IN THE HIGH COURT OF SOUTH AFRICA, NORTHERN CAPE DIVISION, KIMBERLEY

Not Reportable

Case No**:** 1691/2022

In the matter between:

KAKAMAS WATER USERS ASSOCIATION **Applicant**

and

MINISTER OF WATER AND SANITATION **Respondent**

Neutral citation: *Kakamas Water Users Association v Minister of Water and Sanitation* (Case no 1208/2023) (27 October 2023)

Date heard: 11 September 2023

Date delivered: 27 October 2023

Coram: Mamosebo J *et* Olivier AJ

JUDGMENT

Olivier AJ

INTRODUCTION:

1. The Applicant (hereinafter referred to as "*the Association"*) approached this Court with an application for an order in the following terms:

1.1 That the decision of the Respondent (hereinafter referred to as *"the Minister"*) as per the directive issued in terms of ***Section 95(3)(h)*** of the National Water Act[1] (herein after referred to only as "*the Water Act*") on 11 March 2023 (herein after referred to as "*the Directive*") be reviewed and be set aside; and

1.2 That the Minister be ordered to pay the costs of the application on a scale as between Attorney and Client, alternatively on a scale as between party and party.

I will henceforth and for purposes hereof refer to the above application as "*the Main Application*".

2. The Main Application was set down for argument before myself and the learned Mamosebo J on Monday 11 September 2023 and at the commencement of the argument of the matter Me. Olivier, who appeared on behalf of the Minister, approached the Court with a substantive application on behalf of the Minister for (essentially) the postponement of the Main Application which application for postponement was filed earlier on Monday 11 September 2023 (herein after referred to simply as "*the Postponement Application*").

The Minister also sought leave to file the remainder of the record as well as an Answering Affidavit in the Main Application.

3. Mr. van Niekerk SC who appeared on behalf of the Association together with Mrs. Erasmus, indicated that, although the Association opposed the Postponement Application, the Association would not file an Answering Affidavit in the Postponement Application and that the Association will argue the matter on the Minister's (the Applicant in the Postponement Application) papers.

4. This Court was therefore tasked with not only determining the Main Application, but also with determining the Postponement Application.

[1]Act 36 of 1998.

THE POSTPONEMENT APPLICATION:

5. After hearing argument on behalf of both parties in the Postponement Application, the Postponement Application was dismissed and the Minister was ordered to pay any costs incurred as a result of the lodging of said application, on a scale as between Attorney and Client, the reasons for the decision to be handed down later.

What follows are the reasons for the refusal of the Postponement Application.

6. It is trite and warrants little explanation and/or discussion that a party seeking a postponement of a matter, is in fact seeking an indulgence from the Court and that such party needs to show good cause for the interference with the right of the other party to proceed with the matter and to have the matter finalised.[2]

7. It is also trite that a party is not entitled to a postponement as of right and that the Court has a discretion when considering an application for a postponement.[3]

8. It is therefore for the party seeking the postponement (in this case the Minister) to satisfy the Court:

8.1 That a reasonable explanation for the delay which necessitated the application for postponement exists; and

8.2 That the Minister has a *prima facie* and a *bona fide* defence to the Association's case as set out in the Main Application.[4]

9. In as far as the second requirement set out above is concerned, the Minister's Founding Affidavit says very little apart from a single and unsubstantiated averment to the effect that, if given an opportunity, the Minister will show that a *bona fide* and good defence against the case of the Association exists.

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[2]See Harms, Civil Procedure in the Superior Courts, at B41.10. Also see *inter alia* Centirugo AG v Firestone (SA) Ltd [1969] 3 All SA 330 (T) at 332.
[3]Madzivhandila v Law Society, Northern Provinces [2009] 1 All SA 124 (SCA), par [20].
[4]Motaung v Mukubela & Another NNO; Motaung v Mothiba NO [1975] 1 All SA 527 (O) at 532.

The above averment unfortunately does not cut mustard and it warrants no further discussion.

10. In as far as an explanation for the Minister's delay in filing an Answering Affidavit in the Main Application is concerned, the Minister unfortunately did not fare any better.

11. I interrupt myself to state that the explanation given for the Minister's delay in filing its Answering Affidavit must be considered against the backdrop of the fact that the Main Application was opposed by the Minister on 14 September 2022 already and that the record of proceedings was filed on 30 September 2022.

