

SOUTH AFRICA / JUDGMENT

Mnguni and Others v City of Johannesburg and Others (29769/2018) [2018] ZAGPJHC 546 (28 August 2018)

[2018] ZAGPJHC 546

COURT

South Gauteng High Court, Johannesburg

BEFORE

Petersen

CASE / FILE NUMBER

29769/2018

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 29769/2018

In

the matter between:

INNOCENT
MBUSO MNGUNI AND 73
OTHERS Applicants
and
THE
CITY OF
JOHANNESBURG First
Respondent
Leapfrog
Property
Trust Second
Respondent
Body
Corporate of
KingsLengeley Third
Respondent
In
re
JACQUES

PIETER GROVE
N.O. First
Applicant
GEORGE
FREDERICK ROBERTSON
N.O. Second
Applicant
INNOCENT
MBUSO
MNGUNI First
Respondent
CAROL
NXUMALO Second
Respondent
MANDISA
PETRONELLA
MVUNGAMA Third
Respondent
PRINCE
NDLOVU Fourth
Respondent
TF
GOREMUSANDU AND 42
OTHERS Fifth
Respondents
THE
CITY OF
JOHANNESBURG Sixth
Respondent

JUDGMENT

(REASONS)

PETERSEN AJ:

Introduction

- [1] This matter came before me as an urgent application on 14 August 2018. The following order was issued:

The Main Application

1. The first respondent is ordered to provide the applicants' with restricted water supply including but not limited to an alternative tap before midnight of the 17 August 2018.

The Counter Application

1. The application is struck off the roll for lack of urgency.

Costs

The parties are to bear their own costs.

The main application

- [2] The nub of the relief sought by the applicants' is found at paragraphs 2, 3 and 4 of the Notice of Motion:

"2. That the Second and Third Respondents be directed to forthwith pay its debt of R1 282 336.42, to the First Respondent, or enter into a settlement agreement with the First Respondent, leading to immediate reconnection of water supply to the Applicants.

3. That failing prayer 2 herein above, the Applicants' be authorised to directly approach the City of Johannesburg, negotiate

immediate restoration of water supply in the property and be authorised to make payments directly to the City of Johannesburg's

Account until the debt of R1 282 336.42 is paid in full.

4. That the First Respondent is hereby ordered, with immediate effect, to reconnect water supply at the applicant's premises, situated at number 3 Paul Nel corner Quartz Streets Hillbrow in Johannesburg also known as "KINGSLANGLEY FLAT".

The counter application

- [3] In the counter application the second and third respondents' as represented by Grove and Robertson sought the eviction of the applicants' Mnguni, Nxumalo, Mvunguma and Ndlovu on an urgent basis in terms of section 5(1) of the PIE, accompanied by an application for condonation for the failure to serve the requisite section 5(2) notice.

The relief sought in the main application

- [4] The relief sought at paragraph 2 of the Notice of Motion seeking an order that the second and third respondents be ordered to enter into a settlement agreement in respect of the arrears water account with the first respondent is unprecedented. The same applies to the relief sought at paragraph 3 of the Notice of Motion.
- [5] There is no basis in law for this court to compel a party to a contractual relationship to engage in settlement negotiations at the behest of a third party who is not a party to the contractual relationship. Similarly there is no basis for this court to issue an order that the applicants' be allowed to engage in negotiations with the first respondent. The relief sought is fallacious.
- [6] In the ordinary course the lease agreements between the applicants' and the second respondent entitle the applicants' to have sight of the municipal account of the second respondent which it holds with the first respondent. The first respondent submitted that it is not averse to engaging with the applicants' on the repayment of the arrears. This view of the

first respondent follows logically, the first respondent has a debt due to it and its primary objective is the servicing of the debt. Seeking an order from the court, however, to endorse the applicants' negotiations with the first respondent is misplaced and ill-conceived, considering the fact that they are not contractual parties to the service agreement with the first respondent.

- [7] The fourth prayer seeking an order that the first respondent without further ado reconnects the water supply is without basis.
- [8] The applicants' portrayed themselves as victims of the second respondent's alleged remissness in paying the water bill. In seeking to draw an analogy or comparison between the monthly rentals paid for July 2018, the lease amounts reflected in the lease agreement and a reconciliation provided by the second respondent of rentals due and outstanding, the applicants' highlighted their own shortcomings. I single out the example utilised by counsel for the applicants' in respect of the first applicant. Given the disparities between the lease amount as it should currently be three years after he took occupation, what is reflected as the initial lease amount R4100.00 per month, the first applicant has not paid his dues in full, having paid only R2500.00. As one embarks on a comparative analysis with some of the other applicants' a similar pattern emerges. The applicants' further surreptitiously indicate on oath that they may be in arrears with their rental. Logically, if the tenants fail to pay their dues as contractually obliged, the landlord cannot pay its dues in terms of its contractual obligation with the municipality. The urgent application by the applicants' framed in the relief sought was ill-conceived.
- [9] The applicants' are constitutionally entitled to water, but the right is subject to limitation. The first respondent gave an undertaking that it would provide an alternative or limited supply of water as it is constitutionally obliged to do. The undertaking was well-founded.

The relief sought in the counter application

- [10] The applicants' in the counter-application took a position akin to a knee jerk reaction or so-called tit-for-tat approach when confronted with the main application. Whilst they maintain instructions had been received for such an application which was imminent, this court was not convinced by the argument. The application sought to single out four (4) of the applicants' in the main application for eviction on an urgent basis when the facts deposed to demonstrated a reaction to the cut water supply from the tenants collectively. The body of tenants on the papers had further mandated the first respondent in the counter application to represent them. Without giving the requisite notice of the intended application to the affected parties and seeking condonation for failure to comply with the prescripts of the law in this regard, was in my view misplaced considering the timing of the application.
- [11] The counter-application failed to make a case for urgency within the parameters of section 5(1) of PIE.
- [12] In brief these are the reasons for the order issued on 17 August 2018.

AH PETERSEN

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

For the Applicants: Adv Mhlanga

Instructed by: Ezenwa Attorneys

For the First Respondent: Adv Tshigomana

Instructed by: Ramatshila-Mugeri Attorneys

For the Second and Third Respondents: Adv Schlueb

Instructed by: Vermaak and Partners Inc.

Date Heard: 17 August 2018

Date of Reasons for Judgment: 28 August 2018

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