



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

CASE NO: B701/24

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: ~~YES~~/NO

25 March 2026

DATE

SIGNATURE

In the matter between:

AFRIFORUM NPC

Applicant

and

RAND WATER

First Respondent

MINISTER OF WATER AND SANITATION

Second Respondent

**THE MINISTER OF CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS**

Third Respondent

MINISTER OF FINANCE

Fourth Respondent

MERAFONG CITY LOCAL MUNICIPALITY

Fifth Respondent

RAND WEST CITY LOCAL MUNICIPALITY

Sixth Respondent

EMFULENI LOCAL MUNICIPALITY

Seventh Respondent

LESEDI LOCAL MUNICIPALITY

Eighth Respondent

NGWATHE LOCAL MUNICIPALITY

Ninth Respondent

VICTOR KHANYE LOCAL MUNICIPALITY

Tenth Respondent

GOVAN MBEKI LOCAL MUNICIPALITY

Eleventh Respondent

JUDGMENT

MODISA AJ

- [1] This is an opposed interlocutory application in terms of Rule 30A(2) of the Uniform Rules of Court.
- [2] The main application is a Rule 53 review application to bring under review the decision(s) by Rand Water to restrict and reduce the water flow and supply to various towns situated within the areas of the Respondent municipalities.
- [3] AfriForum seeks an order that Rand Water is ordered to comply with the Rule 53(1)(b) notice and to provide specific documents, and to further provide reasons impugned decisions. In the alternative, AfriForum seeks an order that Rand Water's notice of intention to oppose the review application be struck-out and that the order is granted as sought in Part B of the main application.
- [4] On 11 March 2024, AfriForum issued a review application in terms of Rule 53 of the Uniform Rules of Court. Rand Water delivered a notice of intention to oppose the review application on 14 March 2024.
- [5] Part A of the Review application was heard on 26 March 2024, in the urgent Court seeking interim relief. The application for interim relief was dismissed by Potteril J.

- [6] Following the institution of the review application, Rand Water delivered an initial Rule 53 Record on 26 April 2024. A paginated version of that record was subsequently delivered on 07 May 2024.

- [7] On 21 June 2024, AfriForum served a notice in terms of Rule 53 (1)(b) calling upon Rand Water to provide the documents detailed in the Rule 53(1)(b) notice and reasons. Rand Water thereafter delivered the supplementary Rule 53 record on 15 July 2024.

- [8] AfriForum served a notice in terms of Rule 30 A on 12 August 2024, alleging that Rand Water has not complied with Rule 53 (1)(b).

- [9] On 07 October 2024, Rand Water delivered a response in which it contended that no reviewable decision existed and that the Rule 30A process constituted an abuse.

- [10] AfriForum thereafter issued an interlocutory application in terms of Rule 30A(2) on 03 December 2024. Rand Water delivered its answering affidavit in the Rule 30A(2) application on 03 February 2025, and AfriForum delivered its replying affidavit on 17 March 2025.

- [11] Rand Water admits restrictions were imposed on Merafong City and Ngwathe Municipalities but asserts that it has since lifted them and restarted lawful debt recovery. It denies restrictions of other municipalities and argues the review is moot, as the decisions have been reversed.

[12] AfriForum contends Rand Water failed to comply with Rule 53(1)(b) by not providing a complete record or reasons for the decisions, hindering a fair review and infringing constitutional rights to lawful and fair administrative action and access to Court. AfriForum disputes Rand Water's versions and alleges on going prejudice due to the absence of formal withdrawal of decisions. It seeks an order compelling full compliance of striking out Rand Water's opposition.

[13] Rand Water contends that the review is moot, with no live dispute. Having reversed decisions and restored the water supply. It claims to have furnished all documents in its possession and denies holding the requested records. Rand Water seeks dismissal with costs.

