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

CASE NO: 21/27399

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

4 November 2022
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In the matter between:

CARLO GIUSEPPE MESSINA Applicant

and

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY Respondent

JUDGMENT

CRUTCHFIELD J:

[1] The applicant, Carlo Giuseppe Messina, a resident and ratepayer in the area of the respondent, The City of Ekurhuleni Metropolitan Municipality, sought an order

compelling the respondent to immediately repair all the streetlights that did not function on specific streets situated within the respondent's area of control.

[2] The respondent was a government entity implementing and responsible for its own by-laws.

[3] The application, initially brought by way of urgency on 6 July 2021, was unsuccessful in the urgent court resulting in the applicant being ordered to pay the wasted costs of that hearing.

[4] The application came before me approximately nine months later, on 25 April 2022. At that stage, the respondent had repaired various of the streetlights referred to in the application at its inception. A significant number of streetlights, however, had not been repaired and remained out of working order ('the dysfunctional streetlights').

[5] The respondent opposed the application, both at the hearing in the urgent court and before me, on the basis that the applicant did not demonstrate compliance with the requirements of final interdictory relief and because the order sought, if granted by this Court, would set a precedent by ordering the respondent to repair the dysfunctional streetlights immediately. It is self-evident that an order that the respondent repair the streetlights involves an order that the respondent is liable for and bears a duty in respect of the repair of the streetlights.

[6] The respondent disputed the applicant's *locus standi* to bring the application. The applicant, however, is a resident within the area of the respondent where the applicant owns residential immovable property, resides and is a ratepayer. Accordingly, the applicant has a sufficiently direct and substantial interest in the relief sought.[1]

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[1] *PE Bosman Transport Works Committee & Others v Plot Bosman Transport (Pty) Ltd* 1980 (4) SA 801 (T) at 804.

Furthermore, the applicant is representative, albeit indirectly, of other residents who reside in the relevant geographical area, utilise the roads referred to by the applicant and who are subject to the dysfunctional streetlights referred to by the applicant.

[7] Accordingly, the applicant should be entitled to hold the respondent to account in respect of its service delivery obligations, particularly in the circumstances of this application.

[8] Whilst the respondent in its answering affidavit appeared to accept its obligation to provide and maintain functional streetlights in the areas under its control, counsel for the respondent, in argument before me, disputed the respondent's obligation to do so on the basis that there was no existing case law providing that the respondent carried. such an obligation. The absence of case law relevant to the issue at hand does not serve to exclude the obligation on the respondent, which the respondent appeared to accept in both its answering papers and practically, as referred to hereunder.

[9] Section 73 of the Local Government: Municipal Systems Act 32 of 2000 ('the Act') requires municipalities to ensure that all members of the local community have access to basic municipal services.

[10] Section 1 of the Act defines basic municipal services as services that ensure an acceptable and reasonable quality of life for residents and which, if not provided, would endanger public health or safety.

[11] Section 74 of the Act provides that municipal councils must levy tariffs for the provision of municipal services in order to provide for the cost of operating, maintaining, replacing and administering the provision of municipal services.

[12] The respondent's acceptance of its obligation to provide and maintain functional streetlights in its area of control is demonstrated by the respondent's website that, according to the applicant, indicates: 'streetlights out' as one of the first items that may be logged as an issue in the respondent's "tip line". I pause to mention that the respondent's "tip line" is a method put in place by the respondent by which residents can log issues of complaint, items that are not functional and thereby bring such non-functional or non-delivery of services to the attention of the respondent's officials and employees.

[13] The applicant logged a report on the respondent's reporting line or tip line in respect of the dysfunctional streetlights, which report was acknowledged by the respondent by way of its system automatically generating an sms (short message system) reply to the applicant, providing a reference number being 0744749452.

[14] That is the methodology utilised by the respondent in order to communicate to a resident who has logged a complaint or a report of a non-functional or dysfunctional service, that the report has been received and will be attended to.

[15] The respondent's undertaking to its residents who log such calls or complaints on its tip line or complaint line is that the respondent will attend to the complaint/s on a turnaround time of five days.

