IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) **REPORTABLE: NO**

(2) OF INTEREST TO OTHER JUDGES: [N]

(3) REVISED: [N]

(4) Signature: _______________ Date: ___________

CASE NO.: 007691/2024

In the matter between:

BODY CORPORATE OF GRAND RAPIDS	Applicant
and	
THE CITY OF JOHANNESBURG	
METROPOLITAN MUNICIPALITY	First Respondent
THE CITY MANAGER: CITY OF JOHANNESBURG	Second Respondent

JUDGMENT

Kumalo J

[1]. This application was launched on an extreme urgent basis with very truncated time limits by the Applicant allegedly because of disconnection of its water supply that occurred on 24 January 2024.

[2]. The Applicant is the Body Corporate of Grand Rapids, the body corporate for the sectional title scheme development known as SS Grand Rapids, established under Scheme No. 288 and 384, under Scheme Name SS Grand Rapids, in terms of section 36 of the Sectional Titles Act, 95 of 1986, read with section s of Sectional titles Schemes Management Act, 8 of 2011, situated at 52 Felstead Road, Olievenhoutpoort.

[3]. The First Respondent is the City of Johannesburg Metropolitan Municipality, a metropolitan municipality established in accordance with the provisions appearing in Chapter 7 of the Constitution of the Republic of South Africa, 1996, read with the relevant provisions of the Local Government: Municipal Structures Act, 117 of 1998.

[4]. The Second Respondent is the City Manager employed as such by the City of Johannesburg Metropolitan Municipality.

[5]. The Applicant seeks a rule nisi calling on the Respondents to show cause on a date to be determined by the Court, why an order should not be made that the First Respondent reconnect the water supply to the Applicant's property situated at 52 Felstead Road, Olievenhoutpoort 196-IQ with account number 440098205, within three hours of granting the order.

[6]. The Applicant further seeks an order that the First Respondent be interdicted and restrained from disconnecting the water supply to the Applicant's aforementioned property as a result of any alleged arrear charges due to the First Respondent, until such time as the Respondents have properly considered, engaged with, and addressed the disputes raised by the Applicant in terms of sections 95(f) and 102(2) of the Local Government: Municipal Systems Act, 32 of 2000.

[7]. The Applicant seeks further an order that the Second Respondent personally oversee the implementation of the order by the First Respondent.

[8]. The Respondents oppose the application on various reasons. Firstly, the Respondents challenge the urgency and submitted that the Applicant has not established urgency let alone the extreme urgency with which the Applicant has approached this court.

[9]. Secondly, the Respondents allege that there is no dispute between the Applicant and the Respondents, therefore, the moratorium provided in terms of section 102 of the Municipal Systems Act 32 of 2000 is not applicable.

[10]. The third reason for their opposition relates to the allegation that the Applicant is a recalcitrant consumer as its account remains in the negative even after its dispute that it lodged in February 2022 was resolved.

[11]. Lastly, Respondents argue that the Applicant has failed to satisfy the requirements of an interim interdict.

[12]. The Applicant's application was uploaded on Caselines/Courtonline on 26 January 2024 at 13:35. It is curious to note that its notice of motion called upon the respondents to file their notice of intention by no later than 13h00 and to file their answering affidavit (if any) by no later than 16h00 and set the matter down for a hearing at 18h00 effectively giving the Respondent less than three hours to prepare and file an answering affidavit.

[13]. It is further curious to note that the Applicant chose to file its application in the Gauteng Division in Pretoria in circumstance that this court believes it would have been more appropriate and convenient for the matter to have been filed in the Gauteng Local Division, Johannesburg. The Johannesburg High court building is less than 2 kilometres from the seat of the City of Johannesburg Metropolitan offices.

[14]. Of more concern though to this court is the truncated times provided by the Applicant without providing a suitable explanation thereof other than stating

boldly that it is a result of the disconnection of its water supply that occurred on 24 January 2024.

[15]. The Applicant does not give a specific time that this incident occurred on 24 January 2024. Given the times that the Applicant chose to launch its application, one would have expected it to disclose all information accurately including the time that the water supply was disconnected. This it did not do. Counsel could also not assist the court in this regard and correctly so as it was not stated in the Applicant's founding affidavit.

[16]. Another curious fact is that, if the matter was so extremely urgent, why was it not enrolled for a hearing on 25 January 2024 during the day or after hours? Further, if it really was so extremely urgent, the Applicant could have approached the registrar or the senior court for the matter to be enrolled on the normal court hours for 26 January 2024 instead of approaching the court for its enrolment on the after-hours roll.

[17]. All the above lends itself to a conclusion that the Applicant may have been forum shopping and hoped for a sympathetic court to listen to its matter. Again, this court cannot help wondering if this was also designed with the hope that the Respondents would not be able to file their papers on time for them to be heard also.