[14] The following issues have to be determined by this Court:

15.1 Whether Rand Water had complied with Rule 53(1)(b);

15.2 Whether the application is moot;

15.3 Whether the Court should compel compliance or strike out Rand Water's opposition to Part B of the application and

15.4 Which party should pay the costs of the application.

[15] At the time when Potteril J dismissed the Application in terms of Part A, AfriForum was also granted leave to supplement its papers. The order of Potteril J which was issued on 26 March 2024 reads as follows:

“ 1. *The application is dismissed.*

2. *The Applicant is granted permission to, on the same papers supplemented if it so wishes, apply to this Court again if any of the transgressions as set out in the founding affidavit and in the notice of motion is executed by Rand Water.*

3. *Each party is to pay their own costs.”*

[16] Rand Water argues that this is fatal to the Applicant's case and they should have supplemented. If there are no further transgressions executed by Rand Water then the question of mootness comes into play. If there were further transgressions executed by Rand Water then those facts should have been canvassed in the supplementary affidavit as suggested by Potteril J in order number 2 of the Court order. The decision to restrict water supply was revoked. I therefore agree with Rand Water's argument.

[17] This interlocutory application requires the Court to consider whether the rule 53 record delivered by Rand Water in a review application that was moot from inception is sufficient. Rand Water contends that the record is sufficient and that the interlocutory application stands to be dismissed with costs for two reasons, being:

17.1 The review is moot as the impugned decision was reversed by Rand Water;
and

17.2 The rule 53 record delivered is sufficient.

[18] The Applicant, AfriForum, launched an unmeritorious application, in two parts. Part A being an application for an interim interdict pending the finalization of a review application in Part B.

[19] The Applicant alleged that Rand Water failed to comply with the requirements of procedural fairness in terms of the provisions of PAJA and in terms of sections 4(3) and 4(5) of the Water Services Act before implementing water reduction measures in the respondent municipalities.¹

[20] Rand Water in its answering affidavit confirmed that all water restrictions it had placed, which were only in respect of two municipalities the Fifth and Ninth Respondents have been lifted. The other five municipalities cited were never placed on water restrictions and the application is not based on facts but on false third party statements and rumours.² Rand Water stated that, *"owing to a lack of full of compliance, these debt recovery processes in relation to the two municipalities have been aborted, so that the processes may be reinstituted, as it has been to the applicant's knowledge."*³

¹ 001-54, para 10.1 of the Founding Affidavit in the urgent application.

² See paras 6 and 9 of the answering affidavit in the rule 30 A application.

³ Paras 4.1, 11 and 12 of the answering affidavit in the rule 30 A application.

[21] Rand Water began debt recovery processes afresh and no decision exists to limit water supply to the respondent municipalities.⁴

[22] When Rand Water reversed the decision to implement water restrictions and water flow was restored, Rand Water removed the possibility of any live dispute between the parties.⁵ The Applicant in the replying affidavit accepts that the matter is only of academic interest.⁶ This issue is fatal to the Applicant's case.

[23] In fact, the Applicant fully participated in the recommenced debt recovery process and as such it cannot now claim ignorance or that there is still some remaining live issues. There is none. It also did not object to the recommencement of the process.

[24] Stephanus Paulus Kruger Blignault deposed to a confirmatory affidavit, which affidavit is attached to the replying affidavit⁷ in his affidavit Mr Blignault states that the water pressure in respect of Lesedi, Local Municipality, Emfuleni, Rand West City Municipality, Merafong City Local Municipality has been restored.⁸

[25] In light of the foregoing the urgent application was dismissed on 26 March 2024 for a failure to meet the requirements for an interim interdict. Since the impugned decision has been reversed there is no useful purpose for the Court to determine

⁴ Paras 4.4 and 13 of the answering affidavit in the rule 30A Application.

⁵ *Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC) para 7.

⁶ 005-17 para 22 of the Replying Affidavit.

⁷ 005-22 Confirmatory Affidavit of Stephanus Paulus Kruger Blignault.

⁸ 005 – 55 para 3.7.1 -3.7.4 of the affidavit deposed to by Stephanus Paulus Kruger Blignault.

the review application.⁹ Part B is bound to face a similar fate as the urgent application as no controversy exists on the papers and the issues presented by the Applicant are not justiciable.¹⁰

[26] In this interlocutory application the Applicant contends that Rand Water has failed to provide it with a full and complete record¹¹ to allow it to prosecute the review application. Accordingly, the Applicant approaches the Court in terms of rule 53(1)(b) for an order that Rand Water supplement the record it has delivered notwithstanding that there is no decision for the Court to set aside.

