

SOUTH AFRICA / JUDGMENT

City Power (SOC) Limited v Combined Private Investigations CC (46054/2018) [2020] ZAGPPHC 679; 2021 (3) SA 202 (GP) (25 November 2020)

[2020] ZAGPPHC 679

COURT

North Gauteng High Court, Pretoria

BEFORE

H P van Nieuwenhuizen

CASE / FILE NUMBER

46054/2018

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES / NO

(3)

REVISED

CASE NO.: 46054/2018

In

the matter between:

CITY POWER (SOC)
LIMITED
APPLICANT
AND
COMBINED PRIVATE INVESTIGATIONS
CC
RESPONDENT
In

re:

COMBINED PRIVATE INVESTIGATIONS
CC
PLAINTIFF
CITY POWER (SOC)
LIMITED
DEFENDANT
("the
main action")

JUDGMENT

VAN NIEUWENHUIZEN AJ:

- [1] This is an application whereby the Applicant (“City Power”) seeks condonation for the late launching of its application for rescission of default judgment in terms of Rule 31(2)(b) and consequently that the default judgment and order granted by this court on 22 August 2019 be rescinded and set aside, together with costs in the event of opposition. The Respondent (“CPI”) obtained default judgment (“the default order”) in respect of two separate claims and the relevant paragraphs thereof read as follows:

“1. Payment in the amount of R605 640,31 (SIX HUNDRED AND FIVE THOUSAND SIX HUNDRED AND FORTY RAND AND THIRTY ONE CENTS);

2. Interest on the amount of R605 640,31 (SIX HUNDRED AND FIVE THOUSAND SIX HUNDRED AND FORTY RAND AND THIRTY ONE CENTS) at 10.25% a tempore morae, being 21 September 2017;
3. Payment in the amount of R468 189,27 (FOUR HUNDRED AND SIXTY EIGHT THOUSAND ONE HUNDRED AND EIGHTY NINE RAND AND TWENTY SEVEN CENTS);
4. Interest on the amount of R468 189,27 (FOUR HUNDRED AND SIXTY EIGHT THOUSAND ONE HUNDRED AND EIGHTY NINE RAND AND TWENTY SEVEN CENTS) at 10.25% a tempore morae, being 21 September 2017;
5. Costs of the action on an attorney and client scale.”

- [2] In deciding whether or not condonation ought to be granted, the standard that a court needs to adopt is whether it would be in the interests of justice to do so, which in turn depends on the facts and circumstances of each case. This is the standard that has been laid down by the Constitutional Court in *Van Wyk v Unitas Hospital* (Open Democratic Advice Centre as *amicus curiae*) [2007] ZACC 24; 2008

- (2) SA 472 (CC) at paragraph 20.

- [3] As I shall demonstrate later in this judgment, by virtue of the fact that I consider that I am obliged, in law, to set aside the default order, it would be in the interests of justice to grant condonation and I therefore do not deal with the question of condonation in more detail herein. I thus confine myself to the general requirements pertaining to the rescission of a default judgment in terms of Rule 31(2)(b), which provides that:

“A defendant may within 20 days after acquiring knowledge of such judgment apply to court upon notice to the plaintiff to set aside

such judgment and the court may, upon good cause shown, set aside the default judgment on such terms as it deems fit.”

[4] In the well-known decision of Silber v Ozen Wholesalers (Pty) Limited 1954

(2) SA 345 (A) Schreiner JA at 353G held as follows:

“It seems clear that by introducing the words 'and if good cause be shown' the regulating authority was imposing upon the applicant for rescission the burden of actually proving, as opposed to merely alleging, good cause for rescission, such good cause including but not being limited to the existence of a substantial defence (cf. du Plessis v Tager, 1953 (2) SA 275 at p. 278 (O)).”

[5] CPI's claims against City Power were pleaded as follows:

“CLAIM 1:

4.

On or about 30 July 2014 and at Johannesburg, the Plaintiff and the Defendant, represented by duly authorised representatives, entered into a written agreement (hereinafter “the first agreement”), a copy whereof is attached hereto and marked as Annexure “A”. The above Honourable Court is requested to incorporate the terms of the first agreement herein as if specifically pleaded.

5.

