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

Case Number: **2024-012537**

(1)	REPORTABLE: NO		
(2)	OF INTEREST TO OTHER JUDGES: NO		
(3)	REVISED: YES		
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In the matter between:

**V&H BONO FURNITURE
MANUFACTURERS (PTY) LTD (IN LIQUIDATION)
THEODOR WILHELM VAN DEN HEEVER N.O.
CAROLINE MMAKGOKOLO LEDWABA N.O.**

First Applicant
Second Applicant
Third Applicant

and

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

Respondent

JUDGMENT

WENTZEL -THOMPSON J

Introduction

[1] This judgment disposes of four interrelated matters which were enrolled together and argued before me in the Special Insolvency Court . They are:

- a. the respondent's application, launched on 28 May 2024, for the rescission of the order of Keightley J granted on 23 April 2024 ("the rescission application");

- b. the applicants' application, launched on 7 August 2024 and amended on 5 January 2026, for an order declaring the respondent to be in contempt of that order and for ancillary relief ("the contempt application");
- c. the respondent's counter-application delivered on 17 April 2025 for condonation of the late delivery of its answering affidavit in the contempt application and for a stay of the contempt application pending the finalisation of the rescission application ("the counter-application"); and
- d. the applicants' application delivered on 13 May 2026 to strike out the respondent's defence in the contempt application and for judgment in terms of the amended notice of motion ("the strike-out application").

[2] These four matters are inextricably linked: The rescission application seeks to set aside the very order upon which the contempt application rests; the counter-application seeks to postpone the contempt application until the rescission application has been determined; and the strike-out application seeks to prevent the respondent from being heard at all in the contempt application.

[3] It is convenient to determine these applications in a sequence dictated by logic rather than by the order in which they were launched. I therefore deal first with the question of what material is properly before me that requires that I consider the condonation and strike-out applications, then with the application for a stay of the contempt application pending the outcome of the rescission application, then with rescission application, and finally, with the contempt application. Ultimately, I will deal with the directions necessary for the further conduct of the main application, and the question of costs, that have been sought on a punitive scale.

[4] It will be apparent from what follows that the rescission application succeeds, and that its success has determined the fate of the remaining matters. I record at the outset that this outcome is reached notwithstanding the respondent's conduct of this litigation, which has been indefensible and which I deal with at length. It is reached, first because the applicants sought final relief in the absence of a respondent while the same relief was already being sought in a pending application which the respondent had been actively opposing through

attorneys that was not told to the court; and second, because the respondent's attorney in the prior proceedings was entitled to be told that a fresh application has been launched against his client that had formally been served upon it, but was not. The first would have had a material bearing on the Order Keightley J granted now sought to be rescinded; and the second had a material bearing upon the non-appearance of the respondent at the hearing and the fact that the Order was granted by default.

The parties

- [5] The first applicant is V&H Bono Furniture Manufacturers (Pty) Ltd (in liquidation). The second and third applicants are cited in their representative capacities as joint liquidators of the first applicant.
- [6] I shall refer to the applicants collectively as "the liquidators" where the context permits.
- [7] The respondent is the City of Johannesburg Metropolitan Municipality, a metropolitan municipality established in terms of section 12(1) of the Local Government: Municipal Structures Act 117 of 1998. I shall refer to it as "the City".

The subject matter of the dispute

- [8] The first applicant is the registered owner of Erf 1[...] W[...] Extension 1, situate at 2[...] P[...] Road, Roodepoort ("the property"). The property is billed by the City under account number 5[...].
- [9] The liquidators have sold the property for R2 600 000. They cannot pass transfer to the purchaser without a certificate issued in terms of section 118(1) of the Local Government: Municipal Systems Act 32 of 2000 ("the Systems Act"). Section 118(1) precludes a registrar of deeds from registering the transfer of property except on production of a prescribed certificate issued by the municipality certifying that all amounts that became due in connection with that property for municipal service fees, surcharges on fees, property rates and

other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.

[10] Two features of the Systems Act are relevant. First, the two-year period in section 118(1) is a limitation on what must be paid in order to obtain the certificate; it is not a limitation on the municipality's underlying claim. Second, section 118(3) preserves a municipality's security in respect of the full historical debt, which is a charge upon the property and enjoys preference over any mortgage bond registered against it. It follows that the issue of a clearance certificate does not extinguish, and does not prejudice the recovery of, the balance of any lawful municipal debt.

[11] The dispute in this matter is essentially a narrow one; it concerns whether or not electricity and water have been consumed in the two year period prior to the date that the section 118(1) clearance certificate was requested:

- a. The liquidators say that they took control of the property before February 2022 and assert that trading operations ceased and that no water or electricity was thereafter consumed for any commercial purpose. They also refer to a site inspection that demonstrated that no municipal electricity meter exists on the property at all, and that water consumption has been negligible as it is only utilised by security guards stationed at the property. They do, however, accept that there is a leak on the property, for which, on my understanding, the liquidated estate of the first applicant would be responsible.
- b. The City says that services have continued to be consumed and that it is entitled to bill for them. In support of this proposition, the City relies upon a letter from the conveyancing attorney engaged by the liquidators bemoaning the disconnection of municipal services at the property on the basis that the purchaser was in occupation of the property and thus required the continued use of municipal services. This is a fact that the City could readily have investigated and verified, but did not.

The relevant background facts

[12] The relevant history, which I set out in some detail because it is material to the issues before me, is largely common cause or uncontradicted on the papers.

[13] The last payment made by the first applicant to the City was on 29 March 2018.

[14] During May 2023 the City furnished section 118(1) clearance figures reflecting a total outstanding amount of R3 781 564.57, R1 794 737.60 of which was payable in terms of section 118(1) before a clearance certificate could be issued. On 11 May 2023, a tax invoice was rendered in the sum of R3 989 318.48, R3 712 616.74 of which fell within the ninety-days-and-older bracket of arrears.

[15] On 9 June 2023 the liquidators launched an application under case number 2023-055817 seeking substantially the relief later granted in this matter by Keighhtley J (“the first application”). The City opposed that application and delivered an answering affidavit on 7 August 2023 deposed to by Mr Jones Moola, a legal advisor employed by the City.

[16] On 23 February 2024, the liquidators caused the present application under case number 2024-012537 to be served by Deputy Sheriff on Ms M Mlombo, a legal intern employed by the City at the City’s offices at Thuso House, 61 Jorissen Street, Braamfontein in terms of Rule 4(1)(a)(ii). The sheriff’s return of service was filed on 29 February 2024 evidencing this.

[17] The application was not opposed. On 23 April 2024, Keightley J granted an order by default in the following terms:

- a. declaring the City obliged to furnish the liquidators, within one month of service of the order, with full and itemised particulars of the amounts which may have become due for payment in terms of section 118(1) of the Systems Act in respect of the property for a period of two years prior to the granting of the order;
- b. ordering the City to remove all water and electricity consumption from the figures from February 2022;

- c. ordering the City to recalculate interest and value added tax after removal of the consumption charges;
- d. ordering the City to remove all penalty charges relating to the disputed consumption charges;
- e. ordering the City to remove account number 5[...] from the figures;
- f. declaring the City immediately obliged, upon payment of such sum as is tendered specifically for the purpose of discharging that indebtedness, to issue the section 118(1) certificate; and
- g. ordering the City to pay the costs of the application on the attorney and client scale.

[18] I shall refer to the order made by Keightley J as “the Keightley order”.

[19] On 2 May 2024 - nine days after the Keightley order was granted - a notice of withdrawal of the first application was signed and uploaded to CaseLines that was admittedly not served upon the respondent’s attorney of record in those proceedings.

[20] On 3 May 2024 the Keightley order was served by hand on the City. An internal email chain of that date, annexed to the City’s own founding affidavit in the rescission application as annexure NM1, records that the order was circulated from Ms Boitumelo Modise to Mr Livhuhani Mukwevho, and then to Mr Jones Moola, who forwarded it to Mr Nigel Masendeke of Mojela Hlazo Practice with the query: *“How have they managed to get such an order knowing that your firm is the City’s attorney of record - Please investigate and ensure that the City’s interests in this regard is safeguarded.”*

[21] This establishes that the City had actual knowledge of the Keightley order on 3 May 2024. This is also the date from which, on its own version, the twenty-day period for a rescission application began to run.

[22] According to the evidence of the liquidators’ own attorney, her omission to serve the notice of withdrawal of the first application on the respondent’s

attorney was only discovered on 30 May 2024, when the rescission application was served upon her firm. The withdrawal was then communicated to the City's attorneys of record in the first application for the first time on 31 May 2024. No tender of the wasted costs of the first application accompanied the withdrawal. Although it is alleged that the letter of 31 May 2024 included an explanation for the withdrawal of the first application and the re-institution of the main application that had come before Keightley J, this letter has not been attached and thus cannot be verified.

[23] On 13 May 2024 and again on 31 May 2024 the liquidators' attorneys and the transferring attorneys each wrote to the City demanding compliance with the Keightley order. On 31 May 2024, a City official responded that the matter had been referred to the City's attorneys of record.

[24] On 28 May 2024 the City launched its application to rescind the Keightley order. The founding affidavit was deposed to by Mr Nigel Masendeke, the City's attorney of record. He states that "*the facts stated herein are to the best of my personal knowledge both true and correct*" and that he is "*the attorney that is seized with this matter*". This is mentioned as it is readily apparent that he cannot have had personal knowledge of the facts in dispute and could not have relied upon what was told to him by the City officials with such knowledge under oath as no confirmatory affidavits have been attached to his affidavit.

[25] The liquidators delivered their answering affidavit in the rescission application on 27 June 2024. In terms of the Rules of Court, the City's replying affidavit fell due on 11 July 2024. However, no replying affidavit was timeously filed or at all; this notwithstanding that as at the date of the hearing before me, more than two years had elapsed since this affidavit ought to have been filed. Yet, still no application was brought before me to afford the respondent an opportunity to file a replying affidavit to respond to the contentions made by the liquidators in their answering affidavit, with the effect that the allegations in the answering affidavit, remain unrefuted and must be regarded as accepted.

[26] On 20 June 2024 officials of the City attended at the property and affixed a disconnection notice claiming arrears of R5 022 892.75.