[16] Given the aforementioned, specifically the reference on the respondent's website to residents reporting dysfunctional streetlights to the respondent being assured of a five-day turnaround time, it was disconcerting to have the respondent's counsel dispute the respondent's liability for the repair of the dysfunctional streetlights. This ran contrary to the respondent's unequivocal admission of a duty to provide and maintain functional streetlights in order to ensure public safety. This was in the context of the respondent's

obligation to provide an acceptable and reasonable quality of life that did not endanger public safety in terms of the Act.

[17] In the circumstances I conclude that the respondent bears a duty not only to provide functional streetlights but to repair those dysfunctional streetlights within a reasonable period of time regard being had to the further issues referred to hereunder.

[18] The order claimed by the applicant that the respondent "immediately repair" must be understood in the context of the application as a whole, particularly the extensive efforts made by the applicant to engage with the respondent's staff and officials, by correspondence on the log-in system, to no avail, prior to the issue of the application.

[19] The respondent denied that the applicant was entitled to an order that the respondent repair the streetlights on the basis of two extracts referred to by the respondent from the cases in the Western Cape. The cases were to the effect that it was not reasonable for a citizen to expect that services such as roads and pavements and by extrapolation, streetlights, be maintained in pristine condition at all times. "A reasonable sense of proportion is called for. The public must be taken to realise that and to have a care for his (their) own safety when using the roads and pavements."

[20] The second extract was that; "It is not necessary, nor would it be possible, to provide a catalogue of the circumstances in which it would be right to impose a legal duty to repair … on a municipality …".[2] Accordingly, it is evident that there may be circumstances in which it is appropriate to impose a legal duty to repair on a municipality.

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[2] *Cape Town Municipality v Bakkerud* [2000] 3 All SA 171 (A).

[21] The reasons relied upon by the respondent for not ordering the respondent to repair the dysfunctional streetlights included issues such as budget constraints, items damaged or stolen including cables, damage to the streetlamp poles and the availability of replacement items. The new budget, however, became effective from the 1st of July 2021 and thereafter, the next budget on 1 July 2022.

[22] Accordingly, issues such as budget constraints should at this stage no longer be a hindrance to the repair of the streetlamps within a reasonable time.

[23] The respondent alleged that it had repaired the dysfunctional streetlights that were possible to repair, complained of by the applicant. Furthermore, the respondent was in the process of attending to the remaining dysfunctional streetlights in the light of the budgetary and other constraints referred to hereinabove.

[24] No details of the schedule in terms of which the respondent anticipated attending to the repair of the remaining dysfunctional streetlights was set out by the respondent. Some nine months later, when the application came before me, various of those same dysfunctional streetlights remained out of working order. No explanation was proffered by the respondent, by way of a supplementary affidavit, as to what had transpired in the interim, why the remaining dysfunctional streetlights had not been repaired since inception of the application, and what the respondent intended to do about fixing them in the future.

[25] The respondent's failure to deal with these issues became of heightened relevance in the context of the statement of the deponent to the respondent's answering affidavit, and I refer to paragraph 11.17 of the respondent's answering affidavit, that the remaining dysfunctional streetlamps were being given priority.

[26] Notwithstanding the prioritisation of those dysfunctional streetlamps, some nine months later they had not been repaired and no explanation was forthcoming from the respondent in that regard.

[27] Notwithstanding the issues relevant to the dysfunctional streetlights being prioritised, the new financial year from 1 July 2021 and thereafter 1 July 2022, and the lapse of some nine months in the interim, no explanation was furnished by the respondent as to why the dysfunctional streetlights had not been repaired or what was being done to ensure that those streetlights would be functional as soon as reasonably possible.

[28] Insofar as the respondent referred to and relied on the responsibility of road users, including motor vehicle users, homeowners and pedestrians to take reasonable steps to keep themselves safe, I accept that residents, pedestrians and road users have such an obligation. I also accept that the geographical area to which this application related is not the only area falling under the respondent's control and in respect of which the respondent has service delivery obligations, all of which are to be met out of the respondent's budget.

[29] It is for those reasons that it was unreasonable for the applicant to seek an order on the urgent court roll that the respondent repair the streetlights immediately. It remains, in my view, unreasonable for the applicant to persist with an order that the repairs be undertaken immediately, notwithstanding the time lapse in the interim. This is also despite the respondent's undertaking of a five-day turnaround period in respect of issues logged on its call line or tip line referred to aforementioned.