The material terms and conditions of the first agreement are, inter alia, as follows:

5.1 The agreement is for services rendered in the form of Strategic Crime Intelligence's Response and Investigation of Theft and Vandalism of the City Power infrastructure;

5.2 In terms of clause 2.1 of Annexure “A”, the effective term of the agreement was for a 36-month period from 03 March 2014 to 28 February 2017, notwithstanding signature thereof, and will endure until the contract has been successfully and fully completed and the Defendant has signed the Final Acceptance Certificate or until 28 February 2017 whichever date occurs first;

5.3 In terms of clause 2.2 of Annexure “A” the contract shall be terminated should the contract price be depleted before the termination date;

5.4 In terms of clause 9.1, purchase orders will serve as instruction to provide the service as requested by the Defendant and the prices payable will be in line with the rates as they appear in Annexure “B” of

Annexure “A”;

5.5 In terms of clause 10.4, the Defendant shall make each payment of the purchase order within thirty (30) days from receipt of the Plaintiff's invoice subject to the approval of the invoice by City Power;

5.6 In terms of clause 28.8(ii) a party to the contract can give the other party 7 days' notice of its intention not to make use of the mediation provisions of clause 28;

5.7 In terms of clause 29.1, in the event of either party committing a breach of any term and condition or provisions of the agreement and failing to remedy such breach within seven (7) days of receiving written notice from the aggrieved party to remedy such breach, the aggrieved party shall be entitled to cancel the agreement against the other party and claim immediate compensation;

5.8 In terms of clause 29.2, the parties agree to legal costs payable on attorney and client scale.

6.

6.1 On 19 July 2016 Mr Owen Bosch of the Defendant, duly authorised thereto, effectively terminated the first agreement in terms of the provisions of clause 2.2 thereof.

6.2 On 20 July 2016, Mr Francois Prinsloo of the Plaintiff, duly authorised thereto, supplied an invoice to the Defendant for services rendered by the Plaintiff to the Defendant in terms of the first agreement until 19 July 2016 and for which payment was not received. A copy of the invoice is attached hereto, marked as Annexure "B".

7.

The Plaintiff has complied with all its obligations in terms of the agreement, inter alia but not limited to rendering services in terms of the purchase orders as received from the Defendant as stipulated in clause 9 thereof; given all written reports as required by the agreement; and supplying the required CPI invoices as referred to in terms clause 10 of the agreement – to avoid these Particulars of Claim to become unnecessarily prolix, copies of all the aforementioned documents are not attached hereto but only the written proof that the relevant notices, reports and supporting documentation were provided to the

Defendant by the Plaintiff. The relevant proofs of sending is attached hereto as Annexure "C".

8.

In a meeting held on 1 December 2016 at Johannesburg between duly authorised representatives of the Plaintiff and the Defendant, the Defendant acknowledged liability for the outstanding amount as referred to above, in paragraph 6.2 supra, and it was agreed –

8.1 that the Defendant will make payment in the amount of R475 438,07 to the Plaintiff; and

8.2 the Plaintiff will assist the Defendant to submit motivation in order to request and obtain funds for the outstanding amount due and payable to the Plaintiff as well as additional invoices for further services rendered by the Plaintiff, as dealt with in claim 2 hereunder.

9.

The Defendant duly paid the amount of R475 538,08 to the Plaintiff and the Plaintiff complied with the request to assist the Defendant with written motivation to obtain further funds.

10.

The Defendant, however, in breach of the terms of the first agreement, failed to pay the outstanding amount due and payable to the Plaintiff, in the amount of R605 640,31, which amount is calculated in terms and as set out in the Plaintiff's tax invoice dated 31 July 2017, attached hereto, marked as Annexure "D".

11.

A letter of demand, dated 28 May 2018, was sent to the Defendant by registered mail, as well as by e-mail ... in compliance with clauses 19.3 and 28.8(ii) of the first agreement – a copy thereof is attached hereto, marked as Annexure "E".

CLAIM 2:

12.

12.1 At the termination of the aforesaid agreement 35 cases investigated by the Plaintiff in terms of the provisions of the aforementioned first agreement, were still outstanding and not yet finalised.

12.2 At a meeting held on 1 December 2016 in Johannesburg, the Plaintiff and the Defendant, both represented by duly authorised representatives, came to a verbal agreement that the Plaintiff will continue to attend to the aforementioned outstanding cases, and be entitled to payment for services received from 20 July 2016, on the same terms as set out in the written first agreement, Annexure "A" hereto, hereinafter referred to as the second agreement.

13.

