




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

**CASE NO: B701/24**

(1)	REPORTABLE: <del>YES</del> /NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> /NO
(3)	REVISED: <del>YES</del> /NO
<u>11 JUNE 2026</u>	
DATE	SIGNATURE

In the matter between:

**AFRIFORUM NPC**

Applicant

In re:

**RAND WATER**

First Respondent

**MINISTER 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] The Applicant brought an application for leave to appeal against the whole of the judgment and order, including the order as to costs of this Court dated 25 March 2026.
- [2] The application for leave to appeal is brought on the following basis:
- 2.1 That the judgment and orders of this Court, despite being in respect of an interlocutory application, are appealable considering that:
- 2.1.1 They are final in effect;
- 2.1.2 They disposed of at least a substantial portion of the relief claimed in the main proceedings and
- 2.1.3 The interests of justice require that the judgment and orders be appealable and the granting of leave to appeal.
- [3] It is trite that the test for leave to appeal is whether there are any reasonable prospects of success on the appeal as contemplated in section 17 (1)(a) (i) of the Superior Court's Act 10 of 2023 and/or whether there are any compelling reasons why then appeal should be heard.
- [4] It must be indicated at the outset that this Court was not confronted and/or dealing with the review application but rather it was confronted with an

interlocutory application. Therefore, this Court did not make any order pertaining to the main application.

[5] The remarks made by this Court regarding the main application is only about mootness.

[6] The Applicant is not debarred from proceeding with Part B of its application. This was simply an interlocutory application.

[7] The Water Services Act affords Rand Water the power to revoke its decisions<sup>1</sup> when the said decision would have detrimental consequences for the consumers. The applicant's reading of the facts and the application of the provisions of the Water Services Act would lead to a position where consumers would be unduly prejudiced. The Supreme Court of Appeal stated that the test for implying a provision to revoke or amend is whether it is necessary to the efficacious operation of the statute.<sup>2</sup>

[8] The applicant's reliance on *Kirland*<sup>3</sup> and *Ouderkraal*<sup>4</sup> principles is misplaced. *Oudekraal* and *Kirland* did not impose an absolute obligation on private citizens to take the initiative to strike down invalid administrative decisions affecting them.<sup>5</sup>

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<sup>1</sup> *Private Security Industry Regulatory Authority v Anglo Platinum Management Service Ltd* [2007] 1 All SA 154 (SCA), para 27.

<sup>2</sup> *Ibid* para 27.

<sup>3</sup> *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd* 2014 (3) SA 481 (CC).

<sup>4</sup> *Ouderkraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA).

<sup>5</sup> *Merafong City Local Municipality v AngloGold Ashanti Ltd* 2017 (2) SA 211 (CC) para 44.

[9] In this instance there are no consequent actions. The matter is simple, Rand Water realised its error in limiting the water supply to the respondent municipalities and reversed its decision. No party bar the applicant places any emphasis on the initial decision that has since been reversed. Further no consequent actions can flow from a decision to limit the water supply to the municipal respondents.

[10] When government errs by issuing a defective decision, the subject affected by it is entitled to proper notice, and to be afforded a proper hearing, on whether the decision should be set aside. Government should not be allowed to take shortcuts. Generally, this means that government must apply formally to set aside the decision. Once the subject has relied on a decision, government cannot, barring specific statutory authority, simply ignore what it has done. The decision, despite being defective, may have consequences that make it undesirable or even impossible to set it aside. That demands a proper process, in which all factors for and against are properly weighed.<sup>6</sup>

[11] In this instance the *Kirland* principle is not applicable. The consumers who were affected by the decision that has since been reversed by Rand Water do not have to be afforded notice in order for Rand Water to reinstate the water provision to the municipalities. There is no need for Rand Water to approach court to set aside the decision to limit water supply as the consumers nor the municipal respondents placed any reliance on the decision. The only party who

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<sup>6</sup> *Kirland* para 65.

places reliance on the decision is the Applicant who claims to be litigating on behalf of the consumers. In any event as stated above Rand Water is empowered by section 4 of the Water Services Act to revoke its decision to limit water supply.

[12] The facts of this case clearly show that Rand Water had initially made a decision to limit water supply to the two respondent municipalities. The applicant's own replying affidavit confirms the point that the water supply to those respondent municipalities has been restored. The applicant's claim that Rand Water did not produce any evidence that the decision was withdrawn revoked or reversed contradicts the contents of the applicant's replying affidavit.

[13] I am of the view that the Applicant does not have reasonable prospects of success in order to prosecute this appeal.

[14] Consequently, the following order is made:

1. The application for leave to appeal is dismissed with costs including the costs of two Counsel where so employed on Scale C for Senior Counsel and Scale B for Junior Counsel.



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**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