

SOUTH AFRICA / JUDGMENT

Molefe and Another v Merafong Local Municipality and Others (63816/2017) [2017] ZAGPPHC 1088 (17 October 2017) [2017] ZAGPPHC 1088

COURT

North Gauteng High Court, Pretoria

BEFORE

M W Msimeki

CASE / FILE NUMBER

63816/2017

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,

NORTH GAUTENG DIVISION, PRETORIA

CASE NO: 63816/2017

17/10/17

(1) NOT REPORTABLE

(2) NOT OF INTEREST TO OTHER JUDGES

(3) REVISED

PULE MOLEFE

1st Applicant

THE RESIDENTS OF THE BLYVOORUITZICHT

2nd Applicant

and

MERAFONG LOCAL MUNICIPALITY

1st Respondent

RAND WATER

2ND Respondent

MINISTER OF WATER AND SANITATION

3RD Respondent

MINISTER OF COOPERATIVE GOVERNANCE

AND TRADITIONAL AFFAIRS FOR GAUTENG

4th Respondent

PREMIER OF GAUTENG PROVINCE

5th Respondent

MEC OF COOPERATIVE GOVERNANCE

AND TRADITIONAL AFFAIRS FOR GAUTENG

6TH Respondent

LEIGH ROERING NO

7th Respondent

KPMM CONSTRUCTION (PTY) LIMITED

8th Respondent

MME MANUFACTURING COMPANY (PTY) LIMITED 9th Respondent

DOUBLE D & G BUILDING CONTRACTORS CC

10th Respondent

ANGLOGOLD ASHANTI LIMITED 11th Respondent

JUDGMENT

MSIMEKIJ,

INTRODUCTION

[1] The first and second applicants, in this application and on an urgent basis, seek an order:

"2. Varying the order of this Court handed down on 18 October 2016 under case number 85928/2015 as follows:

2.1 Deleting paragraph 1.2 of the order in its entirety.

2.2 Deleting the words "hours of 6 am to 10 am and 5 pm to 9 pm" in paragraph 1.3 of the court order and replacing them with the following phrase:

"the hours of 4 pm to 10 pm"

3. Directing the first and second respondents to restore the piped water supply to Blyvooruitzicht in compliance with the order of this Court granted on 18 October 2016, subject to the above variations.
 4. Directing the first and second respondents to immediately engage in good faith with the applicants to identify and implement an alternative solution if the above variation to the 18 October 2016 court order does not provide access to sufficient water for all residents of the Blyvooruitzicht Mining Village.
 5. In the event that the parties are unable to reach agreement on an alternative solution in terms of paragraph 4 above, the applicants may supplement their papers and approach this Court for further and/or additional relief.
 6. Directing the first and second respondents to pay the costs of this application.
 7. Further and/or alternative relief"
- [2] The first and second respondents filed their answering affidavits.

BACKGROUND

- [3] Blyvooruitzicht is a gold mining village which was established in 1937 with the aim of housing qualifying employees who worked for the Blyvooruitzicht Gold Mine. The mine paid for water services for both domestic use by the employees who lived in the mining village and industrial use. The mine paid the account of the residents and deducted a small sum from the employees' salaries. In August 2013, the mine was placed under provisional liquidation and was closed. The majority of the residents who included the deponent to the founding affidavit were retrenched. Approximately 6000 people, according to the first applicant, currently live in Byvooruitzicht. The number includes children and elderly people. For lack of formal employment, due the closure of the mine, most residents, according to the first applicant, live through informal trading, piece jobs and relying on social grants and food parcels distributed to indigent households. The problems that seem to have plagued the applicants, according to the first applicant, concern water in Byvooruitziicht. The applicants contend that the first and the second respondents, on numerous occasions, effected or attempted to effect termination of the water supply to Blyvooruitzicht without notice. This, according to the applicants, resulted in a number of applications brought by them against the first and second respondents. The applications, seemingly, were all opposed.
- [4] The second respondent is a Water Board in terms of Water Services Act 108 of 1997 (the Act) while the first respondent is a Water Services Authority. Section 27 (1) (b) of the Act, guarantees the right to water. The Act regulates Water Boards and water services authorities.