The Plaintiff again complied with all its obligations in terms of the second agreement, inter alia but not limited to their obligations as set out in paragraph 5.7 supra.

...

15.

On 3 October 2017 the aforementioned second agreement was effectively terminated by the Defendant.

17.

The Defendant, however, in breach of the terms of the second agreement, failed to pay the outstanding amount due and payable to the Plaintiff, in the amount of R466 189,27."

(sic).

[6] For reasons that shall become apparent later herein, in my view I also need not deal with the questions of wilful default. I thus limit my judgment to the question of a bona fide defence. City Power raised the following defences in its founding affidavit:

[6.1] Firstly, that the claims of CPI were subject to the dispute resolution clause provided for in the parties' agreement and that CPI had not pleaded a basis upon which it sought to abandon same, nor did CPI inform City Power of its intention not to invoke the mediation provision provided for in terms thereof ("the alternative dispute mechanism defence");

[6.2] CPI was not entitled to the payments claimed as it had failed to comply with the provisions of their agreement by failing to provide monthly reports to City Power based upon progress of the investigations and court processes and that since the agreement had been terminated, CPI had failed to provide any such reports and accordingly CPI could not expect City Power to pay invoices annexed to the Particulars of Claim without any reports or details as to the outcome of the said court attendances. City Power further disputed that the reports annexed to the Particulars of Claim constituted the reports as required in terms of their agreement. The deponent to the founding affidavit, Mr Monyai, the General Manager of Legal Services of City Power, stated that he had checked his e mails and had not received any of the e mails attached to the Particulars of Claim ("the failure to report defence");

[6.3] In respect of CPI's second claim, that it had been a tacit term of the parties' agreement that the Plaintiff would continue to render the services in accordance with the terms of their agreement and at the rate stipulated therein, but only in respect of 15 cases which were outstanding. CPI had charged or had billed at a higher rate than the agreed rate and claimed for hours outside of the agreed upon time and further failed to render reports for City Power's approval and accordingly City Power did not approve such invoices and is thus not obliged to make payment in terms thereof ("the defences pertaining to CPI's second claim").

[7] After perusing the papers in the application before me, as well as the parties' heads of argument, I requested the parties' counsel to prepare submissions in respect of whether or not I might, mero motu, raise the question as to whether or not a court may, or indeed must, raise the question as to whether a contract, or the extension thereof, is unlawful in terms of Section 172 of the Constitution, as well as certain other matters (which, in view of the approach I adopt in this matter, are not relevant for the purposes of this judgment). I made this request in light of the fact that in terms of Section 172(1)(a) of the Constitution, I am enjoined to declare invalid any law or conduct that I find to be inconsistent with the Constitution. This principle generally comes to the fore in review applications where State organs often themselves seek to review their own decisions or actions premised upon the principle of legality. In *State Information Technology Agency SOC Limited v Gijima Holdings (Pty) Limited* 2018 (2) SA 23 (CC) the Constitutional Court discussed the principle at paragraphs 38 to 41 as follows:

"Review under legality

[38] The conclusion that PAJA does not apply does not mean that an organ of state cannot apply for the review of its own decision; it simply means that it cannot do so under PAJA. In *Fedsure* this court said that '[i]t seems central to the conception of our constitutional order that the Legislature and Executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law'. It also said that —

'a local government may only act within the powers lawfully conferred upon it. There is nothing startling in this proposition — it is a fundamental principle of the rule of law, recognised widely, that the exercise of public power is only legitimate where lawful. The rule of law — to the extent at least that it expresses this principle of legality — is generally understood to be a fundamental principle of constitutional law. This has been recognised in other jurisdictions. In *The Matter of a Reference by the Government in Council Concerning Certain Questions Relating to the Secession of Quebec from Canada* the Supreme Court of Canada held that:

Simply put, the constitutionalism principle requires that all government action comply with the Constitution. The rule of law principle requires that all government action must comply with the law, including the Constitution. This court has noted on several occasions that with the adoption of the Charter, the Canadian system of government was transformed to a significant extent from a system of Parliamentary supremacy to one of constitutional supremacy. The Constitution binds all governments, both federal and provincial, including the executive branch (*Operation Dismantle Inc.*

v. *The Queen*, [1985] 1 S.C.R. 441, at p.455). They may not transgress its provisions: indeed, their sole claim to exercise lawful authority rests in the powers allocated to them under the Constitution, and can come from no other source.'

