive Condonation Application and that no effort had been made on the part of the Applicants to settle the matter out of court through the scheduling of a debatement meeting.

[5] Mr Sihawu informed the Court that the debatement meeting was delayed by the Respondent not having fully completed the application form for a tariff change. However, Mr Paige-Green advised that the scheduling of the debatement meeting did not depend on the form being completed.

[6] The previous court order referred to in para [4] above was delivered by agreement between the parties, by my brother Justice Wright arising from a hearing on 7 May 2025 (“first main application”). The order (“Wright Order”) reads:

- “1. The matter is removed from the roll;
2. The Respondents are to file their Answering Affidavit within 15 (fifteen) days of the handing down of this order along with a substantive Condonation Application;
3. The parties are to arrange and attend a debatement meeting in respect

of the Applicant's account within 15 (fifteen) days of the expiry of the time period of prayer 2 *supra*.

4. Should the Respondents fail to comply with prayer 2 and/or 3 *supra*, the Applicant may set the matter down on the unopposed roll, on duly supplemented papers if necessary, for an order in the ordinary course;
5. The First Respondent and its subsidiaries may not terminate/restrict or threaten to terminate/restrict the supply of electricity or water to the Property, in respect of purported arrears on the Account, until this dispute is finally resolved;
6. The costs of the application are borne by the Respondents on the party party scale B including costs of counsel."

[7] On 22 September 2025, the Applicants filed a request for reasons for my order.

[8] I delivered reasons on 27 September 2025, which was uploaded onto CaseLines on 29 September 2025. Therein I noted:

"When asked by the court why the Answering Affidavit and Condonation Application had not been filed in compliance with the court order of 7 May 2025, the legal representative for the Respondents was unable to provide a cogent reason."¹

[9] I also noted:

"The Answering Affidavit does not provide any reason for the late filing of the affidavit. It simply contains one paragraph addressing condonation, which reads (at paragraph 7):

"To the extent that this answering affidavit was not delivered in accordance with the timelines as set out in the Notice of Motion, the City seeks condonation from this Honourable Court."²

[10] I concluded that,

"... the Respondents failed to provide adequate grounds for their late filing [of their Answering Affidavit] required by the previous court order and up to the date of the hearing on 15 September 2025, and they did not provide a

¹ Para 8 of the Reasons for the Order.

² Para 10 of the Reasons for the Order.

substantive condonation application for the late filing of the Answering Affidavit.”³

[11] I therefore did not condone the late filing of the Answering Affidavit and proceeded to determine the matter on an unopposed basis.

Arguments for leave to appeal

[12] The Applicants sought leave to appeal my order on the basis that I misdirected myself in two main respects:

- a) by proceeding with the matter on an unopposed basis; and
- b) in determining the basis for condonation.

[13] The Applicants argue that their Answering Affidavit was filed with a substantive Condonation Application and therefore the matter was fully opposed and should not have been treated as unopposed.

[14] The Applicants directed the Court to paras 9.9.1.1.1. and 9.9.4.1-2 of the Practice Manual, and paras 26.12-13 of the Consolidated Practice Directives.

[15] Para 9.9.1.1.1. of the Practice Manual defines an unopposed motion as one,

“... in which the Respondent has failed to deliver and (sic) answering affidavit and has not given notice of an intention only to raise a question of law (Rule 6(5)(d)(iii)) or a point *in limine*.”

[16] Para 9.9.4.1 of the Practice Manual provides,

“Where the Respondent has failed to deliver an answering affidavit and has not given notice of an intention only to raise a question of law (Rule 6(5)(d)(iii)) or a point *in limine*, the application must not be enrolled for hearing on the opposed roll. Such an application must be enrolled on the unopposed roll.”

[17] Where such an application (referred to in para 9.9.4.1) becomes opposed thereafter, para 9.9.4.2. of the Practice Manual requires “the Judge hearing the matter ... [to] give the necessary directions for the future conduct of the matter.”

[18] Para 26.12. of the Consolidated Practice Directives provides,

³ Para 11 of the Reasons for the Order.

“A Respondent who, despite being late to do so, wishes to oppose the granting of an order, must communicate that fact by uploading the necessary notice to the casefile on CaseLines / Court Online and by email to the secretary of the allocated Judge, with all other parties copied into all email correspondence, and otherwise comply with this directive.”

[19] When the opposition becomes known to the attorney for the applicant, para 26.13. of the Consolidated Practice Directives requires them to communicate the fact of the opposition to the Judge, regardless of the merits of the opposition.