[27] Rand Water has furnished the Applicant with documents in relation to all the municipal respondents bar the Seventh Respondent.¹² On 15 July 2024 Rand Water delivered a supplementary record. The documents delivered were in respect of the municipalities which were affected by Rand Water's decision to Water to restrict or reduce the supply of water to the respondent municipalities namely the Fifth and Ninth Respondents.¹³

[28] On 7 October 2024 Rand Water informed the Applicant that it did not have possession of the requested documents and accordingly it could not furnish the Applicant with a supplementary record.¹⁴ The Applicant does not accept that Rand Water does not have these documents and relies on the fact that its

⁹ *President, Ordinary Court Martial v Freedom of Expression Institute* 1999 (4) SA 682 (CC) para 8.

¹⁰ *Janse van Rensburg NO v Minister of Trade and Industry* 2001 (1) SA 29 (CC) para 9.

¹¹ Para 4.2 of the Founding Affidavit in the rule 30 A application.

¹² Para 5.10 of the Founding Affidavit in the rule 30 A application.

¹³ Paras 5.19 – 5.21 of the Founding Affidavit in the rule 30 A application.

¹⁴ Paras 6.8 – 6.12 of the Founding Affidavit in the rule 30 A application.

rule 53(1)(b) notice is 'specific' and also attacks Rand Water's answer in respect of the request for a supplementary record in a form over substance fashion.¹⁵

[29] The issues that this interlocutory application raises are:

29.1 Whether it is prudent for the Court to reconsider a decision which has been reversed and no rights were infringed; and

29.2 Whether it is in the public interest for the Court to entertain this moot application.

[30] In my view, the First Respondent demonstrated successfully so that:

30.1 There is no point in dealing with this matter as there is no justiciable issue between the parties;

30.2 It is not prudent for the Court to review the reversed decision;

30.3 Public interest dictates that the matter be dismissed as it a waste of judicial resources; and

30.4 That Rand Water has furnished the Applicant with the record in its possession.

¹⁵ Paras 6.13 – 6.14 and para 6.23 the Founding Affidavit in the rule 30 A application.

[31] The question to be answered in this application is whether the interlocutory application can be granted in spite of mootness. Mootness does not lessen the burden for the Applicant, it compounds it.¹⁶

[32] The odds are all the more stacked against entertaining this interlocutory application because the facts that gave rise to the main application have been withdrawn by Rand Water. The reasons and the record whose disclosure were supposed to facilitate are no longer necessary.

[33] The fact that a matter may be moot in relation to the parties before the Court is not an absolute bar to the Court considering it. The Court retains a discretion, and in exercising that discretion it must act according to what is required by the interest of justice. What is required for the exercise of this discretion is that any order made by the Court has practical effect either on the parties or others. Other relevant factors that could be considered include: the nature and extent of the practical effect the order may have; the importance of the issue; and the fullness of the argument advanced. Another compelling factor could be the public importance of an otherwise moot issue.¹⁷

[34] During argument, the Applicant has conceded that the Court has a discretion to entertain a matter which is moot. This Court, in exercising its discretion, is reluctant to entertain a matter which is moot.

¹⁶ *President of the RSA v DA* 2020 (1) SA 428 (CC) para 27.

¹⁷ *Director-General Department of Home Affairs and Another v Mukhamadiwa* 2014 (3) BCLR (CC) para 40.

[35] Courts have been cautioned by the Constitutional Court to avoid giving advisory opinions on abstract propositions of law.¹⁸ Matters that have become moot may be heard by our Courts if any order that the Court may make will have some practical effect either on the parties or on others.¹⁹ The following factors have been held to be potentially relevant:

35.1 The nature and extent of the practical effect that any possible order might have;²⁰

35.2 The importance of the issue;²¹

35.3 The complexity of the issue;²²

35.4 The fullness or otherwise of the argument advanced;²³ and

35.5 Resolving disputes between different Courts.²⁴

[36] Any possible order that a Court may make in the circumstances will have no practical effect on any of the litigants or third parties. The impugned decision has

¹⁸ *MEC for Education, KwaZulu-Natal, and Others v Pillay* 2008 (1) SA 474 (CC) para 32.