[39] *Pharmaceutical Manufacturers* tells us that the principle of legality is 'an incident of the rule of law', a founding value of our Constitution. In *Affordable Medicines Trust* the principle of legality was referred to as a constitutional control of the exercise of public power. Ngcobo J put it thus:

'The exercise of public power must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution.'

[40] What we glean from this is that the exercise of public power which is at variance with the principle of legality is inconsistent with the Constitution itself. In short, it is invalid. That is a consequence of what s 2 of the Constitution stipulates. Relating all this to the matter before us, the award of the DoD agreement was an exercise of public power. The principle of legality may thus be a vehicle for its review. The question is: did the award conform to legal prescripts? If it did, that is the end of the matter. If it did not, it may be reviewed and possibly set aside under legality review.

[41] It was not in dispute that the award of the DoD agreement by Sita was not pursuant to a competitive bidding process. Neither party produced evidence to show that, despite not following a competitive process, the process followed complied with the relevant public procurement prescripts. Section 217 of the Constitution insists on a system of public procurement that complies with certain factors. It provides that '(w)hen an organ of state . . . contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective'. It therefore seems reasonable for this court to infer that, in awarding the contract, Sita acted contrary to the dictates of the Constitution. Based on Fedsure, this was at odds with the principle of legality and liable to be reviewed and possibly set aside. Indeed, we have previously held that the principle of legality would be a means by which an organ of state may seek the review of its own decision. This was in Khumalo.”

[footnotes omitted] and at paragraphs 51 to 52, after dealing with the effect that a delay in seeking to review such an order might have on the court’s discretion and criticising the applicable State organ in that matter, resoundingly concluded as follows:

“[51] Does that mean the decision to award the DoD agreement stands?”

Relief

[52] We concluded earlier that, in awarding the DoD agreement, Sita acted contrary to the dictates of the Constitution. Section 172(1)(a) of the Constitution enjoins a court to declare invalid any law or conduct that it finds to be inconsistent with the Constitution. The award of the contract thus falls to be declared invalid.”

[Footnote omitted.]

[8] The Constitutional Court proceeded to discuss the wide remedial power a court would have in such circumstances to ensure that any order it makes is just and equitable, but that does not find relevance in the matter before me.

[9] During argument before me, Mr Georgiades SC, on behalf of City Power, submitted that I was entitled to mero motu raise the question of legality, despite it not being raised as a defence by City Power as part of its application for rescission of the default order. Mr Goosen, who appeared on behalf of CPI, agreed with such a submission (correctly in my view). In *Southern Africa Enterprise Development Fund Inc v Industrial Credit Corporation Africa Ltd* [2007] ZAGPHC 293; 2008

(6) SA 468 (W) at paragraph 22 Van Oosten J discussed the court’s duty to ensure that justice is done where appropriate to raise issues

mero motu as follows:

“[22] Against this background I consider it appropriate and necessary to comment briefly on the court's power to deal with issues mero motu raised by it. I cannot accept the notion of the judge merely acting as an umpire in the adjudication of disputes between parties. It is also the judge's duty to ensure that

justice is done. If during the consideration of a matter a fundamental issue arises, which the parties have overlooked or have failed to recognise, and it is in the opinion of the judge in the interests of justice necessary and convenient to determine that issue, I can see no reason why this cannot be achieved through a process of fairness to all the parties concerned. Fairness, I need hardly reiterate, would embrace, inter alia, that proper notice of the issue and its proposed determination be given to all parties and further that the principles of audi alteram partem be observed. The possibility of prejudice always remains an important consideration. In the absence of prejudice the court, in my view, should not hesitate to adopt such a course in order to arrive at a just decision of the case. I am fortified in the views I have expressed if regard is to be had to the judgment of the then Appellate Division in Paddock Motors (Pty) Ltd v Igesund where the court considered it necessary, for the proper adjudication of a stated case, to allow the appellant to revive an earlier abandoned contention based on a question of law. In dealing with this aspect, Jansen JA held:

If eg the parties were to overlook a question of law arising from the facts agreed upon, a question fundamental to the issues they have discerned and stated, the Court could hardly be bound to ignore the fundamental problem and only decide the secondary and dependent issues actually mentioned in the special case. This would be a fruitless exercise, divorced from reality and may lead to a wrong decision. It follows that the Court cannot be confined in all circumstances to the issues explicitly raised in the

special case. This does not mean that the Court will always be free to enlarge the issues, whether mero motu or at the

request of a party. The question of prejudice may arise, eg, where a party would not have agreed on material facts, or on only those stated in the special case, had he realised that other legal issues, not stated in the special case, were involved.