[30] The respondent, however, was faced in this application with a frustrated resident who had not received reasonable service delivery despite the respondent's undertaking

thereof, which the respondent is obliged by law to render to residents in its area. It verges on the disgraceful for the respondent to brand the applicant as being motivated by a political agenda, as the respondent did in its answering affidavit. This was in the absence of any facts in support of such a scurrilous allegation by the respondent and in circumstances where the respondent's own failure to comply with its undertakings to its residents, and to communicate effectively with those residents, was the essential reason for the application before me.

[31] Insofar as the respondent alleged that the applicant failed to exhaust the remedies available to him prior to approaching this Court, the applicant utilised the remedies advertised by the respondent and known to the applicant, and to the public, by the respondent, being the tip line or call line referred to above.

[32] The respondent contended that the applicant ought to have escalated the query to the highest echelons of the respondent, involvement of all interested parties and approaching the Court in the normal course. Nowhere did the respondent allege that it had made known to the public in clear, concise and easily available and understandable terms, what the so-called additional remedies and alternate steps to be taken by the applicant or other members of the public, were. The rule of law requires that certainly be provided and that remedies such as those referred to by the respondent, be easily and clearly accessible to the public and not be imposed retrospectively.

[33] Furthermore, the fact that the respondent's answering affidavit was deposed to by the Divisional Head: Special Legal, By-law Drafting and Supply Chain Management Support, demonstrated that senior staff within the employ of the respondent were aware of the dysfunctional streetlamps and that it was not only junior staff, as alleged by the respondent, who were aware of the issue.

[34] It is not without significance that the court in *Agri Eastern Cape & Others v The MEC for the Department of Roads and Public Works & Others,*[3] authorised the applicants in that matter to repair the dysfunctional roads themselves, and to charge the respondent, the MEC for the Department of Roads and Public Works, for the costs of the repairs, albeit that the court laid down strict conditions for the applicants in doing so.

[35] As to the requirements of the final interdict sought by the applicant, the respondent denied that it was *"pro-actively duty-bound to keep and repair all streetlights all the time"*. It is correct that the respondent cannot reasonably be expected to maintain every streetlamp in working order all of the time. However, the respondent in this matter, allowed the remaining dysfunctional streetlamps to remain dysfunctional for some eleven months from the date that the issue was brought to the respondent's attention initially, to the date of the hearing before me.

[36] It was not unreasonable of the applicant to expect that those lights would be repaired in the interim period.

[37] In the specific circumstances of this matter, including the respondent's failure to explain its failure to repair the remaining dysfunctional streetlights in the interim, I am of the view that the applicant, as a resident and in his representative capacity as set out hereinabove albeit indirectly, adversely affected by the remaining dysfunctional streetlights, the applicant has a clear right to an order that the respondent repair the remaining dysfunctional streetlights within a reasonable period of time from the granting of this order. Such a reasonable period is a period of three (3) months.

[38] In respect of the requirement of harm to be shown by the applicant in order to succeed with its relief, the respondent alleged that nobody had been robbed, no traffic

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[3] *Agri Eastern Cape & Others v The MEC for the Department of Roads and Public Works & Others* 2017 (3) SA 383 (ECG).

accidents had occurred in the interim. However, the obligation on the respondent to maintain services that provide reasonable safety, does not arise only once a person is robbed or a crime is committed or a traffic accident occurs. The obligation remains throughout and is to be delivered upon by the respondent consistently.

[39] Furthermore, the respondent itself acknowledged that it was in the best interests of its residents, that the respondent maintains the streetlamps in functional working order, and it was committed to doing so.

[40] This court in the matter of *Save Emalahleni Action Group* stated that citizens may approach the court to force a municipality to deliver services in line with their constitutional obligations. The applicant falls directly within that group of concerned citizens and has a right to enforce service delivery from the respondent.

[41] Whilst it would have been preferable for the respondent to provide a plan on how it intended to maintain the streetlamps in a functional state in the future, the applicant did not claim such an order and hence it is not within my power to order the respondent to provide such a plan.

[42] I am mindful of the fact that the Judiciary should not be ordering a municipality to priorities service delivery of certain obligations over others and what may well be more pressing obligations. This is particularly as regards more pressing social needs in poorer areas than that resided in by the applicant.