[18]. To this end, I align myself with the dictum of the Learned Wepner J in the *In re: Several matters on the urgent court roll 18 September 2012*[1] dealing with the preserved abuse of the process that has developed in order to steal a march upon state respondents.

[19]. No proper and valid explanation was provided why the Respondent was given such truncated times to respond when the cause of action arose allegedly on 24 January 2024.

[20]. The Applicant's primary argument for the course that it adopted is that its fundamental constitutional right has been violated by the First Respondent's action of disconnecting the water supply to allegedly 120 homes.

[1] [2012] ZAGP JHC 165; [2012] 4 All SA 570 (GSJ); 2013 (1) SA 549 (GSJ) (18 September 2012).

[21]. It is correct that the provision of water is a fundamental constitutional right. However, rights come with obligations. Local municipalities are obliged to provide their residents with certain services that include water and electricity. However, this does not come without limits. The residents or citizens have an obligation to pay for the services and the municipalities are obliged to collect payment for those services that they provide, and this is a constitutional imperative.

[22]. The Applicant argued that on an initial perusal, it appears that one is forced to commit to an uncomfortable balancing act of fundamental rights in order to responsibly adjudicate the matter and determine where the interests of justice lie. I agree with the above sentiments but differ somewhat with what it defined as the competing rights.

[23]. The Applicant put on the one hand what it called the fundamental human rights of the 120 homes and on the other, the ability of the Respondents to present their case in the limited time afforded to them.

[24]. The above are not the only competing interests or rights in the matter. There is also the Respondent's constitutional obligation to provide services and the right to collect on the services provided.

[25]. Since the matter concerned competing fundamental rights of the parties, it is necessary to also peruse the merits of the parties' case.

[26]. The Applicant submitted that the Respondents violated its right to the provisioning of water as there is a current dispute between the parties which it allegedly lodged through its erstwhile Attorneys, Schindlers. To demonstrate the existence of the dispute, the Applicant attached to its founding affidavit a letter dated 7 September 2022 from its attorneys addressed to the First Respondent.

[27]. The above-mentioned letter was a sequel to its letter dated 28 July 2022 wherein the Applicant formally raised a query regarding its billing.

[28]. The Respondent contended that there is no dispute existing between the parties and any dispute that may have existed was resolved and that the parties entered into an Acknowledgement of Debt Agreement.

[29]. The Applicant denied that there is an Acknowledgment of Debt Agreement as the agreement referred to by the Respondent was not signed by it or any of its representatives. This however flies in the face of the evidence before this court.

[30]. Whilst it is correct that the agreement attached to the Respondents' answering affidavit is not signed, the communication between the Respondents' employee who was dealing with the matter the Applicant's erstwhile attorneys suggests otherwise.

[31]. The said agreement was sent to the Applicant's erstwhile attorneys as late as 4 December 2023 calling on the Applicant to provide the Respondents with a signed copy of the Acknowledgment of Debt with certain other documents and warning that failure to submit same would result in the disconnection of the services and deactivation of the agreement.

[32]. In response, the Applicant's erstwhile attorneys apologized for the delay and stated that they are awaiting signature of the client, the Applicant in this matter. They did not raise issues about the agreement of that there is still a dispute pending between the parties.

[33]. If indeed the Applicant held the view that there was no agreement between the parties, one would expect them to have raised the issue in their founding affidavit that the erstwhile attorneys acted outside their mandate. Instead they simply asserted the fact that the Acknowledgment of Debt agreement was not signed.

[34]. To further compound the problem for the Applicant, it had on 4 December 2023 paid the R88,554.22 deposit required by the Respondent in terms of the Acknowledgment of Debt agreement. The Applicant can therefore not be heard to deny that the dispute between the parties had been resolved.

[35]. In the circumstances, I must agree with the Respondents that the provisions of section 102 of the Systems Act cannot find application.

[36]. Having said all of the above, I am of the view that this court need not deal with the requirements of an interim interdict as the Applicant has failed in the first two huddles that it is required to overcome, and this application ought to be dismissed with costs.

[37]. The Applicant prayed that it be awarded costs on an attorney and client basis. I do not see any reason why in these circumstances it should not be visited with a punitive cost order. The Applicant was not candid with this court. It sought to hide from this court crucial information relating to the existence or non-existence of a dispute between the parties, even on the face of evidence that shows clearly that the parties engaged on the dispute and had reached an agreement which counsel for the Respondents termed 'an agreement in principle'.

[38]. Clearly with the knowledge of the above, it ought not to have approached this court and particularly on such extreme urgency when it could have opted for other means.

[39]. In the circumstances, the following order is made:

1. The Applicant's application is dismissed; and
2. The Applicant is to pay the costs on an attorney and client scale.

KUMALO MP

Judge of the High Court

Gauteng Division, Pretoria

Counsel for the applicant: Adv A Kruger

Instructed by: Rabie Attorneys

Counsel for the respondents: Adv B Lukhele

Instructed by: Ncube Incorporated Attorneys