Finally, in this context, it is apposite to quote the words of caution expressed by Marais JA in S v Gerbers:

(I)t remains incumbent upon all judicial officers to constantly bear in mind that their bona fide efforts to do justice may be misconstrued by one or other of the parties as undue partisanship and that difficult as it may sometimes be to find the right balance between undue judicial passivism and undue judicial intervention, they must ever strive to do so.

Having considered the principles and considerations I have outlined above, I have come to the conclusion that it would indeed be appropriate to now determine the new issue, and I accordingly proceed to do so.”

[Footnotes omitted.]

[10] In McLaren v Badenhorst and Others 2011

(1) SA 214 (ECG), Chetty J, on behalf of the Full Bench, at paragraph 3 held as follows:

“It is common cause that the presiding magistrate raised the lack of jurisdiction mero motu. Her entitlement to do so has been attacked on the basis that while it is a court's duty to mero motu have regard to illegality, even in the absence of it being pleaded, it is only permissible to do so where the illegality appears ex facie that which is presented to the court. The reasons underlying the dismissal of the appeal, adumbrated hereinafter, vindicate the magistrate's decision to have mero motu raised the jurisdiction issue, and her decision to do so cannot be faulted.”

[See also Tuckers Land and Development Corporation (Pty) Limited v Loots 1981 (4) SA 260 (T).]

[11] A contract, prohibited by statute, is illegal (see Harms, Amler’s Precedents of Pleadings, 9th Edition at page 119 s.v. “contrary to law” and “effect”).

[12] In light of what was said in Gijima, Southern Africa Enterprise Development Fund Inc and McLaren, and having afforded the parties’ counsel adequate notice of the issue of the principle of legality, I am of the view that I am not only entitled, but in fact duty bound, to have raised this issue.

[13] During argument, the question of legality was aimed more against the second claim of CPI than to the first. The “second agreement” or “verbal agreement” forming the foundation of CPI’s second claim would patently fall foul of municipal procurement processes and ultimately Section

217 of the Constitution which provides that: “(w)hen an organ of State ... contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.” CPI’s second claim prima facie appears to be premised upon an invalid agreement, which would constitute a valid bona fide prima facie defence as envisaged in terms of the authorities in the context of “good cause”.

[14] Although CPI’s first claim was not attacked on the same basis during argument, but rather the other defences as I have defined in paragraph 6 supra (to which I return in dealing with the question of costs) and although, in terms of Rule 32(1)(b), I would be entitled to rescind only a portion of the default order [see Conekt Business Group (Pty) Limited v Navigator Computer Consultants CC 2015

(4) SA 103 (GJ)], in the exercise of my discretion, I decline to do so and shall rescind the whole of the default order because of the fact that on CPI’s own pleaded version in its Particulars of Claim, the “first agreement” was terminated on 19 July 2016 in terms of clause 2.2 thereof, which provided that same would be terminated if the contract price had been depleted before the termination date. It would follow logically that the contract price had been depleted as at 16 July 2016 and that any payments made thereafter or alleged to be owing would have been in excess of the depleted contract price. As was said by Leach AJA (as he then was) in Municipal Manager: Qaukeni Local Municipality and Another v FV General Trading CC 2010 (1) SA 356 (SCA) at paragraph 14:

“It is not a question of a court being entitled to exercise a discretion having regard to issues of fairness and prejudice. Rather, the question is one of legality.”

It seems to me that prima facie, thus, claim 1 of CPI, in this context, is also a matter fit for trial. “Good cause” has accordingly been established to set aside the default order.

[15] That then leaves the question of costs. Mr Goosen referred me to the judgment of Cloete JA on behalf of the Supreme Court of Appeal in *Premier, Western Cape v Lakay* 2012

(2) SA 1 (SCA) at paragraph 25 where it was stated as follows:

“The court a quo ordered the Premier to pay the applicant's costs occasioned by the former's opposition to the application. Counsel on behalf of the Premier initially argued that the applicant should have been ordered to pay the Premier's costs as, it was submitted, the applicant was seeking condonation and the Premier's opposition was not unreasonable. Ordinarily, in applications for condonation for non-observance of court procedure, a litigant is obliged to seek the indulgence of the court whatever the attitude of the other side and for that reason will have to pay the latter's costs if it does oppose, unless the opposition was unreasonable.” [footnotes omitted.]

