



IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NUMBER: 2025-049909

In the matter between:

MARGARET ALOYSE SHAYO & OTHERS

APPLICANTS

Versus

HARRY GWALA DISTRICT MUNICIPALITY

FIRST RESPONDENT

MUNICIPAL MANAGER:

HARRY GWALA DISTRICT MUNICIPALITY

SECOND RESPONDENT

JUDGMENT

P C BEZUIDENHOUT J:

[1] Applicant brought and urgent application which was filed on 9 April 2025 claiming certain relief in terms of Part A of the notice of motion. The certificate of urgency was signed on 7 April 2025 and the matter was set down on 15 April 2025.

[2] In the notice of motion it seeks relief that pending final determination of the order in Part B the water supply be restored to nine properties namely 2[...] C[...] Street, 4[...] C[...] Street, 6[...] H[...] Street, 5[...] B[...] Street, 3[...] S[...] Street, 7[...] H[...] Street, [...] V[...] Drive, 4[...] T[...] A[...] and 7[...] S[...] J[...] Street. All these properties are situated in Kokstad. The sought relief is that Respondents be restrained from terminating or disconnecting the water supply and that they should pay the costs on an attorney and client scale.

[3] The application was opposed by Respondents who firstly raised the issue of urgency that the matter was not urgent and if there was any urgency it was self created.

[4] On 15 April 2025 when the matter was before court and opposed by Respondents it was adjourned to 24 April 2025. It was ordered that Applicants file their heads of argument by 22 April 2025 and Respondents by 23 April 2025. There is no indication on the papers nor was any explanation provided as to what happened on 24 April 2025. Applicants filed their heads of argument on 23 April instead of 22 April 2025. There is no indication on the papers nor were there any submissions that the matter was either removed from the roll or adjourned on 24 April 2025. The next date that can be determined from the papers is that on 12 January 2026 a notice of set down was filed for the matter to be heard on 21 January 2026 on the opposed roll. This is approximately 9 months after the application was launched.

[5] Accordingly considering these facts and the time period that has lapsed it would appear to me that the question of urgency is now academic and is no longer an issue in this matter. It is therefore not necessary to give further consideration to the issue of urgency. If the matter was indeed urgent it would have been heard on 24 April 2025 the date to which it was adjourned in respect of the interim relief which was being sought.

[6] It is still argued at this stage that the only relief which is sought is that of the interim relief in Part A of the notice of motion.

[7] It is contended by Applicant that on 17 January 2025 officials of First Respondent disconnected the water without notice at 2[...] C[...] Street, Kokstad. There were quests at the premises at the time. Her requests that it not be disconnected were ignored. The officials then went to the other properties mentioned in annexure S1 a letter dated 26 March 2025 to the Municipal Manager. The properties therein are 6[...] H[...] Street, 5[...] B[...] Street and 3[...] S[...] Street. All of these premises are bed and breakfast establishments and had guests at the time.

[8] In paragraph 9 of the founding affidavit she indicates that she is the owner of nine properties. After the water supply was disconnected at the said four properties she obtained the services of a private plumber to restore the water. No indication is given of the exact time lapse that this occurred. Prepaid water metres have been installed at the said properties since the year 2021 to 2022.

[9] On 12 March 2025 officials of First Respondent returned and removed all connecting pipes at the said four properties and meter reading pipes at the other properties. She carried on by supplying water out of her own from 17 January 2025 until 12 March 2025. It is submitted that the issue is one of *mandament van spolie* to restore the status quo as she has a right of access to water in terms of section 27 of the Bill of Rights.

[10] Further she had to be given adequate notice of any termination and that this was not done.

[11] Applicant deals with the question of urgency which I have already dealt with and that the balance of convenience favours her that she has a clear right and no alternative remedy. Attached to her affidavit were also affidavits of employees.

[12] The answering affidavit of Respondents was filed on 15 April 2025 when the matter was set down for the first time and thereafter adjourned to 24 April 2025.

[13] It is contended that all the properties are commercial properties as they are bed and breakfasts and that Applicant in actual fact owns ten properties and not nine. Only four were disconnected on 16 January 2025 namely the ones mentioned in annexures SM1 and paragraph 2 above. This was due to outstanding arrears. In March 2025 the four properties were inspected by officials of First Respondent and it was found that the water at said properties had been reconnected. The four properties which had previously been disconnected were then disconnected again due to tampering. It was then established that at the other six properties, the water meters were bypassed they had been tampered with and were illegal. The job cards for the disconnections are attached to the said affidavit. The four properties were disconnected the second time on 7 March 2025 because of the unlawful connection that had taken place. Mention is made of the Water Services Act 108 of 1997 (The Act) and it is contended that if the water connections have been tampered with then the service can be discontinued without further notice.