[20] In essence, the relevant paragraphs of the Practice Manual and Consolidated Practice Directives, read together, require a Judge to give the necessary directions for the future conduct of the matter when in an unopposed application, a Respondent files a notice of opposition to the matter. In the first main application that was heard by my brother Justice Wright on 7 May 2025, that notice was filed on 9 October 2024.

[21] The Respondent argues that the Applicants failed to abide by prayers 2 and 3 of the Wright Order, compelling it to avail itself of prayer 4 of the order, to set the matter down on the unopposed roll with duly supplemented papers, and this is how the matter came before me on 15 September 2025 (“second main application”).

[22] Mr Sihawu, appearing for the Applicants, contended that as soon as the Answering Affidavit was filed, the matter became opposed and that I then needed to “give the necessary directions for the future conduct of the matter” in terms of para 9.9.4.2. of the Practice Manual. By this, Mr Sihawu means that I should have removed the matter from the roll and ordered that it be placed on the opposed roll.

[23] Mr Sihawu’s contention incorrectly presupposes that a Practice Directive overrides the discretion given to a court in terms of Rule 27(3) of the Uniform Rules of Court to condone non-compliance with the Rules if good cause is shown.

[24] As my brother Justice Moshwana pointed out in *Sakeliga NPC v Minister of Cooperative Governance and Traditional Affairs and Others*,⁴

“[I]t must be emphasised that no judge is bound by practice directives. Accordingly, the Practice Manual is not intended to bind judicial discretion.”

[25] Mr Sihawu’s contention must also presuppose that I granted condonation for the late

⁴ (132918/2023) [2024] ZAGPPHC 885 (12 September 2024) para 9.

filing of the Applicants' Answering Affidavit. If I had done that, then I would have ordered the matter to be removed from the roll and placed on the opposed roll. But I did not accept the Applicants' reasons for the late filing of their Answering Affidavit. I did not find that good cause had been shown for the Applicants' non-compliance with the Uniform Rules of Court and accordingly did not grant condonation. Since the Answering Affidavit was not properly before me, I proceeded to hear the matter on an unopposed basis.

- [26] In terms of the Wright Order, the Applicants should have filed their Answering Affidavit with a substantive Condonation Application by 28 May 2025 and scheduled a debatement meeting by at least 19 June 2025.
- [27] Mr Paige-Green argued that the Applicants failed to abide by the Wright Order by not filing a substantive Condonation Application and by not filing it by the ordered *dies*.
- [28] The Respondent interprets a substantive Condonation Application as comprising a Notice of Motion per Rule 6 of the Uniform Rules of Court. While the Applicants' Answering Affidavit included some paragraphs dealing with their request for condonation of the late filing of their Answering Affidavit, it was not accompanied by a Notice of Motion.
- [29] Mr Paige-Green also argued that the Applicants flouted the Wright Order by not filing their Answering Affidavit by 28 May 2025 and instead were late in filing it by 76 court days. This is almost four and a half months later, and one court day before the second main hearing on 15 September 2025.
- [30] Mr Sihawu interprets a substantive Condonation Application as merely requiring a reference to condonation with substantive reasons for the delay being included in the Answering Affidavit. He argues that this has become accepted practice in this division.
- [31] Regardless of which interpretation of a "substantive Condonation Application" is correct, the main reason for my not condoning the late filing of the Answering Affidavit is that I did not accept the reason for the delay as cogent and reasonable.
- [32] Mr Sihawu argued that the Court erred by not fully considering the Applicants' Condonation Application. He correctly points out that my written reasons for the order refer only to para 7 of their Answering Affidavit and did not mention paras 63 to 72 thereof, which also deal with condonation. However, as I explain below, these

paragraphs do not provide substantive and cogent reasons for the delay in filing the Answering Affidavit and did not take the reason provided by Mr Sihawu much further.

[33] In para 63 of their Answering Affidavit, the Applicants explain that their

“... failure to deliver an affidavit timeously was due to the Municipality hoping that the Respondent would be willing to complete the tariff change application and have the matter dealt with out of court”.

[34] In amplification thereof, Mr Sihawu argued that the delay in filing the Answering Affidavit was because the Applicants thought that the parties would settle out of court through the convening of a debatement meeting and that the scheduling of the meeting depended on the Respondent fully completing the tariff change application form, which had not been done.

[35] Paras 64-72 of the Answering Affidavit in essence contain an apology for the delay and prejudice caused to the Court, and argue that: the interests of justice dictate that the affidavit be accepted; late delivery of the affidavit would not prejudice the Respondent; the balance of convenience does not favour the Respondent; and the Applicants would be prejudiced if condonation was not granted. None of these paragraphs expand on the reason provided in para 63 for the late filing of the Answering Affidavit or offer any other reason.

