

SOUTH AFRICA / JUDGMENT

Stoltz and Others v Rustenberg Local Municipality (UM29/2020) [2020] ZANWHC 46 (28 May 2020) [2020] ZANWHC 46

COURT

North West High Court, Mafikeng

BEFORE

J T Djaje

CASE / FILE NUMBER

UM29/2020

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST DIVISION, MAHIKENG

CASE

NO: UM29/2020

In

the matter between:

GABRIEL COENRAAD

DANIEL STOLTZ

1ST

APPLICANT

NWAFOR SAMUEL

OFOBUIKE

2ND

APPLICANT

AKILILU

SHAMEBO ANBASSE

3RD

APPLICANT

And

RUSTENBURG LOCAL

MUNICIPALITY RESPONDENT

JUDGMENT

DJAJE J

- [1] The applicants first approached this Court on 27 February 2020 on an urgent basis for an order in the following terms:

“1. That the forms and service provided for in the Uniform Rules of the above Honourable Court be dispensed with and that this matter be dealt with as one of urgency in terms of Rule 6(12)(b);

2. Condoning service by way of email on the Respondent;
3. Declaring the disconnection of electricity supply to the Applicants’ property on 15 January 2020 to be unlawful;
4. Directing the Respondent to restore the electricity supply to the Applicants’ property located at 26 Molen Street, Rustenburg within 2(two) hours of this order being handed down;
5. If the Respondent fails to reconnect within 2 (two) hours of the handing down of this order, the Applicants are entitled to enlist the services of a private contractor to reconnect the electricity supply and hold the Respondent liable for the costs associated with the use of such services;
6. Directing that the Municipality be obliged to conduct an investigation into the lawfulness of the conduct of its officials involved in issuing the “fines” and “reconnection charges” to the Applicants, and terminating the electricity supply to the Applicants’ property, and provide such report to the Applicants, within 30 (Thirty) days of the handing down of this Court order;
7. Ordering that the Respondent is hereby interdicted from disconnecting/ terminating, or causing or instructing the disconnection/ termination of the electricity supply of the Property owned by the First Applicant, for any reason whatsoever, at any time after the handing down of this order, without a valid Court Order to the contrary;
8. Directing that the costs of this Application be paid by the Respondent, on the attorney and client scale; alternatively, by such other scale as this Honourable Court may deem fit; and
9. Further and/ or alternative relief.”

- [2] On 27 February 2020 the applicants applied for a postponement of the matter in order to file a replying affidavit as the respondent had filed an answering

affidavit. The matter was subsequently postponed by agreement between the parties to 6 March 2020. On 6 March 2020 the application was struck off the roll due to lack of urgency. The applicants have now on 19 May 2020 requested the reasons for the order of 6 March 2020.

- [3] The applicants in this matter brought this application for the urgent reconnection of electricity to their buildings. It was argued that the supply of electricity was terminated on 15 January 2020 and a tampering notice issued. Since then the applicants tried to negotiate with the respondent to restore connection but to no avail. It is the applicants' case that on 7 February 2020 it became apparent that the respondent was not willing to restore the electricity connection. The applicants' attorneys could only bring the application on 18 February 2020. The respondent was served on 24 February 2020 and given until 27 February at 12h00 to file their answering affidavit as the matter was set down for 14h00.
- [4] In contention the respondent argued that the urgency in this application was self-created as the applicants took time before instituting this application. The respondent argued that the applicants waited for six weeks before instituting the urgent application despite their attorneys threatening the respondent with the institution of the urgent application from 7 February 2020.
- [5] Rule 6(12)(b) of the Uniform Rules of Court requires the applicant in an urgent application to state specifically on affidavit the circumstances that render the application urgent and the reason why he could not be afforded substantial redress at the hearing in the normal cause. The applicants in the founding affidavit state that the reason for the urgency was that the residential units might have the elderly and children residing therein. Further that some of the residents in the property need electricity to keep their medication in the refrigerator. They are unable to cook and warm up their households.
- [6] In this matter the applicants waited for approximately six weeks to bring this application when the electricity supply was terminated on 15 January 2020. The urgency arose when the supply was terminated and the applicants should have approached the court immediately. To add salt to the wound the applicants served the application on 24 February 2020 giving the respondent two days to file an answering affidavit. On the date of hearing the applicants requested seven days to file their replying affidavit despite the so called urgency of the matter. The respondent correctly argued that the conduct of the applicants was an abuse of the court process. It was for the above reasons that the matter was struck off the roll due to lack of urgency.

J T DJAJE

JUDGE OF THE HIGH COURT

APPEARANCES

DATE OF HEARING

: 06 March 2020

DATE OF

JUDGMENT

: 06 March 2020

DATE OF REASONS :

28 May 2020

COUNSEL FOR THE APPLICANTS : ADV Ramarumo

COUNSEL FOR THE RESPONDENTS : ADV Scholtz

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