[14] It was further submitted that in respect of the four properties mentioned notice of disconnection were provided to Applicant on 20 November 2024. It was further contended that an amount of R2 175 707.49 was still due and owing and payable by Applicant to First Respondent. It also set out that in terms of section 4(2)(C)(iv) of the Act the supply of water can be disconnected, the procedure to be followed and further that the user must pay a reasonable charge for the supply of water. In terms of the Water Bylaws of First Respondent no one was allowed to interfere with the water meter or disconnect it and that only First Respondent or the Municipality was entitled to connect water services. No person may reconnect any installation if the

water has been restricted or disconnected. No payment arrangements were made for the prepaid metres. The disconnection notices were for the said four properties.

[15] It was submitted by Applicant that the notice in respect of the four said properties was in dispute and that there was accordingly a dispute of fact in that regard. It was further submitted that the amounts which First Respondent was demanding from Applicant had prescribed as in term of the Prescription Act charges for the supply of water would prescribe after a period of 3 years. Further that it was a *mandament van spolie* to restore unlawfully deprived possession of the water.

[16] It was further submitted that there could be a counter spoliation and that is what was the position in the present case as Applicant had after the water had been disconnected obtained the services of a plumber to restore and reconnect the water supply. The counter spoliation was therefore justifiable. Further submissions were made in respect of urgency but as I have stated due to the lapse of time the question of urgency is longer an issue.

[17] It was submitted on behalf of Respondents that Applicant based its application on its constitutional right to the provision of water and that no notice was given before the water services were terminated. It was submitted that the properties were bed and breakfast properties were thus commercial of nature with substantial arrears. Proper notice was afforded to Applicant for termination of the four properties. They were thereafter unlawfully reconnected and then together with six other properties that were found to have been unlawfully bypassed then disconnected. It was submitted that no notice was necessary where an unlawful connection or reconnection had been done. It also addressed the issue of urgency which I have already dealt with. It was submitted that the Court should not come to the assistance of Applicant based on their own unlawful acts. It was further submitted that there was no real explanation in the affidavit of Applicant as to the disconnection of the six properties which were found to have bypassed the water meters and thus unlawful water connections.

[18] It was submitted that the counter spoliation application were mutually exclusive. The issue of prescription was only raised in the replying affidavit and that a case had to be made out in the founding papers.

[19] The facts in this case are mostly common cause. Firstly in its notice of motion Applicant seeks the reconnection of nine properties. In the founding affidavit Applicant states that she is the owner of nine properties but makes no mention of the disconnection of the water in the other five properties. In the answering affidavit it is set out that Applicant is in actual fact the owner of ten properties and owes a substantial amount to First Respondent.

[20] Applicant contends that she is seeking a *mandament van spolie* to restore the water to her properties. The first contention is that notices were not provided that the water was to be disconnected. In the answering affidavits of Respondents this is dealt with and the four notices that were sent to her in respect of the said four properties are attached. They were served at the premises during November 2024. Although there may be a dispute as to whether there was personal service there is nothing that I could find that there needs to be personal service on her but it is not in dispute that the said notices were served at the said premises and in my view that was sufficient. The water was then disconnected during January 2025. Applicant on her own admission thereafter obtained the services of a plumber to reconnect the water on the four properties. During March 2025 Respondents did an audit and established that the water to the four properties had been illegally restored and the water was then disconnected again. An audit of the other properties of Applicant was then done and it was established that in respect of the other six properties water was connected to the premises by bypassing the water meters. It was therefore illegal connections and the water was then accordingly disconnected.

[21] The issue of prescription as set out was raised for the first time in the replying affidavit. It is a well known fact that an applicant must make out a case for the relief

sought in the founding papers. Further Applicant states that water metres were installed in 2021 to 2022. No specific date is given and further it was in 2024 that the notices were served. It is accordingly not clear whether at that stage the issue of prescription had arisen or not. It is indeed so that at this stage there is not an action to claim the arrears from Applicant and that the issue of prescription can then be raised at that stage. However with the information placed before the Court it is not an issue to be decided at this stage and it is also not possible to determine whether any of the claims for water have prescribed.