[36] Mr Paige-Green advises that failure by the Applicants to timeously file their Answering Affidavit because they believed the matter would be settled out of court is misplaced because the Wright Order required the Applicants to comply with the order regardless of extraneous discussions occurring or not occurring.

[37] Mr Paige-Green also argued that the debatement meeting did not depend on the completion of the application form for tariff change. As Mr Sihawu himself informed the Court, the application for change of tariff impacts on future tariffs, not past tariffs, while the debatement meeting would have considered past billings for the purpose of possible rebilling of past service usage.

[38] It is also clear from correspondence⁵ by the Respondent's attorneys that they requested a date and time for the debatement meeting from the Applicants on several occasions including 21 and 26 May 2025, 15 and 25 July 2025, and again on 14 and

⁵ CaseLines 011-11 – 011-15.

18 August 2025. On 18 August 2025, the Applicants advised that their attorney (copied in their response) would revert to the Respondent. By 19 August 2025, the Respondent's attorney informed the Applicants that they had still not heard from the Applicants' attorney. In correspondence by the Applicants' attorney to the Respondent's attorney dated 30 May 2025, the Respondent's attorney is advised that the application form for tariff change was incomplete and requested that it be completed in full. In that same correspondence (of 30 May 2025), the Applicants' attorney advised that they were in the process of finalizing their investigation and would provide a date for the debatement meeting *during the coming week* (my emphasis).

[39] From the correspondence referred to above, it is clear that the debatement meeting was never scheduled. In fact, Mr Paige-Green informed the Court on 15 September 2025 that up until that date, no debatement meeting had been scheduled by the Applicants. By the date of the hearing for application for leave to appeal, one had still not been scheduled.

[40] It does not appear that the scheduling of the debatement meeting depended on the tariff change application form being fully completed because if this was the case, the Applicants would have advised the Respondent about this condition. Yet, nowhere in their correspondences do the Applicants inform the Respondent that the scheduling of the debatement meeting depends on the completion of the tariff change application form. In fact, even when the Respondent repeatedly asked in their correspondences for the Applicants to advise when the debatement meeting would be scheduled, the Applicants, in their response dated 30 May 2025 simply advised that their investigation was still being finalised and they would provide a date for the debatement meeting *in that coming week* (my emphasis). A reasonable inference can be drawn from the correspondences that the scheduling of the debatement meeting did not depend on the completion of the tariff change application form otherwise the Applicants would have indicated in their correspondences of 30 May 2025 and 18 August 2025 that the debatement meeting could not be scheduled until the tariff change application form was first fully completed.

[41] So, I did not then and still do not accept the reason advanced by the Applicants for their substantive delay in filing their Answering Affidavit as cogent and based on good cause. There was no good reason for the Applicants to defy prayers 2 and 3 of the

Wright Order. I therefore exercised my judicial discretion as per Rule 27(3) of the Uniform Rules of Court by not condoning the Applicants' non-compliance with the time rules for the delivery of their Answering Affidavit as per the Wright Order and gave the necessary direction for the matter to proceed on an unopposed basis.

[42] Mr Sihawu argued that by not allowing the matter to proceed on an opposed basis, the Applicants were denied their right to *audi alteram partem*. However, this was brought about by their own wrongdoing by filing a substantially late Answering Affidavit with a Condonation Application that did not provide a reasonable basis for the delayed filing of their Answering Affidavit.

[43] Mr Sihawu further argued that by granting the order, this Court overstepped its judicial exercise and interfered in the Applicants' exercise of its administrative functions. I do not agree. In granting the order, this Court simply required the Applicants to put in place practical measures to among others, install a split meter reading system, enable a correct rebilling for the period July 2018 to date, and reverse charges that stand to be written off. The necessary rebilling exercise would still need to be undertaken by the Applicants. None of these involve an intrusion into the Municipality's executive powers, including its policy regarding tariff changes.

[44] The Applicants referred this court to *Malakite Body Corporate and Another v City of Johannesburg Metropolitan Municipality and Another*,⁶ to support its argument that "actual use takes precedence over zoning for tariff classification purposes".⁷ But that is to my mind precisely what the Respondent asked for in its application – for actual use of services to be billed. It should also be noted that the facts of the *Malakite* case are distinguishable from this matter. In *Malakite*, the appellants were not asking for a hybrid approach to be adopted using a split meter system. They wanted their property to be billed as residential only, even though it had two units serving as Lifestyle Centres, both with a restaurant and a gym. In this application, the Respondent is asking the Applicants to install a split meter system so that they can be charged for actual usage of the municipality's services: a residential meter for residential usage and a commercial/business meter for business usage. The Applicants do not dispute that a split meter reading system should be installed on the Respondent's property.