- [27] On 7 August 2024 the contempt application was served. The City delivered a notice of intention to oppose on 12 August 2024. Its answering affidavit was accordingly due on or before 2 September 2024; again, none was delivered.
- [28] On 13 September 2024 the liquidators' reconciliation specialist furnished the City's attorneys with a detailed reconciliation calculating the amount they allege was properly payable under section 118(1) at R517 679.53, made up of section 118(1) charges for sewer, refuse and rates for the period September 2022 to September 2024 in the sum of R446 396.85, plus forward projections for October 2024 to January 2025 in the sum of R71 282.68. That reconciliation has never been answered, engaged with, or contradicted by the City, either by way of replying or supplementary affidavit in the rescission proceedings, or by way of answering affidavit in the contempt proceedings. This is not only remiss, but a flagrant disregard by the City of its obligations to guard taxpayer funds, particularly where it maintains that there is a genuine dispute as to whether or not services have continued to be consumed on the property.
- [29] On 3 October 2024 the transferring attorneys, Jason Michael Smith Inc, addressed an email to a Mr Maart of the City recording that the City had again disconnected services at the property and pointing out that "*the purchaser is in occupation of the property and requires the services to be reconnected as a matter of URGENCY*". Mr. Smith also complained that payment of an amount in excess of R6 million had been demanded. The City places heavy reliance on this email as proof that services were and are being consumed at the property.
- [30] The contempt application was enrolled on the unopposed roll of 31 October 2024. On that date Noko J granted an order postponing the contempt application sine die, granting the City leave to deliver its answering affidavit by 15 November 2024, the liquidators to reply by 25 November 2024, the liquidators to deliver heads of argument by 15 December 2024 and the City to deliver heads by 15 January 2025. Costs were reserved. The City did not deliver its answering affidavit by 15 November 2024, or at all in that year.

[31] On 7 November 2024 a joint inspection of the property was conducted by the second applicant, Ms Corlia van Veijeren and officials of the City. The inspection established three matters of importance:

- a. First, there was no municipal electricity meter on the property at all. This means that neither meter number 6[...] nor meter number 6[...], both of which the City had been utilising for its billing of electricity, exists on the property.
- b. Second, the water meters upon which the City had based its billing bearing numbers 8[...] and 2[...], were likewise not present on the property.
- c. Third, the only water meter on the property is meter number 1[...], which had never historically been billed on the account and which was read for the first time on 7 November 2024.

[32] Following this inspection, the City rebilled the account. Inexplicably, in these rebilled invoices dated 29 and 30 November 2024 and 5 December 2024 in which the City rendered rebilled invoices for December 2023, July 2024, November 2024 and December 2024 respectively, they continued to bill electricity consumption on the basis of meter number 6[...] – the very meter which its own officials had confirmed three weeks earlier was not found on property, as follows:

- a. R800 249.43 for 367 days, being R2 180.55 per day, reflected as an actual reading;
- b. R553 834.83 for 214 days, being R2 588.01 per day;
- c. R357 336.73 for 122 days, being R2 928.99 per day; an
- d. R60 650.07 for 29 days on an estimated reading.

[33] According to the liquidators, the City has continued to bill estimated electricity charges under that non-existent meter monthly. The tax invoice for April 2025, annexed by the City itself to its answering affidavit as annexure “CoJ1”, reflects

electricity consumption of 17 442.941 kWh on meter 6[...] for the period 4 March 2025 to 2 April 2025, expressly described as “*Type: Estimated Readings*”, at a daily average of 581.431 kWh, and reflects a total balance due of R6 815 076.29.

[34] On 17 April 2025 - the day of the hearing, and more than five months after the date fixed by Noko J - the City delivered its answering affidavit in the contempt application, together with its counter-application. The answering affidavit was again deposed to by Mr Masendeke, the City’s attorney. No confirmatory affidavit by any official of the City’s revenue, metering or billing departments was attached to the affidavit.

[35] The liquidators delivered their replying affidavit on 10 July 2025 and their heads of argument on 18 November 2025. On 17 December 2025 they launched an application to compel the respondent to file its heads of argument and an application for leave to supplement its papers.

[36] On 5 January 2026 the liquidators delivered an amended notice of motion in the contempt application seeking:

- a. an order declaring the City to be in contempt of the Keightley order;
- b. an order declaring the City immediately obliged, upon payment of R517 679.53, to issue the section 118(1) certificate;
- c. an order declaring that the City must pay a fine of R100 000 or such amount as this Court may determine; and
- d. costs on the attorney and client scale.

[37] On 11 February 2026, by agreement between the parties, Von Ludwig AJ granted an order permitting the liquidators to file their supplementary affidavits of 10 October 2024 and 28 November 2024, granting the City leave to deliver a supplementary answering affidavit by 4 March 2026, the liquidators to reply by 18 March 2026, the liquidators to deliver supplementary heads of argument by 10 April 2026 and the City to deliver its heads of argument by 17 April 2026.

Costs were again reserved. That order was served on the City's attorneys on 9 March 2026 via email and read receipt was recorded at 13:56 on that day.

[38] The City did not deliver a supplementary answering affidavit. It did not deliver heads of argument by 17 April 2026; it delivered heads of argument two months later on 18 June 2026.

[39] On 28 April 2026 the liquidators delivered their heads of argument in the rescission application. On 13 May 2026 they launched the strike-out application. On 25 May 2026 the City delivered heads of argument in the rescission application.

[40] It is against this background that the four applications before me must be determined.

The lack of personal knowledge of the deponent to the affidavits submitted on behalf of the City

[41] Every affidavit filed by the City in these proceedings - the founding affidavit in the rescission application and the answering affidavit in the contempt application - is deposed to by Mr Masendeke, the City's attorney of record.

[42] Mr Masendeke asserts personal knowledge. That assertion cannot be accepted at face value in respect of the billing disputes that are at the heart of the current proceedings. Yet, as I have said, there is not a single confirmatory affidavit from any employee of the City with knowledge of the metering, reading, billing or reconciliation of the account. In particular, no-one with knowledge of the facts has dealt with the serious allegations contained in the applicant's affidavits, including, whether an electricity meter exists on the property; whether it was read, whether the readings were actual or estimated, how the account was reconstructed in the November 2024 rebills, whether the City's internal dispute procedures were followed, whether the dispute was investigated internally, etc. These are matters peculiarly within the knowledge of the City's officials and not of its attorney. As the liquidators correctly submitted, on such matters the deponent is no more than a conduit and the evidence he has sworn to is inadmissible hearsay without such confirmation.

[43] This Division has recently criticised this very practice on the part of this very respondent. In *Millu v City of Johannesburg Metropolitan Municipality and Another*,¹ delivered some five weeks before the Keightley order, Sutherland DJP criticised in the strongest terms the City's habit of putting up affidavits by legal advisers and attorneys who lack personal knowledge of the billing facts, and marked the Court's disapproval with a punitive costs order. That admonishment appears to have gone unheeded by the City.

[44] The consequence is highly prejudicial to the City, and the taxpayers whose funds it uses to carry out its operations. It is now well established that in motion proceedings a respondent must deliver a version deposed to by a person with personal knowledge of the facts. Bald denials by a deponent without personal knowledge do not create a genuine dispute of fact and cannot displace the applicants' evidence when one applies the rule set out in *Plascon-Evans*.² As I have already said, the City's assertion that services "*are being consumed*" is based entirely on the correspondence from the conveyancing attorney that has not been verified by any member of the City who would be able to affirm this on affidavit.

[45] Equally troublesome is that fact that the City filed no supplementary answering affidavit in the contempt application, despite being granted leave to do so by agreement. The liquidators' supplementary affidavits of 10 October 2024 and 28 November 2024, and their replying affidavit of 10 July 2025 dealing with the site inspection and the rebilling on phantom meters, therefore stand entirely uncontested. It was utterly irresponsible of the City not to fully investigate this and place all relevant facts before the court.

The strike-out application

[46] The liquidators ask me to strike out the City's defence in the contempt application in its entirety and to grant judgment as prayed. They advance two bases for this: The first is the City's serial non-compliance with the Rules and with three orders of this Court regulating the filing of papers. The second is the

¹ (25039/2021) [2024] ZAGPJHC 419 (18 March 2024)

² *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C.

principle set out in the English case of *Hadkinson v Hadkinson*,³ to the effect that a litigant in contempt of an order of the court may be refused audience until the contempt is purged. They also rely on *Beylieveldt v Redpath*⁴ and on *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Co Ltd*⁵ in support of this.

[47] A agree that the City's conduct of this litigation has demonstrated a repeated and flagrant disregard for the Rules of this Court and for Court Orders prescribing time periods. It delivered its answering affidavit five months out of time and then, this was on the morning of a hearing; it ignored an order of Noko J; it ignored the timetable in an order of Von Ludwig AJ which it had itself agreed to; and it delivered heads of argument two months late. It has never filed a replying affidavit in its own rescission application, now more than two years overdue and to this day has not sought condonation to do so.

[48] In *Millu v City of Johannesburg Metropolitan Municipality and Another*,⁶ Sutherland DJP granted an order precisely in the terms that the liquidators now ask me to do. Sutherland DJP struck out the City's defence for what he characterised as egregious non-compliance with an order of the Court, and proceeded to grant substantive relief upon the account, including the reversal and correction of estimated electricity charges, the production of meter-reading records and tariffs, an interdict against the termination of basic services on the strength of the disputed amounts, and costs on the attorney and client scale. That judgment, significantly, was delivered on 18 March 2024, five weeks before the Keightley order, and it was directed at the same respondent before me.

[49] Neither party cited this case upon this issue; the liquidators invoked it only for the criticism of the City's practice of filing affidavits deposed to by its attorneys. Although it is plainly relevant to the strike - out application, it is, in my view it is distinguishable, for three reasons. First, in *Millu*, the non-compliance which attracted the sanction was non-compliance with an order made in the very

³ [1952] 2 All ER 567 (CA)

⁴ 1982 (1) SA 702 (A) at 714E-G

⁵ [2013] ZASCA 5 at para 17

⁶ (25039/2021) [2024] ZAGPJHC 419

proceedings in which the defence was struck out, and the striking out went to the respondent's defence in the main application. Here the strike-out is sought in the contempt application, and the order said to have been disobeyed is the Keightley order, which I have agreed to rescind, as appears hereafter.