[16] In my view, the opposition of CPI was certainly not unreasonable in the present matter where CPI was in fact not called upon to meet a defence of legality on the papers. Rather, on the papers, and thus on City Power's case, had it not been for the principle of legality, I would not have rescinded CPI's first claim granted in the default order. This is because there is no merit in the defences raised in that regard.

[17] Insofar as the alternative dispute resolution defence is concerned, the letter of demand of CPI of 28 May 2018 clearly recorded that unless City Power met CPI's demand, summons would be issued for the recovery of the outstanding amount. This cannot be construed in any other reasonable manner than CPI not intending to make use of the mediation provisions in terms of clause 28 of the first agreement.

[18] In respect of the failure to report defence, the Plaintiff annexed e mails containing reports sent to City Power, as well as e mails from City Power to it confirming the payment arrangement of 1 December 2016 as pleaded by CPI. In particular, one Ms Charmaine Abrahams confirmed the version of CPI in her e mail of 6 December 2016 which appears to form part of Annexure “C” of the Particulars of Claim and Mr Monyai was in fact copied in on such correspondence, yet Ms Abrahams does not provide a confirmatory affidavit, nor is her response explained by City Power at all. City Power also failed to explain why it had made a partial payment as averred by CPI and undertook to pay the balance if it had any conviction in the defences raised in its founding affidavit. City Power further failed to provide comparable reports which they suggest would have complied with the provisions of the first agreement to demonstrate that the reports sent by CPI did not so comply. To a certain extent, the

lack of bona fides in putting forward this defence also finds application in respect of the defences pertaining to CPI's second claim, albeit only to the extent of the complaint relating to the reporting.

[19] Therefore, had it not been for the question of legality, City Power would only have been partially successful with its application and, in seeking condonation, would also have been liable for CPI's costs. Mr Georgiades SC ingeniously sought to persuade me that CPI itself erroneously sought default judgment (premised upon the principle of legality) and thus the default order ought never to have been granted in the first place and that CPI should therefore not be entitled to costs, and at best each party should be responsible for their own costs. The difficulty with that argument is, firstly, the present application was not brought in terms of Rule 42(1)(a) and it certainly was not the case that CPI was called upon to meet. Had such a case been advanced by City Power in its papers, CPI may very well have not sought to oppose the present application. Secondly, default judgment might have been inadvertently erroneously sought (and no doubt the pleadings in the present matter will undergo significant changes going forward), but it was also erroneously granted. Why should CPI receive extra blame if this court itself had missed the principle of legality in considering the application for default judgment? The additional factor that I hold against City Power is that the

application for rescission was brought out of time and it sought condonation in respect thereof as well. Therefore it hardly

behoves City Power to suggest it ought to escape liability for the cost of the present application. Albeit that the first

agreement does provide for costs to be payable on the attorney and client scale, if the first agreement, or rather the claims made in respect thereof in the pending action, is found to fall foul of the principle of legality at trial, then such a costs scale would not be justifiable on a contractual basis. In my view, it would be fair that I order costs on the party and party scale.

[20] Accordingly, I make the following order:

[20.1] Condonation is granted for the late launching of the rescission of default judgment application dated 18 February 2020;

[20.2] The default judgment and order granted under the above case number on 22 August 2019 is set aside;

[20.3] The Applicant, City Power, is ordered to pay the costs of this application on the party and party scale.

H P VAN NIEUWENHUIZEN

Acting Judge of the High Court

Gauteng Division of the High

Court, Pretoria

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 e mail and by uploading it to the electronic

file of this matter on CaseLines. The date for hand-down is deemed to be 25 November 2020.

Date of hearing: 12 November 2020

Date of judgment: 25 November 2020

Appearances:

Tshiqi Zebediela

Attorneys for the Applicant

Counsel for the Applicant: Advocate C Georgiades SC

(The Applicant's heads of argument were prepared by Advocate C Georgiades SC and Z Ngwenya)

Arthur Channon Attorneys

Attorneys for the Respondent

Counsel for the Respondent: Adv H S Goosen

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2020/679.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/city-power-soc-limited-v-combined-unknown-topic-agpphc-2020>

Prepared on 13 October 2026 · Esheria