[45] Also in their Answering Affidavit, the Applicants argued that the late delivery of the

⁶ (A2023/050651) [2024] ZAGPJHC 397 (15 April 2024) para 17; (832/2024) [2025] ZASCA 192 (15 December 2025).

⁷ Para 39.2.2. of the Applicant's Heads of Arguments.

Answering Affidavit would not prejudice the Respondent because they continue to receive uninterrupted services, they continue to consume services without making payment, and therefore the balance of convenience does not favour the Respondent and the interests of justice require the matter to proceed on an opposed basis.⁸

[46] I have already established that the Applicants did not provide good cause for the late filing of their Answering Affidavit in defiance of the Wright Order. All that the Applicants needed to do was schedule the debatement meeting and the matter may have been settled prior to the second main hearing of 15 September 2025. But the failure of the Applicants to adhere to the Wright Order compelled the Respondent to invoke prayer 4 of the order and set the matter down for a second time on the unopposed roll. Thus, the interests of justice would not have been served if the late filing had been condoned. Instead, doing so would have resulted in a waste of more court time and resources, more costs for the taxpayer as a result of continued litigation proceedings, and greater costs for the Respondent. The latter includes the fact that the longer it takes for this dispute to be resolved, the more charges are incurred by the Respondent for service delivery, and for those charges that do not get written off, the Respondent will be liable for interest. Therefore, it is not correct for the Applicant to say that the Respondent is not prejudiced because the failure by the Applicant to comply with the Wright Order continues to prejudice the Respondent and this prejudice will continue until this dispute is resolved.

Test for leave to appeal

[47] S 17(1) of the Superior Courts Act 10 of 2013 provides,

“Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

(a)

- (i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be

heard, including conflicting judgments on the matter under consideration;

⁸ Paras 65-72 of the Answering Affidavit.

- (b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and
- (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.”

[48] Section 16(2)(a) of the Superior Courts Act reads,

- “(i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.
- (ii) Save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.”

[49] In *MEC for Health, Eastern Cape v Mkhitha*,⁹ the Supreme Court of Appeal (SCA) confirmed the test for leave to appeal enunciated in s 17(1)(a) of the Superior Courts Act:

“... leave to appeal, ... must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal *would* have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or 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.”

[50] Elaborating on its understanding of the test, the SCA in *Ramakatsa and Others v African National Congress and Another*¹⁰ explains:

“If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal

⁹ [2016] ZASCA 176 paras 16-17.

¹⁰ (724/2019) [2021] ZASCA 31 (31 March 2021) para 10.

should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates 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 other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.”

[51] It is my considered view that for the reasons provided in this judgment, a court of appeal will not reasonably arrive at a different conclusion. There is thus no reasonable prospect of success on appeal and there is no compelling reason why the appeal should be heard.

[52] I am also of the view that s 17(1)(b) and (c) do not apply. While Mr Sihawu argued that this Court’s orders do not have practical effect because they cannot change the tariff policy of the Applicants, as explained previously, my orders do not impact on the tariff policy of the Applicants and will have practical effect for the Respondent. Furthermore, my orders result in the disposition of all the matters raised in this case.

Conduct of the Applicant

[53] In *Millu v City of Johannesburg Metropolitan Municipality and Another*,¹¹ my brother Justice Sutherland takes the Johannesburg Municipality to task for flouting a court order by failing to file heads of arguments and not submitting an application for condonation.¹²

[54] In the present case, the Applicants did file an Answering Affidavit, but almost literally in the eleventh hour with a brief explanation by way of seeking condonation for the late delivery and filing of the affidavit. Their conduct was thus an abuse of court process and reveals a flagrant disregard for the authority of the court.

[55] Court orders are not there for the picking and choosing for parties to decide if or when they should adhere to an order, especially when the order contains explicit

¹¹ (25039/2021) [2024] ZAGPJHC 419 (18 March 2024); supplemental judgment: (25039/2021) [2024] ZAGPJHC420 (29 April 2024).

¹² Para 11.

timelines as was the case in the Wright Order. A one-line apology in an Answering Affidavit does not suffice, particularly without providing substantive reasons for failing to adhere to a court order. There was no good reason for the Applicants to have not respected and followed the Wright Order.

Costs

[56] The Respondent asks that the application be dismissed with punitive costs.

[57] Costs follow suit and given the conduct of the Applicant in flagrantly ignoring a court order, will be on a punitive scale. My order is thus as follows:

Order

[58] The application for leave to appeal is dismissed with costs on an attorney-client scale B.

AMIEN W
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances

For the Applicants: V Sihawu
Instructed by: Kunene Ramapala Inc.

For the Respondent: T Paige-Green
Instructed by: Boruchowitz Attorneys