[50] Second, and consequently, the foundation for the strike out in the matter before me is different; the liquidators' primary complaint is that the City was in contempt and should be denied audience on *Hadkinson* principles until the contempt was purged. Although I have found later in this judgment that the contempt has been established for the period during which the order bound the City, following by decision to grant rescission of the Keightley order (also dealt with later in this judgment), the order itself no longer exists and there is thus, nothing left to purge. To deny the City audience in the main application on account of its disobedience of an order which this judgment sets aside would be to visit upon it the consequences of an order it was never given a proper opportunity to resist.

[51] Third, the striking out in *Millu* was the only means by which that litigant could obtain relief; here it is not, because the directions I propose to make secure the same practical result by a less drastic route.

[52] I must stress that the striking out of a defence is among the most drastic sanctions available to a court; it denies a litigant its constitutional right of access to court under section 34 of the Constitution and it decides a matter otherwise than on its merits. Moreover, the *Hadkinson* principle is discretionary and our courts have consistently been slow to invoke it, particularly against an organ of state which holds public funds in trust. Where, as here, the same result can be achieved by the ordinary and more measured route of holding the defaulting party to the consequences of its own failure to deliver its own supplementary answering affidavit, such a drastic remedy as striking out the City's defence is not required.

[53] This is because the City's failure to deliver a supplementary answering affidavit means that the liquidators' evidence concerning the site inspection of 7 November 2024, the non-existence of the electricity meter, the phantom water

meters and the rebilling on those meters is uncontradicted and must be accepted for the purposes of these proceedings. Its failure to put up any deponent with personal knowledge means that its assertions on consumption carry no evidential weight. It is woeful that the City, that runs on taxpayer's money, could act so recklessly.

[54] It may, however, be that the City assumed that it was not necessary for it to fully address the contempt application as it had sought this to stay while its application for rescission of the Keightley Order was pending. I can see some logic in this as if the Keightley Order is overturned, the City may have thought that contempt application must of necessity fall away. This, however, I will demonstrate later in this judgment, is an utterly misconceived premise.

[55] Although the City has been found to be in contempt by me below, that finding relates to a now rescinded order and I have declined to give it the further consequence of denying the City to place material facts before me in the contempt application.

Condonation for the late delivery of the answering affidavit

[56] The City seeks condonation for the late delivery of its answering affidavit in the contempt application. Its explanation is that *"the Municipality was delayed due to the fact that it had to appoint legal representatives and also attended several consultations in order to settle the present affidavit"*, and that upon furnishing clearance figures it *"understood the issue is settled"*. I reject this contention:

- a. First, the clearance amounts were furnished to the conveyancing attorney and not the attorney representing the applicant's in the contempt proceedings.
- b. Second, it is trite that an applicant for condonation must furnish a full, detailed and accurate account of the causes of the delay and must satisfy the court that the explanation covers the entire period of default. The explanation furnished does neither and is wholly inadequate. The City had already appointed Mojela Hlazo Practice by 3 May 2024, three months before the contempt application was served. The proposition that it

understood the matter to be settled is irreconcilable with the fact that it appeared before Noko J on 31 October 2024 to seek and obtain an extension, and then simply ignored the extension it had obtained. There is no explanation at all for the period from 15 November 2024 to 17 April 2025.

[57] Nevertheless, I am persuaded to grant condonation, for two reasons:

- a. First, the contempt application seeks, among other relief, the imposition of a fine. Proceedings seeking criminal sanction demand that a court should be slow to determine them without hearing the respondent's version as this would necessarily impinge upon the City's Constitutional right to a fair trial set out in section 12(1) of the Constitution.
- b. Second, the interests of justice in a matter such as the one before me are best served by a decision on the merits that finally disposes of the dispute, rather than causes it to be delayed further.

[58] Condonation is accordingly granted, but the City must pay the costs occasioned by its default, including the wasted costs of 17 April 2025 and the reserved costs of 31 October 2024.

The rescission application

[59] The City's notice of motion does not identify the provision under which rescission is sought. Its founding affidavit sets out the three requirements for an application under the common-law, or an application under Rule 31(2)(b). The latter requires that the application be brought within twenty days of knowledge of the order, that an explanation for the default is provided, and that a bona fide defence is disclosed. In argument Mr Sithole, for the City, relied on Rule 42(1)(a) as well. I accordingly deal with both grounds for rescission of Keightley's order.

[60] I must, however, begin with the circumstances in which the Keightley order was obtained, because those circumstances are decisive with regard to the rescission application.

[61] On 9 June 2023 the liquidators launched the first application under case number 2023-055817. The City instructed Mojela Hlazo Attorney to oppose the application. On 7 August 2023 those attorneys delivered an answering affidavit opposing the relief sought. The first application was thus a live opposed application between the parties, seeking to compel the City to provide valid clearance figures so that a clearance certificate could be obtained to enable transfer of the very property that is the subject of the current proceedings pursuant to the very same sale.

[62] On 23 February 2024, while that opposed application remained pending, the liquidators launched the present application under a new case number, seeking substantially the same relief. They caused it to be served by the Sheriff on Ms Mlombo, a legal intern, at the City's premises. They did not send a copy to Mojela Hlazo Practice; nor did they, even out of courtesy, inform those attorneys telephonically that a fresh application had been launched and served on the City.

[63] Needless to say, the City did not oppose the proceedings as it mistakenly assumed that its attorney on record in the first application were handling the matter on its behalf. This was also not entirely unreasonable as the application served on the City referred to an amended notice of motion that it was reasonable to assume was part and parcel of the proceedings that had been opposed by it. One could not expect that the recipient would have appreciated that while the identity of the parties and the relief sought was the same, the case number was different.

[64] On 23 April 2024, Keightley J granted final relief on an unopposed basis. She was not told that an application between the same parties for materially the same relief was pending. She was not told that it had been opposed and replying affidavit had been filed, rendering the matter ripe for hearing. She was not told that the attorneys who had delivered the answering affidavit opposing the application had not been notified of the application before her or that, that matter had not been withdrawn.

- [65] On 2 May 2024 - nine days after the Keightley order - a notice of withdrawal of the first application was signed. It was uploaded to CaseLines in the first application and not on Court Online. More importantly, the withdrawal was not served on the City's attorney who was on record in those proceedings.
- [66] On 3 May 2024, the City learned of the order. Mr Moola wrote to Mr Masendeke in the terms quoted by me above, querying how it was possible that an Order could have been granted against the City when attorneys had been appointed and the matter was opposed.
- [67] On 28 May 2024, the City filed its rescission application. On 30 May 2024 it was served on KG Tserkezis Inc, then the liquidators' attorneys of record.
- [68] It was only then, and only because of that service, that the withdrawal of the first application was communicated to the City. This is conceded by the liquidators at paragraphs 24 to 26 of the founding affidavit in the contempt application. There Ms Nieuwoudt states that on 30 May 2024 her firm was served with the rescission application and that *"upon investigation, [she] realised that the notice of removal was not served on the attorneys of record for the previous application bearing case no 2023-055817 ... but was only uploaded to caselines"*. She goes on to explain that a *"without prejudice"* letter was then sent to the City's attorneys *"in respect of the error advising of the withdrawal and the reasons for withdrawal of the application on 31 May 2024"*.
- [69] The reasons for the withdrawal was explained by the liquidators in paragraphs 6 to 10 of the answering affidavit in the rescission application, namely that they had made out their case substantially in reply and it was thus thought prudent to avoid this difficulty by simply re-instituting the proceedings afresh. It was only because of this that the two proceedings were not identical. However, the new proceedings commenced with an *"amended notice of motion"* supported by a founding affidavit that, so I understand, included all the new matter that was contained in the previous replying affidavit. It was this new application, supported by an amended notice of motion, that was served upon the City. The original notice of motion has not been placed before me.

[70] But what is of relevance is that in their answering affidavit, the liquidators explain that the first application was withdrawn “*for the simple reason that new facts were raised in the Replying Affidavit which is contrary to caselaw and rules of court*”, and that they “*withdrew the case in order to place all facts in one application, and have the Applicant answer to all relevant facts*”. They say that the two applications were “*based on similar facts but the second application had a more in depth background, with additional evidence*”.

[71] However, the liquidators also say, at paragraph 11, that the second application was served at the City’s principal place of business “*as is required by the rules of court*”. In paragraph 12 they then explain their rationale for doing so, being “*as this was a new application the attorneys of record in the first application was not mandated for the second application*”. This does not explain the non-service of the second application on the City’s attorneys who had opposed the first application, particularly as they added at paragraph 14, that “*due to a clerical error, the Notice of withdrawal was served late*”. Apart from the fact that this was not an explanation put before Keightley J, the withdrawal was not simply served “*late*”, it was served after Keightley J’s order had been sought and had been granted on an unopposed basis.

[72] In these circumstances, it does not lie in the liquidators’ mouth to say that the new application was properly served by Sheriff on the City in terms of the Rules of Court; there can be no doubt that the liquidators attorney owed a professional duty to the City’s attorney to inform him about the withdrawal of the previous application and the reasons before the new application was brought. What is more, it was not permissible for the liquidators’ attorney to withdraw the first application without informing the City’s attorney and tendering costs.

[73] I also have some doubt as to the reasons furnished to the City’s attorneys for the withdrawal as had they known, they would certainly have insisted on being paid the wasted costs, had they not also opposed the withdrawal and the re-institution of the proceedings on the same facts in order to avoid the inevitable consequence of their case being made out in reply and the very real possibility of the dismissal of the original application brought that would then have been *res judicata* unless appealed.

[74] I note that the explanation furnished concerning the failure to inform the City's attorneys of the withdrawal of the first application was furnished in the founding affidavit in the contempt application and not in the answering affidavit in the review application. Of further concern it that the letter allegedly advising the City's attorneys "*of the withdrawal and the reasons for withdrawal of the application on 31 May 2024*" has not been annexed to the affidavit. Whilst I accept that this letter may have been "*without prejudice*", that could have been waived; what is more, is that the reasons provided could readily have been furnished in the affidavit.