[43] However, the applicant has shown that this is a case, given its particular circumstances, where an order should be granted albeit that the order should be framed in reasonable terms, regard being had to the respondent’s budgetary constraints and

obligations in respect of other social responsibilities in the entirety of the respondent's area of control.

[44] This Court does not hold a general discretion to refuse a final interdict in instances where the requirements for such an interdict have been met as they have in this case. The respondent did not refer to any alternate remedy by which the applicant might obtain satisfaction. Indeed, other than attending to repair the dysfunctional street lamps itself, as in the case in the Eastern Cape hereinabove, there is no alternate remedy by which the applicant can obtain satisfaction.

[45] The injury to the applicant arises from the ongoing failure of the respondent to comply with its obligations in terms of the Act and the applicant's right to reside and travel in a reasonably safe area.

[46] In the light of the history of this matter, there is no alternate equal remedy available to the applicant.

[47] There will not be any prejudice to the respondent as a result of the order to be granted by me, in the event that the respondent has repaired any of the dysfunctional streetlamps in the interim, between the date of the hearing of this application before me and the date of the handing down of this judgment,

[48] By reason of the aforementioned, I am of the view that the respondent has a legal duty to maintain the streetlamps in a reasonably functional state and that the respondent should be ordered to repair the dysfunctional streetlights on the roads referred to in the order to be granted hereunder, within three (3) months from the date of this order.

[49] This Court previously reserved the costs of the application launched by the applicant compelling the respondent to file its heads of argument and additional documentation. The respondent was afforded more than sufficient notice between the date of the application being served on the respondent and the date of service of the notice of set down of this application, upon the respondent. Notwithstanding, the respondent failed to take any steps whatsoever to deliver its heads of argument. This resulted in the applicant being granted an order and the costs being reserved, given that the respondent filed its heads of argument on a public holiday shortly before the hearing.

[50] In the light of the delay by the respondent in delivering its heads of argument, I am of the view that the application to compel was necessitated by the respondent's conduct and the respondent should be held liable for those costs.

[51] In the circumstances, I grant the following order:

1. The respondent is ordered to repair and/or restore to functionality the dysfunctional streetlights situated on the roads described on CaseLines pages 017-19, being the following:

    1.1. The top of Townsend Road, corner Townsend and opposite 31 Townsend Road;

    1.2. The bottom of Townsend Road and corner Van Buuren and Townsend – 2 streetlights not working;

    1.3. On Van Buuren Road, between Townsend Road and Florence Road – 5 streetlights not working;

1.4. On Van Buuren Road, between Florence Road and Kings – 3 streetlights not working on Van Buuren Road – 3 streetlights not working on Florence Road and Kings Road;

1.5. On Van Buuren Road, between Kings Road and De Wet Street – 3 streetlights not working – 1 streetlight not working outside the police station;

1.6. On Van Buuren Road, between De Wet Street and Kloof Road – 1 streetlight not working;

1.7. On Kloof Road, between Van Buuren and Kings – 10 streetlights not working;

1.8. On De Wet Street, between Bowling Road and Van Buuren Road – 1 streetlight not working;

1.9. On Bowling Road, corner Dean and Bowling Road – 1 streetlight not working;

1.10. On Bowling Road, corner Bowling and Sainsbury – 1 streetlight not working;

1.11. Corner Florence and Bowling Roads – 1 streetlight not working;

1.12. On Florence Road, between Bowling and Kloof – 3 streetlights not working;

1.13. On Kloof Road, between Florence Road and Townsend Road – 6 streetlights not working;

1.14. Corner Lavin and Acacia Road – 1 streetlight not working;

1.15. Between Bowling Road and Kloof Road on Pine Road – 1 streetlight not working;

1.16. Corner Doves and Florence Road – 1 streetlight not working.

2. The respondent is ordered to pay the costs of the application including the reserved costs of the application to compel the respondent's heads of argument.

I hand down the judgment.

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A A CRUTCHFIELD
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 4 November 2022.

DATE OF THE HEARING: 25 April 2022.

DATE OF JUDGMENT: 4 November 2022.

ATTORENYS FOR THE APPLICANT:
MESSINA INCORPORATED

ATTORNEYS FOR THE RESPONDENT:
MPHAHLELE MS ATTORNEYS