12. The Postponement Application should also be considered with due consideration being given to an order that was granted by Nxumalo J on 10 March 2023 (which order was in fact made by agreement between the parties) to the effect:

    12.1 That the Main Application was to be postponed to 11 September 2023;

    12.2 That the Minister was to file the complete record in terms of ***Rule 53*** of the Uniform Rules of Court (herein after "*the Rules*") by 31 March 2023;

    12.3 That the Association had to supplement its papers by 21 April 2023;

    12.4 That the Minister had to file an Answering Affidavit by 26 May 2023;

    12.5 That Heads of Argument would be filed by both parties in terms of the Rules; and

    12.6 That costs would be costs in the application.

13. The gist of the Minister's explanation for the failure to file an Answering Affidavit in the Main Application, may be summarized as follows:

    13.1 That, during a consultation held between Ms. Olivier and officials of the Department of Water and Sanitation ("*the Department*") on 19 December 2022, it

was agreed that the Department would put together the complete record for purposes of filing same;

13.2 That further consultations took place on 30 March 2023 but due to the fact that the record was still missing, the due date for filing of the record namely 31 March 2023 could not be adhered to[5];

13.3 That, on Friday 9 September 2023 (in other words 1 (one) Court day before the Main Application was to be heard on 11 September 2023) Ms. Olivier received instructions from the Department to apply for a postponement of the Main Application and to tender payment of the wasted costs occasioned by such postponement on a scale as between party and party[6];

13.4 That she (Ms. Olivier) only became aware of the above instruction at approximately 16:22 on 8 September 2023 and that she thereafter immediately phoned the Attorney for the Association with a request for a postponement only to be informed that a formal application for a postponement would have to be made on Monday 11 September 2023;

13.5 That the record of the proceedings, if filed, will show that the Minister was indeed correct in issuing the Directive to the Association;

13.6 That it is important for her (Ms. Olivier) to peruse the record which she received on 8 September 2023 and to consult with the Department thereon;

13.7 That the Minister would then be in a position to explain the delay in filing the record and Answering Affidavit in the Main Application in a properly prepared Answering Affidavit and would be in a position to also fully explain the Minister's failure to adhere to the Rules; and

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[5]The Respondent gave no explanation as to what transpired between the 19th of December 2022 and the 30th of March 2023 in as far as attempts to find and compile the complete record was concerned.
[6]Similarly no explanation was provided for what transpired between the consultation of 30 March 2023 and the date of 8 September 2023.

13.8 That the Court would not be in a position to consider all the facts in the Main Application in view thereof that the record and the Minister's Answering Affidavit had not been filed and that, should the Court proceed on the version of the Association only, the Minister would be severely prejudiced thereby.

14. Mr. Van Niekerk SC on behalf of the Association, unsurprisingly, argued that the explanation afforded the Court by the Minister in the Founding Affidavit in the Postponement Application, lacks a proper explanation for the Minister's failure to file an Answering Affidavit in the Main Application and specifically lacks an explanation for the entire period of the said failure by the Minister.

15. Mr. Van Niekerk SC furthermore argued that the explanations for the delay in filing an Answering Affidavit and the reasons for failing to adhere to the Rules, should have been included in the Minister's Founding Affidavit in the Postponement Application.

16. Mr. Van Niekerk SC also importantly pointed out that the deponent to the Founding Affidavit in the Postponement Application contradicts herself where she makes the submission that an Answering Affidavit on behalf of the Minister in the Main Application would show that the Minister was correct in issuing the Directive, but in the very next paragraph of the Founding Affidavit states that she still needs to peruse the relevant record and then consult on same.

17. It is furthermore important to note that Ms. Olivier stated during her argument that the record that is allegedly still outstanding, is merely the original and signed version of the record that had been filed in September 2022 already.

Ms. Olivier could give no satisfactory explanation as to how the filing of the originally signed version of the same record that is already in the possession of the Association and the Court, would suddenly afford the Minister a different defence than the defence to the Association's claims which the Minister would have had when the copy of the record was filed in September 2022.

18. I have to agree with Mr. Van Niekerk SC in that the Founding Affidavit in the Postponement Application and the explanation offered therein does not meet the necessary requirements in that *inter alia*:

18.1 An explanation as to what transpired during the period 30 March 2023 and 8 September 2023 in as far as attempts to find the original record are concerned, is not given;

18.2 An explanation of attempts to lodge the Postponement Application at an earlier stage, for example when the Minister realized that the original record is not forthcoming, is not given; and

18.3 An explanation as to possible attempts to engage the Attorneys for the Association at an earlier stage in the proceedings is not given (Ms. Olivier in actual fact conceded that there was no such efforts made).