¹⁹ *Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC) para 11.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *AAA Investments Pty (Ltd) v Micro Finance Regulatory Council and Another* 2007 (1) SA 343 (CC) para 27.

been reversed by Rand Water and the respondent municipalities are all receiving unrestricted water supply.

[37] Rand Water has repeatedly stated on oath that all water restrictions it had placed on the Fifth and Ninth Respondents have been lifted.²⁵ There is no practical effect in determining the review application.²⁶ The pending review application is not even of academic interest as the law regulating compliance with legislation and processes is settled and accepted by Courts.²⁷

[38] The issues sought to be ventilated in the review application are important issues, so important that Rand water took it upon itself to reverse the decision before the issues were ventilated in Court. The importance of the issue is that the rule of law and principles of natural justice require parties to follow due process before decisions are made that have an adverse effect on others. The principles pertaining to procedural fairness are well established and important in our law and do not need another Court to develop the principles.

[39] The issues the Applicant seeks to have adjudicated upon by the Court are not complex issues at all. The issues are whether Rand Water complied with the relevant legislative prescripts prior to commencing debt recovery processes. Rand Water accepts that it has failed to comply with the legislative prescripts and accordingly reversed its decision to restrict water supply. Rand Water has since

²⁵ 004-12 para 19 of the Answering Affidavit.

²⁶ *Netherburn Engineering v Mudau* 2010 (2) SA 269 para 10.

²⁷ *Chairman, Board on Tariffs and Trade, and Others v Brenco Inc and Others* 2001 (4) SA 511 (SCA) para 13.

restored the water supply and no harm was visited upon the residents of the respondent municipalities.

[40] Notwithstanding the Applicant's own affidavits confirming that there are no water restrictions the Applicant persists with the review application. The Applicant's conduct amounts to an abuse of Court process and a waste of judicial resources depriving litigants with real issues of their opportunity to have their issues to be ventilated.

[41] This application stands to be dismissed as the issues sought to be ventilated in this application are moot and accordingly not justiciable.

[42] This interlocutory application is nonsensical it has no practical effect. It is all designed in an attempt to review and set aside a decision that has been reversed by Rand Water.

[43] Notwithstanding the fact that Rand Water had reversed the decision and had restored water to the respondent municipalities and the Applicant in reply having confirmed same the urgent Court was detained by this matter and full argument was heard. Accordingly, this matter, which is moot should not detain another Court as there is no need for this Court to determine the issues raised in the review application.

[44] The law regulating the issues in this application is clear and there are no conflicting judgments that need to be settled. The matter is moot and the dictates of public interest warrant against the matter being heard.

[45] Before a Court orders the production of a rule 53 record the Court must first determine its competence to hear the review application.²⁸ This Court does not have jurisdiction to entertain the review and accordingly is not competent to hear this interlocutory application as there is no decision to review and set aside.

[46] As there is no dispute inter parties the Court, in law and in fact has no jurisdiction to entertain the review application as Rand Water has self-corrected and complied with the law. This application should be dismissed with costs.

[47] The objective of rule 53 is obvious. The rule serves as a tool to ensure that any challenge to the proceedings sought to be reviewed is well considered and properly pleaded.²⁹

[48] Undeniably, a rule 53 record is an invaluable tool in the review process. It may help: shed light on what happened and why; give a lie to unfounded ex post facto (after the fact) justification of the decision under review; in the substantiation of

²⁸ *Competition Commission of South Africa v Standard Bank of South Africa; Competition Commission of South Africa v Standard Bank of South Africa; Competition Commission of South Africa v Waco Africa (Pty) Ltd and Others* (CCT 158/18; CCT179/18; CT 218/18) [2020] ZACC 2; 2020 (4) BCLR 429 (CC) (20 FEBRUARY 2020 at para 121.