[75] With this background in mind, the liquidators' attorneys had a duty to the court to inform Keightley J that there was a pending matter based on substantially the same facts that was opposed and was still pending. This may well have caused the learned judge to more fully interrogate the service of the application and to ensure that it had indeed come to the attention of the City.

[76] Apart from this, and my misgivings about the conduct of the liquidators' attorneys, what is clear is that, so far as the City and its attorneys were aware, the first application remained pending and opposed from 9 June 2023 until 31 May 2024. It was in this interim period that the second application was launched, served, enrolled, heard and judgment had been granted against the City on an unopposed basis. The withdrawal upon which the liquidators rely in order to say that nothing was pending was, on their own attorney's evidence, discovered to be ineffective only when the City brought an application to set the order aside, and was also only regularised on Caselines the day after that application was served.

[77] If the object was to place all the facts before the court in one properly constituted application, the plain and proper course was to withdraw the first application, tender the wasted costs, and then launch the second. What was done instead was to launch the second application, while the first stood pending and opposed, to obtain final relief in the second application, unopposed, and only then to sign a withdrawal of the first. No reason has been advanced for that order of events, and I can conceive of none which is

consistent with the candour a litigant owes to a court hearing a matter in the absence of its opponent.

[78] Whatever the differences in the evidence presented in the second application, the two applications were between the same parties, concerned the same property, the same municipal account, and sought materially the same relief; the liquidators themselves describe them as “*based on similar facts*”. That such an application was pending, and had been opposed on affidavit, was a fact of obvious materiality to a judge asked to grant final relief in an unopposed application. Both the liquidators’ answering affidavit, at paragraph 49, and their heads of argument, at paragraph 30.2, assert that “*there was no pending application*” because the first had been withdrawn. Those assertions are wrong: the hearing was on 23 April 2024; the withdrawal was signed on 2 May 2024 and communicated on 31 May 2024.

[79] The central question that remains is why the City’s attorneys were not informed about the second application, or contacted out of courtesy when no intention to oppose was served, knowing full well that the first application had been opposed. The liquidators’ answer, in their affidavit and in their heads, is that Mojela Hlazo Practice held no mandate in the new case number, so that service at the City’s principal place of business was “*not only procedurally correct but was the only appropriate manner of service*”, for which they invoke Rule 4(1)(a)(ii) and section 115 of the Systems Act.

[80] I accept the first half of that proposition. Service by the Sheriff on a responsible employee at the City’s principal administrative offices was formally good service on the municipality, and Rule 4A imposes no obligation to serve upon an attorney who is on record in different proceedings. To that extent the liquidators acted regularly. I do not accept the second half; that a mode of service is permissible does not make it the only appropriate one. The liquidators knew, as a matter of fact, that the City had appointed attorneys and that those attorneys had answered on affidavit the very complaint which was about to be re-litigated. Ordinary courtesy between practitioners, and the duty which practitioners owe to the administration of justice and the court, required that a copy of the fresh application be transmitted to them, if only under cover of a letter explaining that

a new application was being brought and why. It would have cost a single email. It would have averted everything that has followed in the two and a half years since; no reason has been given for not doing it.

- [81] Finally, a party who withdraws proceedings ordinarily tenders the wasted costs. The City was put to the expense of instructing attorneys and delivering an answering affidavit in an application which was then abandoned in favour of a fresh one on similar facts. It has not been compensated, and no tender has been made to this day for these costs.

Rescission under Rule 42(1)(a)

- [82] Rule 42(1)(a) permits a court to rescind an order “*erroneously sought or erroneously granted in the absence of any party affected thereby*”. Two requirements must be satisfied; absence, and error.

- [83] Absence is not in dispute; The City was not before Keightley J. And I have already found that this was reasonable in the circumstances.

- [84] As to error, the settled position is that an order is not erroneously granted merely because the defaulting party afterwards discloses a defence. In *Lodhi 2 Properties Investments CC v Bondev Developments (Pty) Ltd*⁷, the Supreme Court of Appeal held that a procedurally valid default judgment, to which the plaintiff was procedurally entitled at the time it was granted, is not “*erroneously granted*” within the meaning of the sub-rule simply because a defence is later revealed. In *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)*⁸, Jones AJA emphasised that Rule 42 is a limited procedural remedy which confers no general discretion to set aside orders. And in *Government of the Republic of Zimbabwe v Fick*⁹, the Constitutional Court affirmed that the rule addresses errors in the proceedings and not the merits.

- [85] However, *Lodhi 2 Properties*¹⁰ is expressly premised upon the plaintiff having been procedurally entitled to the judgment at the time it was granted. The

⁷ 2007 (6) SA 87 (SCA)

⁸ 2003 (6) SA 1 (SCA) at para 17

⁹ 2013 (5) SA 325 (CC) para 85

¹⁰ *supra*

reasoning is that where a defendant has been properly served, has not defended, and the plaintiff is entitled to judgment on the papers, the judgment is not erroneous merely because a defence in fact existed. The corollary, drawn in the same passage, is that a judgment is erroneously granted where, at the time of its grant, there existed a fact of which the judge was unaware and which, had it been known to him or her, would have precluded the granting of the judgment or order. The question, accordingly, is not whether the City had a defence; it is whether there existed a fact, unknown to Keightley J, which would have precluded the grant of the order.

[86] In my judgment there was such a fact, and it was not a single fact but number of material facts that ought to have been disclosed to Keightley J. Unknown to Keightley J were the following material facts: One, that an application between the same parties, concerning the same property and the same account, and seeking materially the same relief, was pending; two, that it had been opposed and an answering affidavit had been filed; three, that the respondent had attorneys of record in that application who had not been notified of the application before her; and four, that no withdrawal of the earlier application had been communicated to the respondent or to those attorneys.

[87] Had Keightley J been apprised of that state of affairs, I do not believe for a moment that she would have granted final relief on the day that she did. She would, at the very least, have stood the matter down, directed that the City's attorneys be notified, and required the withdrawal to be regularised before proceeding. Accordingly, on any realistic view, the order would not have been granted on the day that it was granted on an unopposed basis.

[88] The liquidators submitted, on the strength of the so-called *Beknor* principle emanating from the judgment of *City of Tshwane Metropolitan Municipality v Beknor CC t/a Crawdaddys*,¹¹ that the existence of prior proceedings does not render a judgment erroneous. Insofar as that submission concerns the later emergence of a defence it is correct, and it is what *Lodhi 2 Properties* decided.

¹¹ (042667/23) [2025] ZAGPPHC 1206 (6 November 2025)

Insofar as it is said to extend to the non-disclosure of pending, opposed proceedings on the same cause, in the absence of the opposing party's attorneys, the reliance on the principle goes too far. Rule 42(1)(a) exists precisely in order to correct orders obtained in circumstances in which the court was not properly informed.

[89] *Beknor* is, in any event entirely distinguishable: There the municipality was aware of the proceedings and the set down; yet took no steps to appear at the hearing. The municipality only sought rescission after the attachment of its bank account. The court concluded at paragraph [26] that:

"Our jurisprudence was said to be clear: where a litigant, given sufficient opportunities to participate, elects to be absent, that such absence does not fall within the scope of the requirement of rule 42 (1) (a), and cannot have the effect of having an order granted in absentia, into one erroneously granted"

[90] I also do not consider *Beknor* as authority for the proposition postulated by the liquidators; indeed it is oft cited for the proposition that a full disclosure must be made to the court where a judgment is sought in the absence of a party.

[91] The ratio for the judgment under Rule 49(1) is set out in paragraphs [48]-[49]:

"The fact that the City believes it has a defence on the merits (which by the way it has had all along deducing from the defence tendered) is an irrelevant consideration and, if subsequently disclosed, cannot transform a judgment validly obtained, into an erroneous one." At the time a case was made on the facts that were before the court, that justified the granting of the order. It therefore cannot be said that the judgment was erroneously granted. The City consequently cannot succeed under Rule 42 (1).

The court granted the judgment by default as is required by the rules, on the basis that the City has been notified of the Respondent's action against it and being aware of the Respondent's claim and allegations in support thereof, was not defending the order sought. The court was therefore entitled in terms of the rules absent any objection, after the Respondent has made a case for the relief sought, to grant the order." (footnotes omitted)

[92] This is not what transpired in the matter before me.

[93] Nor does it assist the liquidators to characterise *lis alibi pendens* as a dilatory plea available only to the party who raises it. That characterisation is correct as

far as it goes in that the fact that the first application was pending did not deprive Keightley J of jurisdiction. But the point is not one of jurisdiction; the point is that she was entitled to be told this and was not. And she was entitled to be told that the City's attorney- who was the party who could have raised the plea of *lis pendens*, was not aware that the second application at all.

[94] The liquidators say that the “*error*” is inseparable from the City's own default as the City was properly served on 23 February 2024, it had two months in which to enter an appearance to defend, and had it done so the plea of *lis pendens* of the first application would have been placed before the court by the party entitled to raise it. A party which by its own inaction deprives the court of information cannot, so the argument goes, convert its own omission into an error of the court.

[95] I would have accepted that submission had the City's inaction been unexplained; it is not. It is explained by the document which the City itself produced showing that within hours of the order reaching him on 3 May 2024, Mr Moola of the City's legal support wrote to the City's attorney. The contents of his letter have already been quoted but need to be repeated. Mr Moola asked “*How have they managed to get such an order knowing that your firm is the City's attorney of record - Please investigate and ensure that the City's interests in this regard is safeguarded.*”

[96] That email constitutes a contemporaneous account of the facts and has not been *ex post facto* manufactured; it is the best evidence of the state of mind of the City's officials, and what it discloses is genuine astonishment of an official who believed that the liquidator's complaint concerning this property and this account was in the hands of attorneys who were opposing it.

[97] Critically, that belief was not a misapprehension; it was objectively correct upon the only information which the liquidators had allowed the City to have. The City had instructed attorneys, those attorneys had filed an answering affidavit, no withdrawal had been communicated to them, and nothing had been sent to them about the second application. Judged upon the state of knowledge available to it, the City was a litigant whose defence was being conducted by its

attorneys in the very dispute in which final relief was granted against it in their absence.

[98] A default is wilful when it reflects a conscious election not to defend. A litigant who does not appreciate that a fresh claim has been made against it elects nothing. I am thus unable to find that the City was in wilful default in failing to oppose the second application, and I decline to do so.