19. It is for the above reasons that the Postponement Application was dismissed and that the Minister was ordered to pay the costs incurred by the lodging of the Postponement Application on a scale as between Attorney and Client.

THE REVIEW APPLICATION:

Salient Background Facts:

20. It transpired from the founding papers filed on behalf of the Association that the Association is in essence responsible for the management and operation of the Kakamas Government Water Scheme in terms of specifically an agreement of co-operation with the Department and that said Kakamas Government Water Scheme supplies bulk water for agricultural irrigation to the towns of Kakamas, Marchand and Augrabies, the settlements of Lutzburg, Cillie and Alheit in the Kai !Garib Municipality as well as water for industrial, domestic and stock watering purposes within its jurisdictional area.

21. It furthermore transpired that the Management Committee of the Association (the so-called “MANCO”) is responsible for *inter alia*:

    21.1 The management of certain employees of the Department that had been re-deployed to the Association;

    21.2 Contributing to the targets of water supply to all South Africans within its management area;

    21.3 Ensuring that all infrastructure, which is the property of the Department, is kept in proper condition as to meet demand; and

    21.4 The administration of the water scheme which includes managing and taking responsibility for an annual budget allocation of over R36 000 000.00 (Thirty-Six Million Rand).

22. Mr Van Niekerk SC argued that the dispute which arose between the parties and which lead to the Directive being issued, arose simply because of the fact that the Association deemed it appropriate to:

    22.1 Appoint a new Chief Executive Officer after the appointment of the previous incumbent had been terminated; and

    22.2 Take disciplinary action against a group of employees who participated in an unprotected strike during August 2017 and to dismiss these employees during or about November/December 2017.

23. It should be mentioned that the dispute, in as far as the dismissal of the afore-said employees is concerned, was considered and decided upon by the Labour Court of South Africa on 8 December 2021 who found the dismissal of the employees in question to be substantively fair.

24. It appears to be common cause that the Minister advised the Association on or about 23 March 2017 of the fact that an advisory committee was appointed to investigate

allegations of maladministration at/by the Association and that during October 2017 already the Association expressed its dissatisfaction with the way in which the investigation was conducted.

It also appears to be common cause that the Association was not favoured with a reply to its above expression of dissatisfaction.

25. An important fact that appears from the papers at hand is that the report by the advisory committee, which was finalized on or about 28 February 2018 alternatively 2 March 2018, was only provided to the Attorneys for the Association on 23 July 2018 when a copy thereof was handed to the said Attorneys for the Association by the Attorneys acting on behalf of the dismissed employees during the proceedings in the labour dispute.

The said report had not been provided to the Association by the Minister despite same being the subject of a meeting on 1 August 2018 which meeting was attended by representatives of both the Association and the Department.

26. It furthermore appears that on 7 August 2018, the Association addressed a letter to the Minister requesting to be afforded an opportunity to present the relevant facts and its (the Association's) views on the report of the advisory committee to the Minister prior to the Minister taking a decision on the implementation of the recommendations of the advisory committee.

It is important to note that the Attorneys for the Association, in this letter of 7 August 2018, pointed to the fact that it was conveyed to the Association that the Minister had already accepted the recommendations of the advisory committee.

27. It was furthermore pointed out in this letter that the issue of whether the dismissal of the employees was unfair was an issue for the Labour Court to decide and the Minister was requested to refrain from implementing the recommendations of the advisory committee as the advisory committee:

27.1 Did not consider or properly consider all the relevant facts regarding the issues and allegations investigated by them;

27.2 Made assumptions and drew conclusions not substantiated by facts;

27.3 Made recommendations which do not fall within the powers or prerogative of the Minister in terms of the Act; and/or

27.4 Made recommendations based on inaccurate facts and/or assumptions.

28. On or about 24 August 2018 and without reacting to the above letter of 7 August 2018, the Minister addressed a letter to the Association intimating that he (the Minister) had the intention of terminating the office of all of the members of the Association's MANCO and that the Association was afforded an opportunity of 7 (seven) working days to provide written reasons as to why the offices of the MANCO members should not be terminated.

29. In response to the above letter, the Attorneys for the Association directed a further letter to the Minister on 4 September 2018 wherein which a reasonable opportunity to respond to the report of the advisory committee was again requested.

30. In response to the above letter of 4 September 2018, the State Attorney who purportedly acted on behalf of the Minister, replied by way of a letter dated 6 September 2018 from which it appears *inter alia* that the Association would not be afforded any further opportunity to make submissions on the contents of the report by the advisory committee.

