

SOUTH AFRICA / JUDGMENT

Body Corporate Ashwood Manor v Macgregor (027545/2023) [2023] ZAGPJHC 1153 (13 October 2023) [2023] ZAGPJHC 1153

COURT

South Gauteng High Court, Johannesburg

BEFORE

N Manoim

CASE / FILE NUMBER

027545/2023

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 027545/2023

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

NOT REVISED

13.10.23

In the matter between:

BODY CORPORATE ASHWOOD MANOR Applicant And ROBERT CLARK MACGREGOR
Respondent

REASONS

MANOIM J:

[1] The applicant in this matter has applied to me under Uniform Rule 49(1)(c) for reasons for an order I granted on 31 August 2023 when I heard the matter on the unopposed roll.

[2] In terms of that rule:

“When in giving an order the court declares that the reasons for the order will be furnished to any of the parties on application, such application shall be delivered within 10 days after the date of the order.”[1]

- [3] The applicant brought this request on 20 September 2023 and thus outside of the time period provided by the rule. There is a good reason for this time period particularly when it concerns matters on unopposed motion rolls which are heavily burdened. Ordinarily I explain in court ex tempore why I am not granting some form of relief sought. Due to the time delay I cannot recall if I gave such an undertaking, but I will give the applicant the benefit of the doubt that I may have.
- [4] Moreover, despite the lateness of this request, I will give my reasons in respect of the relief I did not grant. I do so as the Body Corporate has an interest in what its rights are vis a vis non-paying members. I will in these reasons confine myself to the prayer I did not grant, as I assume that is the only issue of interest now to the applicant.
- [5] The matter concerned a body corporate’s attempts to recover to recover arrears from one of its members, the respondent in this matter, who owns a section in Ashwood Manor, a sectional title

scheme, and in addition to disconnect the respondent’s electricity supply. Amongst the arrear amounts were charges for unpaid electricity which became a cost the remaining members had to incur.

- [6] On the day the matter was heard only the applicant appeared, represented by counsel. I granted three of the prayers sought; namely payment of the outstanding arrears, interest on that amount and costs on the terms sought by the applicant.

- [7] However, I did not grant the disconnection prayer which had been formulated as follows:

“3. In the event that the Respondent does not effect payment as per paragraph 1 and 2 within 10 days of granting of this order, the Applicant is authorised to engage the services of an electrician at a reasonable fee, registered with the Electrical Contractors Association of South Africa, in order to disconnect the electricity supply to the Respondent’s section being: section[...], Holkam Road, Paulshof, Ext 52, Gauteng. The electricity supply shall remain disconnected until payment of the aforesaid amount has been effected.”

- [8] The reason for this is that no legal power was advanced by the applicant to grant such a form of relief to a private body. In this regard I have followed the reasoning of Wilson J in *Lion Ridge Body Corporate v Alexander and Others* (17074/2022; 18106/2022; 19220/2022) [2022] ZAGPJHC 666 (21 September 2022).
- [9] In that matter Wilson J held:

“Neither the Sectional Titles Act nor the standard Management and Conduct Rules promulgated under it empower a body corporate to interfere with a member’s utility supply, and Lion Ridge does not allege any other common law or statutory power to do so. It follows that Lion Ridge has not identified the source of its alleged right to disconnect or limit the respondents’ utilities. Critically, Lion Ridge does not allege that it has adopted a specific rule, in terms of section 10 of the Act or section 6 of the Regulations, that empowers it to disconnect its members’ utilities to recover outstanding levies.” [2]

[10] This case is on all fours with that matter, and I do not consider that case to have been incorrectly decided. It follows that this form of relief was not competent and hence I could not grant it. Whilst this may understandably be a frustration to the body corporate and its members, their remedy is to adopt a rule to this effect.

N. MANOIM

JUDGE OF THE HIGH COURT

GAUTENG DIVISION

JOHNANNESBURG

Date of Reasons: 13 October 2023

Appearances:

Counsel for the Applicant:

S Mchunu

Instructed by.

Biccari Bollo Mariano Inc

[1] Rule 49(1)(c).

[2] At paragraph 7.

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