[99] Two further observations need to be made by me: The first is that the clerical error upon which the liquidators rely cannot be given exculpatory weight as for it was discovered and cured only when, and only because, the City brought the rescission application. An error corrected upon discovery is one thing; an error which comes to light only when the opposing party seeks rescission of the order granted in its absence is another. Second, the liquidators cannot simultaneously rely upon the withdrawal in order to say that nothing was pending, and upon their own failure to serve that withdrawal in order to explain why the City did not know of it.

[100] The requirements of Rule 42(1)(a) are accordingly established; an “error”, in the sense in which *Lodhi 2 Properties* employs the term, has been shown.

[101] However, the remedy under Rule 42(1)(a) is discretionary; the sub-rule provides that the court “may” rescind. Where the requirements are met, rescission will ordinarily follow, but the discretion is to be exercised judicially having regard to all the circumstances, including the conduct of the party seeking relief. The City’s own conduct after 3 May 2024 would ordinarily have caused me to have exercised my discretion against granting relief. However, nothing in what follows should be read as condoning the patently dilatory conduct of the City.

[102] The City launched its rescission application on 28 May 2024, within the twenty days. There its diligence began and ended. The liquidators answered on 27 June 2024. The City’s replying affidavit fell due on 11 July 2024. It has never been filed. More than two years have passed. The City did not enrol the application. It took no step whatever to have the rescission determined, save to ask that the contempt application be stayed because of it. A litigant which says

that an order against it was irregularly obtained, and which then sits for two years without prosecuting the only application by which that order can be set aside, invites the inference that it valued the pendency of its rescission application to defeat the contempt proceedings more than its outcome.

[103] Nevertheless, the discretion conferred by Rule 42(1)(a) is directed not at the conduct of the City, but at the question whether the order should stand, and the paramount consideration is whether it is an order which the court would have made had it been properly informed. Where the process of a court has been invoked in the absence of a party, in circumstances in which that party had been given no reason to know that a claim had been made against it, and where material facts were withheld, it is the integrity of the judicial process itself which is at stake and must be guarded. That consideration is not displaced by the subsequent misconduct of the party seeking rescission, however grave that misconduct may be; it is answered by an appropriate order as to costs and by directions which deny the delinquent party any advantage from its delay.

[104] I have considered whether refusing rescission would nonetheless be the just course because the City's defence is hopeless as on the uncontradicted evidence, the City cannot have measured electricity through a meter which does not exist. But under Rule 42(1)(a), unlike the common law, an applicant is not required to establish a bona fide defence, and there is good reason for that difference; the sub-rule vindicates the regularity of the process rather than the merits of the claim. To refuse rescission upon the footing that the City would lose in any event would be to decide the main application without having heard it, which is the very defect the sub-rule seeks to prevent.

[105] There is, moreover, a practical answer to my concerns: Rescission need not, and in this case will not, leave the liquidators where they stood in June 2023; the main application will revive and is before me. The parties have exchanged founding, answering, supplementary and replying affidavits and full heads of argument. I shall give directions which compel the City to answer, on affidavit and through a deponent with personal knowledge, the very matters upon which it has for two years been silent, upon a strict timetable and with a set consequence for default. In addition, I intend to grant the liquidators interim

protection against the debt-collection measures (the disconnection of services) which the City has been threatening and implementing in respect of the disputed amounts.

[106] For completeness I record that, had the matter fallen to be decided under the common law or under Rule 31(2)(b), the outcome would have been different. Those remedies require the applicant to show good cause, namely a reasonable and acceptable explanation for the default and a bona fide defence carrying some prospect of success, the two requirements being cumulative.¹²

[107] On the findings I have made, the City's explanation for its default, taken together with the Moola email, is reasonable and acceptable. Its defence, however, is not *bona fide*. The assertion that electricity is being consumed is contradicted by the City's own officials, is unsupported by any admissible evidence, and has for two years gone unsubstantiated despite every opportunity. The City would have failed upon the second leg and its application would have been dismissed. It succeeds because Rule 42(1)(a) asks a different question and has different threshold requirements.

[108] The Keightley order was granted in the absence of the City and, in the sense explained above, erroneously granted. It falls to be rescinded; it was an order granted in the absence of a party, upon incomplete information, in circumstances in which that party had been given no reason to know that a claim had been made against it, cannot stand.

The application for a stay of the contempt proceedings

[109] It is now well established that the institution of an application for rescission does not, without more, suspend the operation or execution of the judgment or order sought to be rescinded. Unless and until the order is rescinded or its execution is separately stayed, it remains operative and enforceable.

[110] The position is thus distinct from that governing an application for leave to appeal. Section 18(1) of the Superior Courts Act 10 of 2013 expressly provides for automatic suspension where a decision is the subject of an application for

¹² *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 765C-G.

leave to appeal or an appeal. It does not extend that automatic suspension to an application for rescission. A party seeking protection pending rescission must ordinarily obtain a stay under Uniform Rule 45A, which provides that the court may, on application, suspend the operation and execution of an order.

[111] This issue was recently considered in *Shackleton Credit Management (Pty) Ltd v Mogodi (Leave to Appeal)*.¹³ The Court expressly confirmed that applications for rescission were deliberately not included within s 18(1). At para 19 it was explained that “[i]f the launching of a rescission application does not suspend the judgment sought to be rescinded...” refusal of rescission simply leaves the underlying judgment intact.

[112] This decision placed reliance upon *Erstwhile Tenants of Williston Court and Another v Lewray Investments (Pty) Ltd and Another*,¹⁴ where Meyer J (as he then was) reasoned that, had the legislature intended an application for rescission automatically to suspend a judgment, it would have expressly included rescission within s 18(1). The contrary construction would allow the mere filing of a rescission application—even an entirely unmeritorious one—to prevent execution. The appropriate protection is instead an application under Rule 45A that requires some judicial oversight before suspension of the Order sought to be rescinded.

[113] Indeed, it was found in *Ebrahim NO and Others v Mohamed and Others*¹⁵ that treating the mere filing of a rescission application as sufficient to suspend execution would render Rule 45A nugatory. The pending rescission therefore did not suspend the judgment “in the absence of an order granted in terms of Rule 45A”. It held that “*there is no basis in law for the automatic suspension of the operation and execution of a Court Order which is the subject of an application for rescission.*”

[114] The effect of this is that the order sought to be rescinded remains binding; a court order exists in fact and has legal consequences until it is set aside by a competent court. Thus, the fact that an order may ultimately prove susceptible

¹³ (17233/2022) [2026] ZAGPJHC 947 (24 August 2026)

¹⁴ 2016 (6) SA 466 (GJ)

¹⁵ (40478/2016) [2017] ZAGPPHC 516 (17 March 2017) at paras 14-15.

to rescission does not permit the affected party simply to treat it as though it does not exist or to ignore it.

[115] This is consistent with the familiar principle associated with *Oudekraal* in the administrative-law context, but in relation to court orders the proposition is stronger in that it establishes that an extant court order must be obeyed unless and until it is set aside, subject of course to any order suspending its operation or execution. The rescission application challenges the continued existence of the order; it does not itself provisionally neutralise it. If the party seeking rescission wishes to prevent execution before the rescission application is determined, the appropriate course is ordinarily to obtain a stay under Rule 45A. The court then exercises a discretion directed principally at whether real and substantial justice requires execution to be suspended.¹⁶

[116] The recent judgment of *MEC for Health and Social Development, Mpumalanga v Sheriff of the High Court (Mpumalanga) and Another*¹⁷ has put the issue beyond doubt and held that Rule 45A confers a discretionary power to stay execution where justice requires it and that “*the mere pendency of rescission proceedings*” is insufficient.

[117] The effect of the above authorities is that the Keightley order remained binding in the absence of an order for a stay of her order under Rule 45A.

[118] Yet, the City did not comply with the Keightley order. It furnished figures which included the very charges the order directed to be excluded, and it stated at paragraphs 14 and 47.4 of its answering affidavit, that it was entitled to do so because it disputes the order. However, a litigant may not appoint itself the judge of the validity of an order directed at it. While the order stood it bound the City, and the City’s refusal to obey it was deliberate.

[119] Most seriously of all, three weeks after its own officials had confirmed that no municipal electricity meter exists upon the property, the City rebilled the account with some R1.7 million of electricity charges levied upon meter 6[...],

¹⁶ *Road Accident Fund v Mokoena and Another In re Mokoena v Road Accident Fund* (2473/2019) [2022] ZAFSHC 172 (12 July 2022) at para 18

¹⁷ (2022-2793) [2026] ZAMPMBHC 69 (6 August 2026)

describing part of that charge as an actual reading, and then proceeded to threaten disconnection upon the strength of a balance said to be owing in the amount of R6 815 076.29. It has offered this Court no explanation of any kind for that conduct, and it has had two years in which to offer one.

[120] I accept that in the City's counter-application it seeks a stay of the contempt application pending the finalisation of the rescission application. It relies upon Rule 45A and upon the inherent power of the court, invoking *Van Rensburg and Another NNO v Naidoo and Others NNO; Naidoo and Others NNO v Van Rensburg NO and Others*,¹⁸ where Navsa JA observed that a court has an inherent jurisdiction in appropriate circumstances to order a stay of execution, that the discretion must be exercised judicially, and that as a general rule a stay will be granted where injustice would otherwise ensue. The City also relies upon *Stoffberg N.O. and Another v Capital Harvest (Pty) Ltd*¹⁹ in which Binns-Ward J explained that the guiding principle is that execution will be suspended where real and substantial justice so requires.

[121] The liquidators have referred me to *Gois t/a Shakespeare's Pub v Van Zyl*²⁰ and *BP Southern Africa (Pty) Ltd v Mega Burst Oils and Fuels (Pty) Ltd*,²¹ in support of the proposition that a court may have regard to the prospects of success in the underlying challenge and to whether the challenge has been launched for an indirect purpose.

[122] In my view, the issue is more complex: The question in fact is whether, prior to the stay being granted, the City has remained in wilful contempt of the Keightley order. I do not see how any stay that I may now grant may be retrospectively applied to negate the prior contempt. Thus my decision to grant rescission has not rendered the contempt application academic and must still be considered.

