

SOUTH AFRICA / JUDGMENT

Lepelle Northern Water Board and Others v Minister of Department of Human Settlement, Sanitation and Water and Others (23535/20) [2020] ZAGPPHC 199 (3 June 2020) [2020] ZAGPPHC 199

COURT

North Gauteng High Court, Pretoria

BEFORE

Van der Schyff

CASE / FILE NUMBER

23535/20

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REPUBLIC
OF SOUTH AFRICA
IN
THE HIGH COURT OF SOUTH AFRICA
GAUTENG
DIVISION, PRETORIA
(1)

REPORTABLE:	NO (2) OF INTEREST TO
OTHER JUDGES:	NO (3) REVISED: NO CASE NO: 23535/20 3/6/2020 In

the matter between:

LEPELLE
NORTHERN WATER BOARD
First Applicant
PHINEAS
KGAHLISHO LEGODI
Second
Applicant
NTLALE
HAROLD MATSEPE
Third Applicant
MATSEBE
IVOR PHASHA
Fourth Applicant
LANGANANE
LUCY CATHERINE MALAMBA
Fifth Applicant
MANKONE
MABATAUNG NTSABA
Sixth Applicant
JOSEPHINE
MAMPHERI LETSOALO
Seventh Applicant
BOXING
PHILEMON SEBOLA
Eighth Applicant
MAKGETSI
ANNABELLE MPHAHLELE
Ninth Applicant
And
MINISTER
OF DEPARTMENT OF HUMAN
First
Respondent
SETTLEMENT,
SANITATION AND WATER
DEPARTMENT
OF HUMAN SETTLEMENT,
Second Respondent
SANITATION
AND WATER
DIRECTOR-GENERAL
DEPARTMENT OF HUMAN
Third
Respondent
JOE
MATHEBULA
Fourth
Respondent
YVONNE
DELIWE
MBANE

Fifth
Respondent
JACK
MATLALA
Sixth
Respondent
MOSIBUDI
MAKHWEDI MAKGOPA-MADISA
Seventh Respondent
MFANELO
CHARLES TWALO
Eighth
Respondent
MAUDINE
MABI
Ninth
Respondent
BOUY
GAOREKWE
Tenth Respondent
GEZANI
PATRICK RITSHURI
Eleventh Respondent

JUDGMENT

Coram Van der Schyff J

Introduction

- [1] This application is considered during the National State of Disaster declared by the State President in terms of the Disaster Management Act, No 57 of 2002 and the ensuing extended Covid-19 national lockdown. It was dealt with in accordance with the Urgent Court Directive dated 28 May 2020 issued by the senior Judge of the Urgent Court, Judge D S Fourie.
- [2] The parties were informed, and accepted, that the application be adjudicated on paper. Despite the fact that the matter was enrolled
- to be considered at 14h00, the parties' requested an extension of the period allowing for the filing of heads of argument. This extension was granted.
- [3] The application was brought on an extremely urgent basis. The applicants seek an order in the following terms, namely that:
1. "This application is to be heard as one of urgency in terms of the provisions of Uniform Rule 6(12) (a) and the non-compliance by the Applicants of the time limits, forms and service be condoned;

2. The Board meeting convened by the fourth respondent scheduled for 4 June 2020 is hereby interdicted;
3. Pending the finalisation of the Urgent Application under case number 23535/20 set down for hearing on 17 June 2020, the fourth to the eleventh respondents ("respondents") are interdicted from executing any of their duties as the interim board members of the first applicant;
4. The Respondents are to pay the costs of this application including the costs of two Counsel, jointly and severally"

[4] It is evident that final and interim relief are sought.