The afore-said letter by the State Attorney furthermore and interestingly enough confirmed that the Minister had accepted and approved the recommendations by the advisory committee as far back as 14 June 2018 already.

31. Suffice it to say at this stage that various further correspondence were exchanged between the Association and the Minister which eventually lead to the Minister inviting the Association to meet with a delegation of the Minister/Department in order to afford

the Association the opportunity to clarify the matters raised in the report of the advisory committee.

32. The proposed meeting eventually took place on 26 November 2018 but it was argued on behalf of the Association that this meeting served little purpose because of the fact:

32.1 That although the meeting was convened for the purpose of clarifying the matters raised in the report by the advisory committee, it appeared that the delegates of the Minister were at the time of the meeting not even in possession of a copy of the said report;

32.2 That the delegates of the Minister failed to focus on the report by the advisory committee and the Association's views thereon, but rather focused on other and often irrelevant and unsubstantiated issues; and

32.3 That the Chairperson of the Association was required to refrain from making any motivations.

33. It appears from the papers at hand that, subsequent to the meeting of 26 November 2018, the Minister had not proceeded with attempts to remove the members of the Association's MANCO from their positions.

The Directive was however issued to the Association on or about 17 March 2022.

34. The Main Application was subsequently lodged on 24 August 2022.

The Legal Position and Merits:

35. It is common cause that everyone has the right to administrative actions that are lawful, reasonable and procedurally fair[7] and that for purposes of the Promotion of Administrative Justice Act ("*PAJA*")[8] an administrative action is defined as a decision taken by an organ of state where such decision adversely affects the rights of any person and has a direct external legal effect and where such decision is taken by the

[7]See Section 33(1) of the Constitution, Act 106 of 1998.
[8]Act 3 of 2000.

organ of state whilst exercising a power in terms of the Constitution or Provincial Constitution or where such organ of state is exercising a public power of performs a public function in terms of any legislation.[9]

36. I have little difficulty in finding that the issuing of the Directive by the Minister meets the above definition of an administrative action and that same may be seen to be an administrative action for purposes of PAJA.

37. PAJA furthermore provides[10], in as far as the review of an administrative action is concerned that:

> *"(2) A court or tribunal has the power to judicially review an administrative action if—*
>
> *(a) the administrator who took it—*
>
> *(i) was not authorised to do so by the empowering provision;*
> *(ii) acted under a delegation of power which was not authorised by the empowering provision; or*
> *(iii) was biased or reasonably suspected of bias;*
>
> *(b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;*
>
> *(c) the action was procedurally unfair;*
>
> *(d) the action was materially influenced by an error of law;*
>
> *(e) the action was taken—*
>
> *(i) for a reason not authorised by the empowering provision;*
>
> *(ii) for an ulterior purpose or motive;*
> (iii) *because irrelevant considerations were taken into account or relevant considerations were not considered;*
> *(iv) because of the unauthorised or unwarranted dictates of another person or body;*
> *(v) in bad faith; or*
> *(vi) arbitrarily or capriciously;*
>
> *(f) the action itself—*
>
> (i) *contravenes a law or is not authorised by the empowering provision; or*
> (ii) *is not rationally connected to—*

[9]See Section 1 of PAJA.
[10]See Section 6(2) of PAJA.

(aa) the purpose for which it was taken;
(bb) the purpose of the empowering provision;
(cc) the information before the administrator; or
(dd) the reasons given for it by the administrator;

(g) the action concerned consists of a failure to take a decision;

(h) the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function; or

(i) the action is otherwise unconstitutional or unlawful."

38. During his argument on behalf of the Association, Mr. Van Niekerk SC pointed to the fact that, if regards are to be had to the contents of the Directive, it is apparent that the Minister based his decision to issue the Directive and the resultant rectification measures on the provisions of ***Section 95(3)(h)(i)*** of the Water Act.

This contention appears to be correct.

39. The said ***Section 95(3)(h)(i)*** of the Water Act provides as follows:

"*(3) If a water user association—*

(a) – (g)…; or

(h) has become redundant or ineffective, the Minister may—

(i) *direct the association to take any action specified by the Minister***;"**

40. During his argument, Mr. Van Niekerk SC reiterated the fact that the primary task of the Association is to provide water to all persons and instances in its area of operations and that, based on the evidence at hand, the question to be answered is whether it could be said that the Association became redundant and/or ineffective in as far as its primary task/objective is concerned.