[123] But the application for a stay at this stage, when I have already decided the rescission application in favour of the City, is moot and meaningless; it ought

¹⁸ 2011 (4) SA 149 (SCA) at paras 51-52

¹⁹ (2130/2021) [2021] ZAWCHC 37 (2 March 2021)

²⁰ 2011 (1) SA 148 (LC) at 155H-156B

²¹ 2022 (1) SA 162 (GJ)

properly to have been brought as a separate application, if needs be as a matter of urgency, to prevent the City being found to be in contempt of Keightley order pending the outcome of its rescission application. Instead, it was brought as a reactionary application in an attempt to stave off the contempt application. It was an application that ought properly to have been brought separately from the rescission application and set down as a matter of priority.

[124] As the stay application has been brought at this late stage when it has been rendered moot, I have no alternative but to dismiss it. But there are serious implications resulting from the failure to timeously bring a stay application prior to the launching of contempt application, and more so, immediately upon launching the rescission application. The City was seriously remiss in not having the stay application heard expeditiously and not setting down its rescission application with the same expediency.

The contempt application

[125] There is an assumption which underlies the whole of the City's conduct in this matter which I have demonstrated is wrong in law; that is that the launching of the rescission application relieved the City of the obligation to obey the Keightley order; it did not.

[126] The City did not seek a stay when it launched its rescission application on 28 May 2024. It sought no stay for the next eleven months. The stay was sought for the first time on 17 April 2025, in the counter-application delivered together with its answering affidavit in the contempt application -that is to say, it was sought not in order to protect the City against the operation of the Keightley order, but in order to meet an allegation that the City was in contempt of it. And having at last sought a stay, the City did not enrol the counter-application either. It was heard for the first time when this matter came before me on 4 August 2026, two years and three months after the Keightley order had been served upon the City.

[127] The consequence is a matter of law: From 3 May 2024, when the Keightley order was served, until the moment that I deliver this judgment, the operation of that order was not suspended; it was at all times binding upon the City and

enforceable against it. Nothing in the pendency of the rescission application, and nothing in the pendency of the unenrolled counter-application, altered that position.

[128] Since the stay was never granted, and is now rendered moot, the question whether it ought to have been granted must be answered as it remains relevant to the contempt application. I would have refused the stay for the following reasons.

- a. A stay under Rule 45A is an indulgence granted to prevent real and substantial injustice. A party which seeks it must come to court with reasonable promptness. Despite this, the City delayed eleven months before bringing the application, and then delayed a further fifteen months before the application was heard. An applicant for a stay which takes twenty-six months to reach the court has, by its own conduct, demonstrated that no injustice was caused by the operation of the Keightley order against it.
- b. A stay pending the determination of a rescission application presupposes that the rescission application is being prosecuted. The City filed no replying affidavit in the rescission application, which remains outstanding to this day, and never enrolled it. A court will not suspend the operation of an order in aid of a challenge which the party asking for the suspension has itself abandoned. On the basis of the approach taken in *Gois* and *BP Southern Africa*, the pendency of the rescission application was being used as a shield against compliance with the Keightley order, and that is an indirect purpose which would have disqualified the applicant from the indulgence sought.
- c. This was the stratagem adopted knowing that the liquidators were unable to transfer a property sold in 2023 to the prejudice of the general body of creditors, while the City levied further charges upon the account and disconnected the supply.

[129] I add, for completeness, that even had I been disposed to grant a stay, I could not have granted one operating retrospectively so as to expunge non-

compliance which had already occurred. Rule 45A empowers the court to suspend the operation of an order for a period which it determines. A suspension is by its nature prospective: It arrests the future operation of an order; it does justify disobedience retrospectively.

[130] The application for a stay would accordingly have been refused, and even if I had granted it, it would not have operated retrospectively.

[131] Because the Keightley order has now been rescinded, the refusal has no prospective operation. It is nonetheless a necessary determination, for it fixes the status of that order during the twenty-six months which the City allowed to pass, and that in turn, determines the fate of the contempt application, to which I now turn.

[132] It follows from the refusal of the stay, and from the reasons for it, that the City's assertion that it was entitled to await the outcome of the rescission application before complying with the Keightley order untenable. The City had at all times a lawful means of protecting itself; it was Rule 45A. It did not use it for eleven months and it did not pursue it for a further fifteen months before this application was heard.

[133] The rescission of the Keightley order raises a question which was not addressed in argument, for the understandable reason that when this matter was argued neither party contemplated that the rescission would be granted while the contempt application still stood for determination. The question is this: Where a party wilfully disobeys an order which is at the time binding upon it, and the order is thereafter rescinded, is the disobedience retrospectively expunged by the rescission?

[134] The argument for the affirmative answer would necessarily be that rescission sets the order aside. A rescinded order is treated as between the parties as though it had not been granted.²² The foundation of the contempt therefore disappears, and with it the contempt.

[135] I do not accept that argument for five reasons:

²² *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) at para 42

- a. First, contempt of court is not a private remedy for the enforcement of a private right. As *Fakie* records at para 6, and as the Constitutional Court has repeatedly emphasised, while the litigant seeking enforcement has a manifest private interest in compliance, the court grants enforcement also because of the broader public interest in obedience to its orders, since disregard diminishes the authority of the courts and detracts from the rule of law; ultimately, the injury done by contempt is done to the administration of justice. As was aptly stated in *Matjhabeng Local Municipality v Eskom Holdings Ltd; Mkhonto and Others v Compensation Solutions (Pty) Ltd*²³ the purpose of a finding of contempt is to protect the fountain of justice by preventing unlawful disdain for judicial authority, and that continual non-compliance with court orders imperils judicial authority.
- b. Second, in *Department of Transport and Others v Tasima (Pty) Ltd*,²⁴ the Constitutional Court held²⁵ that, in the light of section 165(5) of the Constitution, an order “*is binding, irrespective of whether or not it is valid, until set aside*”, and that an order which does not declare law or conduct constitutionally invalid “*was enforceable immediately after it was issued*”.²⁶ The Court cautioned expressly that nothing in its judgment “*should be taken to mean that a party is entitled to ignore a court order enforcing a contract that is subsequently found to be unlawful*”,²⁷ and it held that the interdict there in issue fell away only once the counter-application succeeded, and that the parties “*were thus obliged to comply with all of the orders premised on the Mabuse J order until their counter-application succeeded*”.²⁸
- c. The Court adopted with approval the statement in *Clipsal Australia (Pty) Ltd v Gap Distributors*²⁹ that the outcome of a review application is irrelevant to whether the respondents were acting in contempt of court,

²³ 2018 (1) SA 1 (CC) at para 48

²⁴ 2017 (2) SA 622 (CC)

²⁵ at para 180

²⁶ at para 183

²⁷ at para 177

²⁸ at paras 198 and 199

²⁹ 2010 (2) SA 289 (SCA); [2009] 3 All SA 491 (SCA); 2009 BIP 251 (SCA) (25 May 2009)

that the order in question “*has to be obeyed even if it is wrong*”, and that should the challenge succeed the interdict “*would come to an end ... but until that happens the interdict stands and has to be obeyed*”. That is precisely the issue in the matter before me, with the single difference that the vehicle of attack was rescission rather than review.

- d. Third, rescission operates upon the order, not upon the events that preceded it; Rescission is an act of the court which sets aside a court order and removes the order’s operation and its enforceability; it does not, and cannot, alter what occurred while the order subsisted. The contempt, if it was committed, was complete upon the expiry of the time for compliance, and the passage of a further two years did not render it incomplete. What rescission achieves is that from the date of the rescinding order the City is no longer obliged to do the things the Keightley order required. It does not mean that prior to this, the City was never obliged to do them.
- e. Fourth, Rule 45A would be rendered pointless. The legislature has provided the mechanism by which a litigant who intends to attack an order may lawfully protect itself against its operation in the meanwhile. If a successful rescission retrospectively cured all intervening disobedience, the litigant who applied for a stay and failed would be in a worse position than the litigant who ignored the order altogether and succeeded years later.
- f. Fifth, the contrary rule would place in the hands of every recalcitrant litigant a simple and complete strategy, that is disobey the order, launch a rescission application, decline to prosecute it, resist every attempt at enforcement on the footing that the rescission is pending, and in due course, having enjoyed years of immunity, obtain the rescission and with it a retrospective absolution. That is, in substance, the course this City in fact followed. A court cannot allow this to be countenanced.

[136] I therefore hold that I remain competent, notwithstanding the rescission, to declare that the City was in contempt of the Keightley order during the period in

which that order bound it. The circumstances in which the order came to be obtained nevertheless remain relevant to the exercise of the my discretion as to relief I should grant for such contempt, if any found by me.

The requirements of contempt of court

[137] Because the relief sought includes a fine, I approach the requirements upon the criminal standard of proof. *Matjhabeng* holds³⁰ that the standard must be applied in accordance with the consequences of the remedy sought, and that the remedies of committal or a fine, having material consequences for the person against whom they are directed, attract proof beyond reasonable doubt. Declaratory relief and other civil sanctions short of committal or a fine are available upon a balance of probabilities.³¹ I find the requirements established upon the higher standard, and it follows that they are established upon the lower one as well.

[138] The three *Fakie* requirements are established upon the City's own papers.

- a. The order was granted on 23 April 2024 and its terms, set out in paragraph 18 above, are not ambiguous. The City's reliance upon *Afrocentrics Projects and Services (Pty) Ltd v State Information Technology Agency SOC Ltd*,³² for the proposition that an order must be unambiguous and capable of enforcement before contempt can follow, was misplaced. There is nothing obscure about a direction to furnish itemised section 118(1) particulars for a defined two-year period, to exclude water and electricity consumption from February 2022, to recalculate interest and value added tax, to remove penalties on the disputed consumption and to remove a specified account number. A litigant genuinely uncertain of the meaning of an order may approach the court for clarification. The City never did so.
- b. The order was served by hand on 3 May 2024 and, on the City's own evidence, was circulated internally and to its attorneys the same day. The

³⁰ at paras 64 to 67

³¹ *Matjhabeng* paras 51, 54 and 65, citing *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)* 2015 (5) SA 600 (CC).

³² [2023] ZACC 2

City pleads that very fact in its founding affidavit in the rescission application in order to establish that its application was timeous. Knowledge is thus admitted.