- [5] The first and second respondents concluded a contract in terms of which the second respondent supplies the first respondent with bulk water which the first respondent, in turn, supplies the end users who are the applicants in this case, with the very water.
- [6] The liquidation and the closure of the mine adversely affected the mine and its employees. The Blyvooruitzicht village and its residents have, as a result, been inexorably plunged into a situation which was never thought of or anticipated. The situation, according to the first applicant, insofar as it relates to water is dire.
- [7] It appears that the applicants approached the Court three times before. Seemingly, the matters on the three occasions, were settled. This is evidenced by Annexures '86 ', 'B7', '81' and '82' respectively. All the matters ended up with draft orders.
- [8] The most relevant of the three draft orders are annexures '81 ' and '82' which are the judgment and the order (Annexures '81 ' and '82'). This is the subject of this application.
- [9] The disputes between the parties go back many years. This is evidenced by the numerous correspondence between them. The letters and emails form part of the paginated papers.
- [10] It is important, before dealing with the issues, to refer to the 18 October 2016 Court Order. This is the order of my brother Kollapen J. The order, reads:

" Under these circumstances, I would then make the following order:

1.1 The first respondent is interdicted from disconnecting the piped water supply to the Blyvooruitzicht Mining Village, or from interfering with the supply of piped water to the Blyvooruitzicht Mining Village in any manner save for what is set out hereunder.

1.2 The first respondent may in its discretion provide for a minimum flow of 60% in the piped water supply.

1.3 The piped water supply shall be available daily between the hours of 06:00 to 10:00 and 17:00 to 21:00.

1.4 The first respondent shall at all times ensure that during the periods of unavailability of the piped water supply as set out in 1.3 above, schools, clinics and other public facilities in the Blyvooruitzicht Mining Village shall have sufficient water to meet their operational needs.

2. The Blyvooruitzicht Residents Committee shall through its endeavours make payment in the sum of R150.00 per household per month to the first respondent as a contribution towards the supply of water services, it being recorded that the payment and receipt of such monies do not constitute any consumer agreement for such services as contemplated by the Water Services Act, nor any expectation with regard to the scope and extent of any future agreement the parties may conclude.

3. The first respondent is directed to develop a water services plan in respect of the Blyvooruitzicht Mining Village with regard to ensuring a proper and sustainable water supply within 120 days of date hereof. It may be in its discretion consult with any other entities including state and non-state entities, but must consult with the applicant in the development of such a plan.
 4. In the event that a plan is not produced within 120 days from date of this order, the parties may on the same papers and supplemented as necessary, approach the Court for further relief. In such event, the order in paragraph 1.1, 1.2, 1.3 and 1.4 and paragraph 2 thereof shall continue to operate until a further determination by this Court.
 5. The first respondent is ordered to pay the applicants' costs in respect of these proceedings including the costs of senior counsel.
 6. No order is made with regard to the costs of the second, third and sixth respondents. "
- [11] The second respondent concedes that it concluded the contract referred to in paragraph 5 above and that it supplies the first respondent with bulk water. Similarly, the first respondent acknowledges its responsibility to supply the applicants with the water.
- [12] The applicants contend that the 18 October 2016 Court Order had resulted in the situation they now find themselves in. According to the first applicant, the implementation of the order, brought about the reduction in the pressure of the water supply to 60%. This was in terms of the provisions contained in the order. The upper areas of Blyvooruitzicht, as a result, became deprived of the water. This, according to the first applicant, could not have been foreseen by my brother Kollapen J when he made the order. The provisions, according to the first applicant, were proposed by Counsel for the second respondent from the bar and were never raised in the affidavits. This, the first applicant proceeds, deprived them of the opportunity to meaningfully respond to the provisions. The Wetcon report, annexure '813' on page 115 of the papers under 14.2.1 on page 148 of the papers evinces that:

" ... 14.2.1.1 Water

It is paramount to note that the stipulation to supply water at 60% of pressure is not practical and not based on any solid engineering principle. By opening the valve partially to limit the supply pressure, you prevent the water from reaching the higher areas, and thus the higher located residents are automatically deprived of water supply, whilst the lower laying residents will have close to normal supply. The required approach to limit the volume is to supply water at full pressure during limited hours." (my emphasis).

- [13] The report notes that the second respondent need to supply 100% pressure within the supply pipeline. The water restriction times too, according to the report, need to be adjusted and the water needs to be supplied for one constant period through the evening i.e.: 16h00-22h00.