[22] The disconnections of all the water connections during March 2025 were due to illegal connections and not due to outstanding payments.

[23] Section 4(1)(2) of the Act deals with the provision of water and in section 4(2)(c)(iv)(v) the circumstances under which water services may be limited or disconnected and the procedures for continuing water services are provided for. The water services bylaws of First Respondent also deals in paragraph 8 with the disconnection of water installation from collection pipes and that water may be disconnected and pipes removed in terms of the Credit Control and Debt Collection Policy and also in terms of paragraph 17 referring to unauthorised services in paragraph (b) deals with the disconnection of the services. In paragraph 71 it deals with the issue that no other person than a municipal official shall make a connection to infrastructure to which water services are provided. It further provides in paragraph 75 that no customer whose access to water supply has been restricted or disconnected may reconnect the services without the approval of the municipality.

[24] Applicant relies upon the counter spoliation as she admits that she reconnected the water supply after it had been disconnected by First Respondent. Firstly the conduct by reconnecting the water supply was illegal and could not have been done by a private individual. Secondly the issue at this stage, in my view on a reading of the papers, is not the initial disconnection of the water connection during January 2025 but the disconnection during March 2025. This in my view is apparent

from the fact that when the water supply was disconnected during January 2025 Applicant took no further steps but only took steps to bring an application after the water supply to the various properties had been disconnected during March 2025. The issue therefore in this case from a reading of the papers is the illegal connections that were made at all the properties of Applicant and the disconnections during March 2025. Firstly the four properties referred to earlier were reconnected by a plumber and secondly the other six properties it was found that the water meters had been bypassed.

[25] The issue of a counter spoliation, in my view, does not arise in this situation as the reconnection was illegal as appears from what is set out above and Respondents were accordingly entitled to disconnect the water supply during March 2025 which only then initiated this application.

[26] However dealing with the issue of a counter spoliation the requirements therefore are set out in the case of *City of Cape Town v South African Human Rights Commission and Others* 2024 (5) SA 368 (SCA) in paragraph 38. It sets out therein that counter spoliation is not unconstitutional and remains part of our law. However it continues and ‘However, it must do so instantler, within a narrow window period, during which counter spoliation is legally permissible. The window closes and the recovery is no longer instantler when the dispoiler’s possession of the land is perfected. Thereafter the city must not breach the right to privacy enshrined in section 14(c) of the Constitution.’ In the present case the disconnection had been completed and it was only sometime thereafter that it was reconnected. Therefore it does not, in my view, fall within the requirements of a counter spoliation requirement.

[26] Counter spoliation is also set out clearly in the *Law of Property Silberberg and Schoeman* 5th Edition at page 306 as follows:

“As a general rule a possessor who has been unlawfully disposed cannot take the law into his or her own hand to recover possession. Instead, he or she will have to make use of one of the remedies provided by law, for example the

mandament van spolie. But if the recovery is forthwith (instanter) in the sense of being still part of the act of spoliation then it is regarded as a mere continuation of the existing breach of the peace and is condoned by the law. This is known as counter spoliation (contra spolie). However, if a victim of a first act of spoliation fails to act forthwith and takes the law into his or her own hands to regain possession after the dispossession has been consequently completed, his or her conduct would constitute a new breach of the peace and would be regarded as a separate act of spoliation, entitling the first spoliator to a spoliation order against him or her.”

Accordingly as set out in this case that was indeed what the position was as it was illegally reconnected some time later and therefore First Respondent was entitled to disconnect the water supply.

[28] Accordingly in my view Applicant has failed to make out a case for the relief which is being sought in Part A of the notice of motion. Respondents were fully entitled to disconnect all the water supplies due to the conduct of Applicant.

[29] As set out I was only asked to deal with the relief in Part A of the notice of motion which is for interim relief and not for the relief in Part B. However paragraph 8 of the notice of motion which falls under part B of the notice of motion is framed that the interim order is granted by the court and would be made a final order. This however cannot be done because it would depend on the decision of the court hearing the matter.

[30] There is no reason why costs should not follow the result.

Accordingly the following order is made:

1. The relief sought in Part A of the notice of motion is dismissed with costs. Such costs to be taxed on scale B.

2. The relief in paragraph 7 of Part B of the notice of motion is adjourned *sine die*.

P C BEZUIDENHOUT J.

JUDGMENT RESERVED: 21 JANUARY 2026

JUDGMENT HANDED DOWN: 14 APRIL 2026

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