- c. The City has never furnished a section 118(1) figure from which water and electricity consumption from February 2022 has been excluded. It says so itself: at paragraph 14 of its answering affidavit it states that “*the Municipality provided the Applicant with the clearance figures but it contained the services which were being consumed on the property*”, and at paragraph 47.4 it asserts that it “*is entitled to charge in the clearance figure the water and electricity as they are currently being consumed*”. Account number 5[...] still appears in the figures of 7 October 2024. Interest and value added tax were never recalculated. The penalty charges were never removed. Non-compliance is admitted upon the face of the answering affidavit.
- d. The City’s plea of partial compliance misconceives the order. The order did not require the City to furnish figures; it required the City to furnish figures of a particular content. Figures which include the very charges the order directs to be excluded are not partial compliance but its antithesis.
- e. Wilfulness and mala fides are presumed once those three requirements are established. Thus, the City bore an evidentiary burden and has not begun to discharge it. Its stated position is that it did not comply because it considers the order to be wrong, and that it was entitled to await the rescission. Neither proposition is a defence. The first was rejected in *Sienaert Prop CC v City of Johannesburg and Another*,³³ in litigation against this same respondent arising from a materially identical refusal to issue a clearance certificate, and in *Tasima*. A litigant may not appoint itself the judge of the validity of an order directed at it. The remedy for a party which cannot comply pending a challenge is to seek a stay, and the City did not seek one for eleven months and did not pursue with any diligence the one it eventually sought.

³³ (31566/2021) [2021] ZAGPJHC 717 at paras 25-31

- f. Nor can the City point to any genuine attempt at compliance: It sought no extension of the one-month period; it raised no difficulty with the liquidators; it never engaged with the reconciliation of R517 679.53 furnished to its attorneys on 13 September 2024, which remains unanswered to this day. And when its own officials confirmed on 7 November 2024 that no electricity meter exists upon the property, it did not correct the account; on the contrary, it rebilled some R1.7 million of electricity upon that non-existent meter, described part of the charge as an actual reading, and enforced the resulting balance by disconnection.
- g. Not one of those matters is explained upon oath by anybody with knowledge of them. Its answering affidavit is deposed to by its attorney, without a confirmatory affidavit from any official, in the teeth of the criticism of this Division in *Millu*.

[139] I am satisfied beyond reasonable doubt that the City's non-compliance was wilful. This was not the case of a municipality struggling in good faith with an order it found difficult to implement; it was a considered decision not to comply, maintained over twenty-six months, in the belief that the pendency of an unprosecuted rescission application placed the City beyond the reach of the order.

The period of the contempt

[140] The Keightley order required compliance within one month of service. It was served on 3 May 2024. Compliance fell due on 3 June 2024. The contempt began on 4 June 2024 and continued, without interruption or amelioration, until the rescission of the order by the order I make below. That is a period in excess of twenty-six months.

The circumstances in which the order was obtained

[141] It remains to consider what weight to give, at this stage, to the circumstances under which the order was obtained. The Keightley order was obtained in the City's absence, without disclosure of the pending first application, and without

the fresh process being brought to the attention of the attorneys who were then actively opposing the same relief. Does that bear upon the contempt?

[142] The City's ignorance was cured on 3 May 2024, when the order was served and read. From that date the City knew of the order, knew of its terms, and knew, or was advised of, everything it needed to know in order to attack it. Its complaint as to the manner in which the order had been obtained was a powerful reason to apply for rescission and for a stay, promptly and diligently; it was no reason at all to disobey without a stay. A litigant who believes an order to have been irregularly obtained has a remedy, and the remedy is the court, not self-help.³⁴

[143] It does, however, bear materially upon sanction. It would be a strange administration of justice which visited the full punitive consequences of contempt upon a party in respect of an order which the same judgment holds ought not to have been granted in the form in which it was granted. The City's disobedience was inexcusable; but the order it disobeyed was one it had never been given a proper opportunity to resist. I take that into account, and it moderates the sanction considerably. It does not, for the reasons given, displace the declaration.

Relief

[144] The relief which may be granted in contempt proceedings takes many forms.³⁵ Not every contempt warrants committal, and a declaration of contempt, even short of any punitive sanction, is a remedy of real value in vindicating the authority of the court.

[145] Two forms of relief which the liquidators seek are no longer available:

- a. Coercive relief is impossible. A fine imposed to compel compliance with the Keightley order, or suspended upon condition of compliance with it, presupposes an order with which the contemnor can still be required to

³⁴ See *Tasima* at paras 149, 150 and 180

³⁵ *Matjhabeng* at paras 51 and 54

comply. The Keightley order no longer exists. There is nothing left to coerce.

- b. The mandatory relief in prayers 3 and 4 of the amended notice of motion - that the City be directed to accept R517 679.53 in discharge of the section 118(1) indebtedness and to issue the certificate - cannot be granted. It is in substance the relief sought in the main application; to grant it now would be to decide the main application without an answering affidavit and upon a record in which the City's version has not been put before the court.

[146] What remains competent is punitive. A completed contempt may be punished notwithstanding that the order has ceased to operate, for the reasons given in paragraphs 112 to 120 above. Committal is not sought and would not be granted: no official of the City has been joined, and a municipality is not susceptible to imprisonment. A fine is the appropriate sanction against an organ of state, and there is direct authority for its imposition upon this respondent.

[147] In *Sienaert Prop CC v City of Johannesburg and Another* (31566/2021) [2021] ZAGPJHC 717, Dippenaar J found the City and City Power to have been in wilful and *mala fide* contempt of an order of Weiner J, directed the issue by a fixed date of a clearance certificate excluding the disputed electricity charges under section 118(1) of the Systems Act, imposed a fine of R100 000 suspended upon condition of compliance, and ordered costs against them. The facts of that matter were materially those of this one: the same municipality, the same statutory provision, the same refusal to issue a certificate free of disputed consumption charges, and the same disobedience of an order compelling it. I am fortified in the view that a suspended fine in that amount is the appropriate response, and I would add that the City has evidently derived no lasting instruction from having had such an order made against it in 2021.

[148] Weighing the gravity of the conduct of the City - a wilful refusal, sustained for twenty-six months by an organ of state, aggravated by the rebilling of charges upon a meter which the City's own officials had confirmed does not exist, and by the enforcement of those charges by disconnection - against the mitigation

identified above, and having regard to the fact that the City must also bear the costs of these proceedings on the punitive scale, I consider that an appropriate fine is one of R100 000, payable to the Registrar of this Court.

[149] I suspend that fine in whole for a period of twelve months upon condition that the City complies with the directions given in Part E of this judgment. Suspension upon condition of future compliance is orthodox, and it is the course adopted in *Sienaert*. It marks the seriousness of what has occurred, while directing the coercive force of the order to the only place where coercion can now serve a purpose: the expeditious and honest determination of the dispute which has occupied this Court since 2023. The City is to understand that if it defaults upon the directions in Part E, the fine will fall to be enforced upon the liquidators' application, without any need to prove the contempt afresh.

[150] There is authority for the Order I propose to make. In *Sienaert Prop CC v City of Johannesburg and Another*³⁶ Dippenaar J found the City and City Power to be in wilful and mala fide contempt of an order of Weiner J, directed that the respondents issue of a clearance certificate excluding electricity charges under section 118(1), and imposed a fine of R100 000 suspended upon condition of compliance, with costs. That Order was made on materially the same facts against the same respondent.

[151] I make one further observation. The declaration I make relates to an order which has been rescinded, and it might be said that a declaration of contempt of a rescinded order is hollow relief; it is not: Two matters flow from it directly: The first is that the City cannot obtain, on the strength of a rescission it took twenty-six months to secure, an order for the costs of the contempt application which its own disobedience made necessary. The second is that the City's conduct in respect of this account is now a matter of record, established upon the criminal standard, and available to be relied upon by any court which is hereafter asked to grant it an indulgence in this matter.

³⁶ : *Sienaert Prop CC v City of Johannesburg and Another* (case no 31566/2021, also cited as 2021/31566) 2021 ZAGPJHC 717, per Dippenaar J, 22 November 2021

[152] There are, however, two matters which cause me some concern extending beyond this case: The first is that the City has been before this Division repeatedly upon materially the same complaint and that the criticisms made in those judgments appear to have produced no change whatever in its conduct. In *Millu* the Court deprecated in the strongest terms the City's practice of filing affidavits by legal advisers and attorneys lacking personal knowledge of the billing facts, and marked its disapproval with a punitive costs order. Five weeks later the City embarked upon this litigation and has conducted the whole of it in precisely that manner.

[153] The second is that a metropolitan municipality should not render accounts, threaten disconnection and effect disconnection upon the strength of charges levied upon meters which do not exist. Section 102(2) of the Systems Act forbids the implementation of debt-collection measures in respect of a specific disputed amount while the dispute remains unresolved, and *Willow and Aloe Grove* holds as much at paras 17, 25 and 33–35. The City invoked that very judgment in argument, for the proposition that a court may not recalculate a municipal account, without appearing to notice that the same judgment condemns what the City has itself been doing.

Directions for the further conduct of the main application

[154] The rescission of the Keightley order restores the main application. The liquidators have been unable to transfer a property sold in 2023 for R2 600 000. They are officers of this Court administering an insolvent estate for the benefit of a body of creditors of which the City is itself one, and every month of delay diminishes the estate. The City, for its part, has demonstrated over two years that it will not act unless it is compelled to do so.

[155] I therefore intend to give directions and retain the jurisdiction of the Insolvency Court over this matter (subject to the caveat set out below). The power to do so is well established. In *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)*³⁷ the Constitutional Court emphasised that the effectiveness of court orders lies at the heart of the rule of law and that courts must fashion remedies

³⁷ 2015 (5) SA 600 (CC)

which secure compliance. In *Black Sash Trust v Minister of Social Development and Others*³⁸ the Court structured its relief around the delivery of reports on affidavit and retained supervisory jurisdiction over their delivery, so that compliance could be measured rather than assumed. Sections 165(5) and 173 of the Constitution provide ample support for such an order.

