



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Case No: 398/2023

In the matter between:

SIPHOKAZI MAFILIKA & 5 OTHERS

Applicant

And

ELUNDINI MUNICIPALITY

First Respondent

**THE MUNICIPAL MANAGER:
ELUNDINI MUNICIPALITY**

Second Respondent

APPLICATION FOR LEAVE TO APPEAL JUDGMENT

Beshe J

[1] On The 10 February 2023 after considering a certificate of urgency filed by applicants' counsel, I issued inter alia the following directive:

The hearing of Part A of the application be set down for hearing on 17 February 2023.

[2] All the requisite affidavits having been filed by the parties, the matter was indeed heard on the 17 February 2023.

[3] In Part A of the application, the applicants sought an order in the following terms:

Part A

1. Condoning the applicants' non-compliance with the uniform rules of Court and dispensing with forms and services provided for in the normal rules of this Honourable Court and directing that this matter be disposed by way of urgency in accordance with uniform Rule 6(2) of the above Honourable Court;
2. Condoning the applicants' non-compliance with the rules relating to the timeframes set out, including the 72 hours' notice referred to in section 35 of the General Law Amendment Act, 1955 (Act 62 of 1995);
3. Pending a final determination of the orders sought in Part B, the Respondents are:
 - 3.1 directed to restore the electricity and water supply within 2 hours after service of the court order, by the Applicants' attorneys of the Sheriff of this Court, at the offices of the first and/or second respondent pending the finalization of Part B of the application;
 - 3.2 interdicted and restrained from unlawfully terminating/disconnecting the supply of electricity to the premises pending the finalization of Part B of the application;
4. Interdicted and restrained from charging the Applicants a reconnection fee as a result of the unlawful termination/disconnection of electricity;
5. Directed to pay the costs of Part A on an attorney and client scale, jointly and severally, the one paying the other to be absolved;
6. Granting such further and/or alternative relief.

For completeness, the order sought in Part B of the application is the following:

Part B

In the main, an order declaring:

7. The conduct of the Respondents in terminating the supply of electricity and water without prior notice be declared unlawful, nul and void *ab initio*;
8. That the interim order granted by this Honourable Court in paragraph/prayers 3.1 and 3.2 above, which preserved the status quo, is hereby made a final order;
9. That the Respondents be directed to pay the costs of this application alternatively the costs of this litigation, on an attorney and own client scale of costs jointly and severally, the one paying the other to be absolved; and
10. Granting applicants such further and/or alternative relief.

[4] Having heard argument on the 17 February 2023, I rendered judgment on the 23 February 2023 “dismissing the application”.

[5] It was common cause that the supply of electricity was terminated by the officials of first respondent on the 7 February 2023. Water supply was terminated on the following day being the 8 February 2023. There is a dispute regarding the identity of the institution that cut the water off. In response to the allegation that officials of the first respondent also disconnected the water supply, first respondent had this to say, amongst other things in this regard:

The competency to supply water within the area of Nqanqarhu falls within the Joe Gqabi District Municipality, a party that is not before court. The circumstances leading to the disconnection of water supply can best be answered by the District Municipality.¹ In addition, first respondent provides the reason for the disconnection of the electricity supply to the premises concerned as being an instruction that was received from the owner thereof. A copy of a

¹ Paragraph 27 of the answering affidavit page 56 of the papers.

letter from the owner of this premises in this regard was annexed to the answering affidavit.

[6] My judgment is assailed on the basis, inter alia that I erred in dismissing Part B of the application together with Part A without hearing or considering any evidence and legal submissions in relation to Part B.

[7] This is clearly a misunderstanding by the applicants of my judgment. The relevant part thereof reads: “In my view, the applicants have not succeeded in establishing that they have a prima facie right requiring protection from the respondent. I do not believe that the applicants enjoy prospects of being successful in Part B of the application. Accordingly, the application is dismissed with costs.” I also made the point that the disconnection of services in this matter was not initiated by the municipality for non-payment for services but by the owner of the premises who had a contract with the municipality in regard to a contract between the parties.

[8] The judgment being appealed against is in respect of an interlocutory application pending the determination of Part B of the application and is therefore generally speaking not appealable. I know of no reason in this matter why the norm should be departed from. I am not persuaded that the appeal would have reasonable prospects of success as envisaged in Section 17(a)(1) of Superior Courts Act 10 of 2013.

[9] Accordingly, the application for leave to appeal is dismissed with costs, such costs to include costs of two counsel where so employed.

N G BESHE
JUDGE OF THE HIGH COURT

APPEARANCES

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Date Heard : 11 September 2023
Date Reserved : 11 September 2023
Date Delivered : 23 January 2024