Service

- [5] At the outset, it is necessary to determine whether the application was properly served on the respondents. Although rule 6(12)(a) provides that a court or a judge may dispense with the forms and service provided for in the Uniform Rules of Court, this provision does not negate the application of the audi et alteram principle.
- [6] The notice of motion is dated 2 June 2020 and the founding affidavit was signed and commissioned on 2 June 2020.
- [7] The first, second and third respondents did not file a notice to oppose this application. No proof that this application, has been served on the first to third respondents, is before me. In this regard it needs to be mentioned:
- i. No service affidavit was uploaded amongst the documents uploaded to Caselines, neither was it amongst the documents received via e-mail;
 - ii. The applicants do not refer to the service of this application on the first, second and third respondents in their heads of argument;
 - iii. Mkhabela Huntley Attorneys Inc (MHA) represents only the fourth to eleventh respondents;
 - iv. Counsel appearing for the fourth to eleventh respondents submitted in his heads of argument that the applicants have not demonstrated that there has been proper service of the application on all the respondents.
- [8] I am aware that rule 4(1)(aA) of the Uniform Rules of Court provides that: "Where the person to be served with any document initiating application proceedings is already represented by an attorney of record, such document may be served upon such attorney by the party initiating such proceedings". In *BHP Billiton Energy Coal South Africa v Minister of Mineral resources and Others*[1] the court said that it is apparent that rule 4(1)(aA) applies to proceedings already instituted, so that it applies in effect to ancillary and interlocutory applications. *Ploos van Amstel J* explained in *ABM Motors v Minister of Minerals and Energy and Others*[2] that in the context of the Uniform Rules of Court, an attorney of record is one who has formally placed himself on record as representing a party in legal

proceedings before the court. It is thus evident that although the applicants seek to rely on the e-mail delivery of the notice of motion and founding papers to MHA, this did not constitute service on the first, second and third respondents. In addition, there is no indication of the application being served on the State Attorney's Office.

- [9] There is consequently no evidence before the court to find that the first three respondents, who have a direct and material interest in the litigation at hand, are in default and that the application can be considered in their absence.

URGENCY

- [10] This application was brought with extreme urgency. The applicants state in the founding affidavit that they only became aware on 2 June 2020 of the fact that the Interim Board would convene a board meeting on 4 June 2020.
- [11] In the answering affidavit deposed to by fourth respondent it is stated that the Interim Board has already held three meetings since the interim members were appointment. In this context, the extreme urgency for preventing a fourth meeting from being held is not explained. In addition, the fourth respondent asserts that the company secretary was informed as early as 29 May 2020 that a Board meeting had to be scheduled for 4 June 2020. She acknowledged receipt and indicated that she requested advice from the Legal Service Department. In light of the fact that the deponent to the founding affidavit was at that stage still employed as the Chief Executive Officer of the Lepelle Northern Water Board, the only logical conclusion is that the deponent had knowledge of the meeting scheduled for 4 June 2020 prior to 2 June 2020.
- [12] It is evident that the Interim Board has commenced with their duties and responsibilities. Their appointment was brought about by an administrative action of the first respondent. This administrative action is challenged in the urgent review application to be heard in June 2020. The status quo that currently exists is that the Lepelle Northern Water Board is being governed by members appointed for an interim period.
- [13] In my view therefore, the matter cannot be entertained as an urgent application.

ORDER

In the result the following order is made:

1. The application is struck from the roll.
2. The applicants are to pay the costs of the application.

E van der Schyff

Judge of the High Court, Gauteng, Pretoria

Counsel for the applicants:

Adv W R Mokhare SC

With

Adv M C Makgato

Instructed by:

Prince Mudau & Associates

Counsel for the respondent:

Adv Kennedy Tsatsawane SC

With

Adv B Manentsa

Instructed by:

Mkhabela Huntley Attorneys Inc.

Date of the roll:

3 June 2020

Delivered:

3 June 2020

[1] 2011 (2) SA 536 (GNP) at 542F-543C. Approved on this point, on appeal in *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd and Others* 2013 (2) SA 204 (SCA) at para 29.

[2] 2018 (5) SA 540 (KZP) at para 26.

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Prepared on 12 October 2026 · Esheria