²⁹ *General Council of the Bar of South Africa v Jiba and Others* 2017 (2) SA 122 (GP) at paras 111 -112.

as yet not fully substantiated grounds of review; in giving support to the decision-maker's stance; and in the performance of the reviewing Court's function.³⁰

[49] Rule 53 is designed to enable an aggrieved party to get quick relief where his rights or interests are prejudiced by wrongful administrative action and the furnishing of the record of the proceedings is an important element in review proceedings.³¹ The Applicant should not be deprived of the benefit of this procedural right unless there is clear justification therefor.³² As the decision has been reversed the Court cannot perform its constitutionally entrenched review function as there is no justiciable dispute before the Court to be decided upon.³³ This application is an abuse of rule 53.

[50] The Applicant has been furnished with a full record. The Applicant however, is dissatisfied with the record and contends that the Court should order Rand Water should deliver documents it does not have in a review application that has since become moot.

[51] This application is a clear abuse of the rules of Court and Court processes. The object of the rules is to secure the inexpensive and expeditious completion of litigation before the Courts: they are not an end in themselves.³⁴ Consequently,

³⁰ *Turnbull – Jackson v Hibiscus Coast Municipality and Others* 2014 (6) SA 592 (CC) para 37.

³¹ *Jockey Club of South Africa v Forbes* 1993 (1) SA 649 (A) at 660D-I; *Helem Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 (CC) at 9 F-G.

³² *Crown Cork & Seal Co Inc and Another v Rheem South Africa (Pty) Ltd and Others* 1980 (3) SA 1093 at 1095 F-H.

³³ *Democratic Alliance and Others v Acting National Director of Public Prosecutions* 2012 (3) SA 486 at para 37.

³⁴ *Centre for Child Law v Hoerskool, Fochville* 2016(2) SA 121 (SCA) at 131G.

the rules should be interpreted and applied in a spirit which will facilitate the work of the Courts and enable litigants to resolve their disputes in as speedy and inexpensive a manner as possible.³⁵

[52] Thus, it has been held that the rules exist for the Court, not the Court for the rules.³⁶ Formalism in the application of the rules is not encouraged by the Courts.³⁷

[53] The Applicant has been furnished with all relevant matter and this interlocutory application is frivolous and baseless especially when consideration is had to the fact that the record is not going to assist the Court as the decision that is sought to be challenged has been reversed.

[54] In the context of this case it would be unreasonable to entertain any further litigation flowing from a decision that Rand Water reversed as the decision has no adverse effects on rights and does not have a direct, external legal effect. Notwithstanding the reversed decision this Court is now burdened with an application to determine whether Rand Water has furnished the Applicant with sufficient relevant matter to determine whether the decision that has been reversed was well made by Rand Water.

³⁵ *African Development Bank v TN* 2019 (2) SA 437 (GP) at 445 D-J.

³⁶ *Mukaddam v Pioneer Foods* 2013 (5) SA 89 (CC) at 98F -99G.

³⁷ *Federated Trust Ltd v Botha* 1978 (3) SA 645 (A) at 654; *Rabie v De Wit* 2013 (5) SA 219 (WCC) at 222E-223 A.

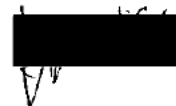
[55] The focus of judicial review falls on the decision itself. The decision in this instance has been reversed by Rand Water yet the Applicant persists with an application to review of a decision that has been set aside. There is no relief or remedy that is appropriate in the circumstances.

[56] There is no need for the record to shed light on the decision-making process as the decision was reversed by Rand Water.

[57] The focus of judicial review falls on the decision itself. The decision in this instance has been reversed by Rand Water yet the Applicant persists with an application to review of a decision that has been set aside. There is no relief or remedy that is appropriate in the circumstances.

[58] In the premises, the following order is made:

1. The application is dismissed.
2. The Applicant is ordered to pay the costs of this application on Scale C.



MODISA AJ
JUDGE OF THE HIGH COURT
PRETORIA

For the Applicant:

Adv AT Lamey

Adv C Van Schalkwyk

Instructed by: Hunter spies Inc

For the Respondent:

Adv Ngutshana SC

Adv L Nyangiwe

Instructed by: Mathopo Moshimane Mulangaphuma Inc