

SOUTH AFRICA / JUDGMENT

Kabylia Mini Market CC v City of Tshwane Metropolitan Municipality (45823/2019) [2020] ZAGPPHC 406 (4 August 2020)

[2020] ZAGPPHC 406

COURT

North Gauteng High Court, Pretoria

BEFORE

Fabricius

CASE / FILE NUMBER

45823/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

CASE

NO: 45823/2019

IN

THE MATTER BETWEEN:

KABYLIA

MINI MARKET

CC

APPLICANT

AND

CITY

OF TSHWANE METROPOLITAN MUNICIPALITY

RESPONDENT

JUDGMENT

FABRICIUS J

- [1] On 1 July 2019 the Respondent was ordered, by way of a rule nisi, to restore the power supply to certain units of Applicant's property. The Respondent was ordered to file an answering affidavit within 20 days, but failed to do so. The answering affidavit now before me is dated 9 October 2019. No application for condonation was filed. An explanation was tendered in Respondent's heads of argument, but this is obviously not what is required by law.

See: Van Wyk v Unitas Hospital [2007] ZACC 24; 2008 (2) SA 472 (CC)

- [2] The rule nisi was extended on 27 February 2020, and again to 3 August 2020 by way of an order dated 14 April 2020.
- [3] Applicant now seeks confirmation of the rule together with a costs order on the attorney and client scale.
- [4] Having regard to the affidavits as a whole and the written arguments, no oral hearing is necessary in the present circumstances existing under the "lock-down" situation under the Disaster Management Act.
- [5] The electricity to the applicant's premises was disconnected without any process during June 2019. Disputes have been lodged

regarding the accuracy of accounts already in 2016. Respondent was aware of those unresolved disputes.

- [6] Respondent's main defence was that it acted lawfully in terms of a policy that applied to disputes of this nature. Such policy documents were not annexed to the answering affidavits and accordingly one is left in the dark as to what Respondent's lawful considerations were. The replying affidavit pointed this out, but respondent failed to take note thereof, or place such policy before this court.
- [7] There is therefore nothing before me to show that this particular policy was lawfully in place and/or that Respondent properly complied with it. On the papers, it simply took the law in its own hands. Respondent's counsel stated in his heads of argument that respondent acted "in terms of clause 6 of the Credit Control and Debt Collection Policy" but I have said this is not before me. Heads of argument can obviously not take the place of affidavits in which the parties set out the evidence they rely on in any particular matter.
- [8] The Local Government: Municipal Systems Act 32 of 2000 provides for the relevant topic at hand and also for the resolution of disputes. Much of respondent's counsel's argument in this context ought to have been addressed fully in a timeous answering affidavit.
- [9] Although the answering affidavit admits that certain disputes were raised by Applicant, this is denied in Respondent's heads of argument. No explanation is given for the apparent conflict.
- [10] There is no merit in Respondent's argument regarding the locus standi of applicant.

- [11] There is no explanation why the disputes raised by the Applicant's have not yet been resolved.
- [12] It is common cause that applicant was in undisturbed possession of the electricity supply. This was disconnected. No acceptable explanation appears from the answering affidavit in the absence of the "policy" that I have referred to.
- [13] Respondent's conduct in these proceedings is unacceptable. The answering affidavit was filed late. No condonation was sought. Respondent's defence is set out in its heads of argument rather than in the answering affidavit as I pointed out. A punitive costs order is therefore justified in the exercise of my discretion.

THE FOLLOWING ORDER IS MADE:

1. The rule nisi granted on 1 July 2020 and as extended to 3 August 2020 is confirmed. Respondent is to pay the costs of the application on the attorney and client scale.

H FABRICIUS

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DATE OF HEARING: NO ORAL HEARING

DATE OF JUDGMENT: 4 AUGUST 2020

APPEARANCES:

FOR THE APPLICANT: ADV Z SCHOEMAN

INSTRUCTED BY: TINTINGERS INC

FOR THE RESPONDENT: ADV J HLONGWANE

INSTRUCTED BY: B CEYLON ATTORNEYS

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Prepared on 10 October 2026 · Esheria