41. Mr. Van Niekerk SC pointed to the fact that, in terms of the contents of the Directive itself, the Minister decided to issue the Directive based thereon that reasonable grounds existed for him (the Minister) to believe that certain governance and non-compliance issues arose at the Association.

42. With reference to the definitions of "*redundant*" and "*ineffective*" as set out in the Collins Concise Dictionary[11] and the Concise Oxford Dictionary[12] it was argued that there is no evidence at hand that the Association has become redundant and/or ineffective.

43. I have to agree with this contention on behalf of the Association as the papers at hand show neither an allegation nor any evidence to suggest that the Association has not fulfilled its primary task/obligation i.e. the supply of water to all persons in its area of operations.

44. It has been held in numerous cases that for any administrative action to be lawful, it has to be rationally connected to the purpose for which the action was taken and must also be rationally connected to the material considered by the functionary in order to reach the decision to take the relevant action.[13]

45. In ***Bapedi Marota Mamone v Commission of Traditional Leadership Disputes and Claims & Others***[14] it was held:

> *"The review threshold is rationality. The test is an objective one and the reviewing court asks if there is a rational objective basis justifying the connection made by the administrative decision-maker between the material made available and the conclusion arrived at. Administrative action that fails to pass this threshold is inconsistent with the requirements of the Constitution and is unlawful. It matters not that the decision-maker acted in the belief, in good faith, that the administrative action was rational."*[15]

46. The Supreme Court of Appeal held in the matter of ***Medirite (Pty) Limited v South African Pharmacy Council & Another***[16] that PAJA was created to give effect to specifically ***Section 33(1)*** of the Constitution and that administrative actions may be set aside in terms of PAJA

> "*… if irrelevant considerations were taken into account or relevant considerations were not considered, if it was not rationally connected to either the information before the administrator or the reasons given for it by the administrator, or if it was an action that no*

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[11] 5th Edition.
[12] 6th Edition.
[13] See Pharmaceutical Manufacturers Association of South Africa & Another *In re*: the *Ex Parte* Application of: The President of the Republic of SA & Others 2000 (2) SA 674 (CC) at paragraphs [89] and [90]. Also see Bapedi Marota Mamone v Commission of Traditional Leadership Disputes and Claims & Others [2014] 3 All SA 1 (SCA) at paragraph [17].
[14] [2014] 3 All SA 1 (SCA).
[15] *Supra*, at paragraph [18].
[16] [2015] JOL 33000 (SCA).

reasonable decision-maker could take. The requirement of rationality is to ensure that the action is not arbitrary or capricious and that there is as rational connection to the facts and the information available to the administrator taking the decision and the decision itself."[17]

47. It is in view of the above authorities and also in view of the fact (as was already mentioned) that allegations were not made and/or evidence at hand do not suggest that the Association has not fulfilled its primary task/obligation i.e. the supply of water to all persons in its area of operations, that I find that the Directive is not rationally connected to the reasons given for it by the Minister.[18]

48. There is also no explanation by the Minister why the Association was allowed to conduct its business for a period of approximately 4 (four) years after the issuing of the report by the advisory committee before the Association was suddenly deemed to be redundant and/or ineffective.

49. One further aspect that warrants mention although it was not argued on behalf of the Association, is the fact that it is evident from the Directive that the Minister, when issuing the directive on 11 March 2022, laboured under the impression that the labour dispute between the Association and the dismissed employees was still pending in the Labour Court and that the Labour Court still had to finalize the said labour dispute.

50. If regards are to be had to the fact that the labour dispute was in fact finalized by the Labour Court on 8 December 2021 already, a serious question mark may be placed on the correctness of the information that was placed before the Minister prior to the issuing of the Directive.

51. This fact, in my view, serves to underline that fact that the Directive was issued based on incorrect information and that the Directive was in that sense not rationally connected to the information at hand.

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[17] *Supra*, at paragraph [9]. Also see Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism & Others 2004 (4) SA 490 (CC) at paragraph [44].
[18] Tonise & Others v Minister of Water and Sanitation & Others [2023] ZAECGHC 50 at paragraphs [26] and [27].

52. Even if I am not correct in my above finding, I hold the view that the Directive stands to be reviewed in any event based on the fact that, on the papers at hand, the Association was never given a proper and reasonable opportunity to answer to the findings made by the advisory committee which findings formed the basis upon which the Directive was issued.