- [14] The applicants contend that the supply of water to the village has effectively been terminated and that they virtually receive no water.
- [15] The issue is whether, as the applicants contend, they indeed, have been virtually left without water. The second respondent contends that this cannot be true and correct as they have now made the necessary adjustments. The first respondent blames the second respondent for the situation that obtains in Blyvooruitzicht village.
- [16] The question that immediately springs to mind is whether or not the applicants are lying. It will be remembered that the applicants approached the Court three times and that this is now the fourth time. One may ask why the applicants should do this if there is no need for it. Are they simply and easily excitable and take delight in approaching Courts?. I do not believe so. They need to invest the time on worthwhile projects particularly if regard is had to the fact that a number of them are now unemployed. They need to look for work and this ranks high in their needs. They have families to look after and support.
- [17] We went to Blyvooruitzicht for an inspection in loco. We were walked around and shown what used to be Blyvoorwitsicht Gold mine. It is, indeed, very sad to look at the plant which now seems to be a derelict.
- [18] We, during the walk around, were taken to Meter 20 which is situated where the responsibility of the second respondent is said to end and where that of the first respondent regarding the supply of water is said to begin. We saw the pipeline which carries the water which is supposed to be supplied to the applicants. The second respondent's Counsel, in their submissions referred the court to page 175 of the paginated papers. Figure 18 shows where the responsibility of the second respondent ends and that of the first respondent starts. The pipeline runs up to Rockland Reservoir. Zones are shown along the pipeline as well as the Zama-Zama spots. Zama-Zamas are said to be illegal miners who together with the leakages are said to affect the flow of the water to the affected areas.
- [19] Another question which seems to need an answer is the extent to which the Zama Zamas and the leakages have a bearing on the proper running of the supplied water. The effect, according to the second respondent, is not negligible. The applicants disagree. We inspected the relevant areas and the effect, in my view, does not seem to very adversely affect the flow of the bulk water.
- [20] It seems to me that the reduction of the pressure, as the report demonstrates ,has a very adverse effect on the supply of the bulk water. The second respondent, in its papers, explains what it did. This, indeed, takes us back to the foreseeability of the problem when the Court Order was made on 18 October 2016. This, in my view, should receive a remedial action on the part of the second respondent. It appears that first respondent is prepared to co-operate. Indeed, the problem needs the joint effort of the stakeholders.
- [21] Blyvooruitzicht Community needs the water. It seems to me they are not receiving the water and that this is the result of the implementation of the 18 October 2016 court order.

[22] It is common cause that for the water to be effectively supplied the cooperation of the first and second respondents is necessary.

[23] It is also common cause that the first respondent owes the second respondent for the water that the second respondent supplies the first respondent with. This, however, should not, in my view, be any impediment to the applicants receiving the water that they need and are entitled to.

[24] The Bulk Water Supply Contract, between Local municipality and Rand Water, is instructive. Clause 34.2.3, on page 498 of the papers which deals with phased reduction in bulk water supply services states:

"34.2.3 The phased reduction in bulk water supply services may, on further notice in a manner similar to that stated in clause 43.2.1, exceed 40%, provided that bulk water supply services shall under no circumstances whatsoever be reduced at the existing customer connections by a percentage that will limit the provision of basic water supply services to the MUNICIPALITY's consumers. The parties shall agree on the quantity of water required for basic water supply services. Where the parties fail to reach agreement either party may refer the matter for resolution in terms of section O

of this contract". (my emphasis).

[25] It is noteworthy that:

1. the first respondent does not dispute that the applicants are entitled to the water in terms of the 18 October 2017 order.
2. the first respondent does not and cannot dispute that there has been an interruption in the water supply during August 2017.
3. the first respondent states that it did not cause the interruption in the water supply.
4. the first respondent does not dispute that the matter is urgent.
5. the first respondent does not oppose the granting of prayers 1 and 2 of the Notice of motion subject only to the condition that the water flow be restricted to no more than 65.000 kilolitres.
6. the applicants were ordered by the 18 October 2016 court order to contribute R150 00 per month per household to the water costs of the first respondent to the second respondent. No amendment is sought in respect of the payment of R150.00. Serious consideration, by the applicants, in my view, should be given to the payment of the R150.00 which is meant to, to an extent, alleviate the problem facing the parties.

[26] It seems that the second respondents opposition to the relief sought by the applicants is restricted to prayer 4 of the applicants' Notice of Motion, paragraph 77.3 of the founding affidavit, and the costs. The proper reading of prayer 4 and paragraph 77.3, in my view, should present no problem to the second respondent. This, in my view, should not stand in the way of the applicants preventing them from obtaining the relief that they seek.

[27] It cannot be gainsaid that the matter is urgent.

[28] Clearly, the water supply to Blyvooruitzicht Mining Village was, without due notice or Court Order, disconnected by the second respondent. The applicants are entitled to immediate restoration of the piped water supply to Blyvooruitzicht Village.

COSTS

[29] The conduct of the second respondent, in my view, attracts a costs order against it.

[30] The applicants have, in my view, made out a case for the order that they seek. The application should succeed.

ORDER

[31] I have perused the draft order that the applicants' Counsel provided the Court with. I am satisfied therewith, and accordingly, make the draft order which I have marked "X" signed and dated an Order of Court.

M.W MSIMEKI

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION OF THE HIGH COURT,

PRETORIA

Date of hearing:

28 September 2017

Date of delivery of

Judgment:

17 October 2017

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