[156] The directions that I propose to make have four elements:

- a. First, the City is to deliver an answering affidavit in the main application within fifteen court days, deposed to by an official in its employ having personal knowledge of the metering and billing of consumer account 5[...], and not by its attorney of record. In motion proceedings a respondent must put up a version deposed to by a person competent to speak to the facts; bald denials by a deponent without personal knowledge do not create a genuine dispute of fact and cannot displace an applicant's evidence on the approach laid down in *Plascon-Evans*.
- b. Second, this affidavit must deal with the matters upon which the City has hitherto been silent: whether any municipal electricity meter exists upon the property, the number, physical location and reading type of every meter upon which any charge on the account has been levied, the basis of the electricity charges levied upon meter 6[...] in the rebilled invoices of 29 and 30 November 2024 and 5 December 2024, and the basis upon which any such charge was described as an actual reading, the basis upon which meters 6[...], 8[...] and 2[...] were billed, the reason for the inclusion of account number 5[...]; the City's response to the reconciliation of R517 679.53 furnished on 13 September 2024, and the outcome of any internal dispute lodged under section 102(2) of the Systems Act.
- c. Third, if the City fails to deliver that affidavit within the period allowed it will be barred from opposing the main application, which will then be determined upon the applicants' papers. I make that direction with a full appreciation of its gravity. I make it because two years of indulgence, three timetables and two orders of this Court have not been adhered to; a

³⁸ 2017 (3) SA 335 (CC)

court which fixes a timetable without attaching a consequence to its breach does no more than fix the date upon which the next indulgence will be sought.

- d. Fourth, pending the determination of the main application, the City is to be restrained from implementing any debt-collection measure in respect of the water and electricity consumption charges levied upon the account from February 2022, including the termination or restriction of the supply of municipal services to the property and the enforcement of the amounts reflected in the rebilled invoices of 29 and 30 November 2024 and 5 December 2024. That relief is the direct application of section 102(2) of the Systems Act and of Willow and Aloe Grove. The City has for two years implemented precisely such measures in respect of precisely such amounts, and the liquidators are entitled to be protected against their continuation while the dispute is resolved.

[157] The Insolvency Court shall retain jurisdiction over the implementation of these directions. Either party may re-enrol the matter before this Court upon five court days' notice, upon the existing papers supplemented as may be necessary, for such further directions as may be required, including relief directed at named officials of the City.

Costs

[158] The determination of costs in this matter is complicated by the fact that no one party has clearly been successful.

[159] With regard to the rescission application, the City has succeeded, and ordinarily costs would follow that success. Two conflicting considerations displace the ordinary rule: and The need for a rescission application at all was created by the liquidators for failing to appraise the City's attorneys of the new applications.

[160] The two years which that application then consumed were created by the City. Having obtained in May 2024 the right to rescind the Keightley order, the City abandoned the attack, filed no replying affidavit and never enrolled the

application; instead, it used its pendency as a shield against compliance with the Keightley order. The greater part of the costs subsequently incurred, including the costs of the interlocutory applications, was wasted by its dilatoriness. Weighing the one against the other, justice is done by ordering each party to pay its own costs of the rescission application, which I so intend to order.

[161] The wasted costs of the first application stands on a different footing: No tender of the wasted costs of case number 2023-055817 has ever been made. Those costs are not before me. But I record that in my view the City is entitled to them, and that its rights under Rule 41(1)(c) to apply for them are unaffected by anything in this judgment.

[162] The contempt application has succeeded in its principal respect. The City has been declared to be in contempt and a fine has been imposed, albeit suspended. That the coercive and mandatory relief originally sought is no longer available is a consequence not of any defect in the application, but of a rescission which the City obtained twenty-six months after it should have obtained it. The application was necessitated in the first place by the City's deliberate refusal to obey an order which was at all material times binding upon it. The City must thus pay the applicants' costs of the contempt application, including the costs of the amendment of the notice of motion and of the supplementary affidavits.

[163] Those costs will be on the punitive scale. An order for costs on the attorney and client scale is reserved for conduct deserving of the censure of the court, and this is comfortably such a case having regard to the dilatory conduct of the City set out in this judgment.

[164] In making such an order I have had regard to, cumulatively, the following:

- a. the City's deliberate refusal, over more than two years, to comply with an order of this Court which bound it;
- b. its launching of a rescission application which it then failed to prosecute for two years, using its pendency as a shield against compliance;

- c. its failure to file a replying affidavit in that application, now more than two years overdue;
- d. its disregard of the timetables fixed by Noko J on 31 October 2024, which it had itself sought, and by Von Ludwig AJ on 11 February 2026, to which it had itself agreed;
- e. its delivery of an answering affidavit five months out of time and on the morning of a hearing;
- f. its delivery of heads of argument two months out of time;
- g. its persistence in placing before this Court affidavits deposed to by its attorney upon matters plainly outside his personal knowledge, in the teeth of the express criticism of this Division in *Millu*; and
- h. its rebilling of some R1.7 million of electricity charges upon a meter which its own officials had confirmed does not exist, including upon a purportedly actual reading, and its enforcement of the resulting balance by disconnection, without a word of explanation to this Court.

[165] The City will likewise pay the reserved costs of 31 October 2024 and of 11 February 2026, and the wasted costs occasioned by the postponement of 17 April 2025, on the attorney and client scale, those costs having been occasioned exclusively by its own defaults.

[166] The strike-out application is refused, for the reasons already given. It was nonetheless reasonably brought and was necessitated by the City's failure to answer the contempt application. The City must pay the costs on the attorney and client scale.

[167] Condonation was granted at the City's instance and upon an explanation which I have found to be wholly inadequate. The costs occasioned by that default fall upon the City, as set out above.

[168] Rule 67A(3), in force since 12 April 2024, requires the court to indicate the scale upon which counsel's fees are to be allowed. This matter has been

unusually protracted. It involved four interrelated applications, a voluminous record and questions of some difficulty concerning the interaction between rescission, stay and contempt. Counsel's fees will be allowed on Scale C.

Order

[169] In the result, the following order is made:

- a. The order granted by Keightley J on 23 April 2024 under case number 2024-012537 is rescinded.
- b. Each party is to pay its own costs of the rescission application.
- c. Nothing in this order affects the respondent's rights in terms of Rule 41(1)(c) of the Uniform Rules of Court in respect of the wasted costs of the application under case number 2023-055817.
- d. The respondent's late delivery of its answering affidavit in the contempt application is condoned.
- e. Save as aforesaid, the counter-application is dismissed. In particular, the application for a stay of the contempt application in terms of Rule 45A of the Uniform Rules of Court is refused.
- f. The respondent is ordered to pay the applicants' costs occasioned by the late delivery of its answering affidavit, including the wasted costs occasioned by the postponement of 17 April 2025, on the scale as between attorney and client, such costs to include the fees of counsel on Scale C.
- g. The application to strike out the respondent's defence is refused.
- h. It is declared that the respondent was in contempt of the order granted by Keightley J on 23 April 2024 during the period from 4 June 2024 until the date of this order.
- i. In the result, the respondent is ordered to pay a fine of R100 000 (one hundred thousand rand) to the Registrar of this Court.

- j. The whole of the fine referred to in paragraph i is suspended for a period of twelve (12) months from the date of this order, upon condition that the respondent complies with the directions set out in paragraph m of this order.
- k. The remaining relief sought in the amended notice of motion in the contempt application, including the relief in prayers 3 and 4 thereof, is refused, the subject matter thereof being governed by the directions set out in paragraph m of this order.
- l. The respondent is ordered to pay the applicants' costs of the contempt application, including the costs of the amendment of the notice of motion, the costs of the supplementary affidavits and the reserved costs of 31 October 2024 and 11 February 2026, on the scale as between attorney and client, such costs to include the fees of counsel on Scale C.
- m. The respondent is directed to deliver an answering affidavit in the main application under case number 2024-012537 within fifteen (15) court days of service of this order upon its attorneys of record. That affidavit shall be deposed to by an official in the employ of the respondent having personal knowledge of the metering and billing of consumer account number 5[...], and not by the respondent's attorney of record, and shall set out:
 - i. the identity and position of the deponent and the basis of his or her personal knowledge;
 - ii. whether any municipal electricity meter exists upon Erf 1[...] W[...] Extension 1, situate at 2[...] P[...] Road, Roodepoort;
 - iii. the number, physical location and reading type, whether actual or estimated, of every meter upon which any charge reflected on the account has been levied since 1 February 2022, together with the reading records relied upon;
 - iv. the basis of the electricity charges levied upon meter number 6[...] in the rebilled invoices of 29 and 30 November 2024 and 5 December

2024, and the basis upon which any such charge was described as an actual reading;

- v. the basis upon which meter numbers 6[...], 8[...] and 2[...] were billed on the account;
 - vi. the reason for the inclusion of account number 5[...] in the clearance figures rendered in respect of the property;
 - vii. the respondent's response to the reconciliation in the sum of R517 679.53 furnished to its attorneys of record on 13 September 2024; and
 - viii. the outcome of any dispute lodged in respect of the account in terms of section 102(2) of the Local Government: Municipal Systems Act 32 of 2000.
- n. The applicants may deliver a replying affidavit within ten (10) court days of delivery of the respondent's answering affidavit.
- o. Should the respondent fail to deliver an answering affidavit within the period stipulated above, it shall not be entitled to oppose the main application save with the leave of the Court, on good cause shown.
- p. Pending the final determination of the main application, the respondent is restrained from implementing any debt-collection measure in respect of the water and electricity consumption charges levied upon consumer account number 5[...] from 1 February 2022, including:
- i. the termination, restriction or disconnection of the supply of municipal services to the property; and
 - ii. the enforcement, by any means, of the amounts reflected in the rebilled invoices of 29 and 30 November 2024 and 5 December 2024.
- q. Either party may re-enrol the main application before the Insolvency court upon ten (10) court days' notice once the affidavits contemplated above

have been delivered, or upon the expiry of the 15 day period referred to in paragraph m above, whichever occurs first.

**WENTZEL-THOMPSON J
JUDGE OF THE HIGH COURT
JOHANNESBURG**

Date of the hearing: 4 August 2026
Date of the judgment: 10 September 2026

For the Applicant: Adv. M Rodrigues instructed by TNS Attorney
For the Respondent: Adv. N. Sithole instructed by Mojela Hlazo Practice