53. It is trite and again warrants little explanation and/or discussion that the rules of natural justice and specifically the *audi alteram partem* principle forms the backbone of lawful and fair administrative actions specifically in instances where such administrative actions adversely affects the rights of others.[19]

54. It appears that the Minister had approved the findings of the advisory committee on 14 June 2018 already, in other words long before a copy of the report by the advisory committee was provided to the Association.

55. The meeting that was proposed by the Minister during late October 2018 and after the proverbial horse had already bolted, to purportedly afford the Association the opportunity to clarify the matters raised in the report of the advisory committee, also came to nothing in that:

    55.1 The delegates of the Minister who attended the meeting were not even in possession of a copy of the said report; and

    55.2 The Chairperson of the Association was required to refrain from making any motivations.

56. I consequently find that on the papers at hand, the Association was not afforded a reasonable opportunity to reply to the contents of the report by the advisory committee before the Directive was issued.

57. This Court is, by virtue of the provisions of ***Section 172(1)(a)*** of the Constitution obligated to declare any law or conduct which is inconsistent with the provisions of the

[19]See Section 6(2)(c) of PAJA. See also *inter alia* Public Prosecutor & Others v President of the Republic of South Africa & Others (Freedom Under Law as *Amicus Curiae*) [2021] JOL 50632 (CC) at paragraph [117].

Constitution invalid to the extent of its inconsistency and to make an order that it deems just and equitable in the circumstances.[20]

58. In view of all of the above, I find the Directive to be invalid as it is inconsistent with the provisions of the Constitution and specifically with the provisions relating to fair administrative actions.

59. In view of what is stated herein above, I do not deem it necessary to delve into the findings and rectification measures as set out in the Directive.

COSTS:

60. It is trite that the awarding of costs is in the discretion of the Court.

61. It has been held that the Court has a duty "*… to insist that the state, in all its dealings, operates within the confines of the law and, in doing so, remains accountable to those on whose behalf it exercises power.*"[21]

62. It is also worth mentioning that in the matter of ***MEC: Department of Police, Roads and Transport, Free State Provincial Government v Terra Graphics (Pty) Ltd t/a Terra Works & Another***[22] the Supreme Court of Appeal, with reference to the matter of ***Mohamed & Another v President of the Republic of South Africa & Others (Society for the Abolition of the Death Penalty in South Africa & Another Intervening)***[23] had confirmed the principle that the State had to lead by example and had to be a scrupulous role model for anyone with whom it transacts.

63. I find that the Minister in this instance did not set the required example and also did not serve as a scrupulous role model.

64. I find that there is sufficient proof of the fact that the Association attempted to resolve the issue in an amicable and responsible manner in an effort to avoid litigation, but that the

[20]Section 172 (1)(b) of the Constitution. Also see the matter of State Information Technology SOC Limited v Gijima Holdings (Pty) Limited [2017] ZACC 40 at paragraphs [52] and [53].
[21]Khumalo & Another v MEC for Education: KwaZulu Natal 2014 (5) SA 579 (CC) at paragraph [29].
[22][2015] 4 All SA 255 (SCA) at paragraph [21].
[23]2001 (3) SA 893 (CC).

actions of the Minister forced the Association's hand in this instance and provided it with no alternative but to approach the Court by way of the Main Application.

65. I furthermore find that the conduct by the Minister to oppose the Main Application but to then fail to ensure that the matter may proceed in a proper and orderly fashion by not filing an Answering Affidavit should be frowned upon.

66. As was correctly pointed out by Mr. Van Niekerk SC, it is not only the Minister that litigates with public funds, but that the Association also had to use public funds to finance an application that could have been avoided.

67. I consequently find that a punitive costs order in this instance would not be inappropriate.

THE ORDER:

In view of all of the above, the following order is made:

1. **That the Application for Postponement lodged by the Respondent on 11 September 2023 be and is hereby dismissed, the Respondent to pay the costs incurred in/by the lodging of said application on a scale as between Attorney and Client;**

2. **That the decision by the Respondent as per the directive, issued in terms of Section 95(3)(h) of the National Water Act, No. 36 of 1998 and dated 11 March 2022 be and is hereby reviewed and set aside; and**

3. **That the Respondent is to pay the costs of the application on a scale as between attorney and client which would include the costs of 10 March 2023, such costs to also include the costs of 2 (two) Counsel.**

OLIVIER AJ

I concur and it is so ordered:

MAMOSEBO J

For Applicant: Adv. J.G. van Niekerk SC and Adv. S.L. Erasmus o.i.o Duncan & Rothman Inc. Kimberley

For Respondent: Me. M.P. Olivier o.i.o. The State Attorney, Kimberley