

IN THE MAGISTRATES COURT
FOR THE DISTRICT OF MOOKGOPONG
HELD AT MOOKGOPONG

CASE NO: CIV28/2021

DATE: 2021-06-29

In the matter between:

ANNELISE DREYER

First Applicant

HENDRIK STEPHANUS DEYER

Second Applicant

versus

MODIMOLLE MOOKGOPHONG MUNICIPALITY

Respondent

RECORD OF PROCEEDINGS

BEFORE : MR TAYOB

ON BEHALF OF APPLICANTS : MR MATLALA

ON BEHALF OF RESPONDENT : MS MOKGEBOTLO

INTERPRETER : NOT REQUIRED



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Recordings, Transcriptions & Translations

CERTIFICATE OF VERACITY

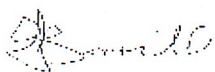
I, the undersigned, hereby certify that, *in as far as it is audible*, the foregoing is a **VERBATIM** transcription of the proceedings as was ordered to be transcribed by Elt Pro Transcriptions by means of a digital recorder in the matter of:

ANNELISE DREYER & HENDRIK STEPHANUS DREYER

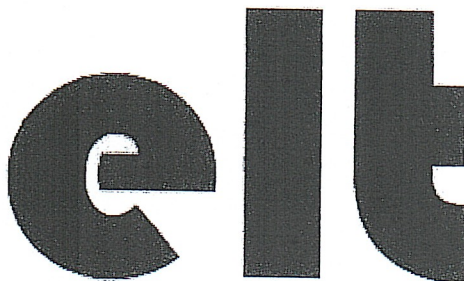
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MODIMOLLE MOOKGOPHONG MUNICIPALITY

CASE NO: CIV28/2021
RECORDED AT: Mookgophong
DATE HELD: 29-06-2021
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PROCEEDINGS HELD ON 29 JUNE 2021

[07:55]

COURT: Thank you people today is 29 June 2021 in the matter between Annelise Dreyer first applicant, Hendrik Stephanus Dreyer second applicant and Modimolle Mookgophong Municipality respondents. The matter was postponed today for judgment, judgment is ready. Mr Matlala is on behalf of the Applicants and Ms Mokgobotlo am I right?

MS MOKGOBOTLO: That is right Your Worship.

10 COURT: *Ja* on behalf of the respondents. I have put the starting time at 10:55.

JUDGMENT

So this is an application which was brought on the basis of urgency and which application is opposed. The application was for the restoration of the applicants' electricity supply.

The respondent raised several points *in limine* the first being that the applicants created their own urgency and more importantly they did not comply with Rule 55(5)(b) which basically states that an application brought as a
10 matter of urgency must be supported by an affidavit where applicants state explicitly or specifically why the matter must be rendered as urgent.

The respondent further states that the court did not consider the fundamental, this fundamental rule when considering the application. Now in the matter of *Sikwe v South African Mutual Fire & General Insurance* 1977 (3) the court held and I quote:

20 "Counsel for the respondent contended that the application was still fatally defective because a supporting affidavit did not set forth explicitly the circumstances which he that is the applicant avers render the matter urgent and the reason why he claims that he could not be afforded substantial redress at a hearing in due course.

It is correct that the affidavit makes no mention of specific facts alleged to constitute urgency. In fact there is no allegation whatsoever that the matter is urgent. In my opinion an applicant who wishes to rely on the procedure provided for in Rule 6(12) must set out sufficient facts in the founding affidavit to enable the court to decide whether urgent relief should be granted.

10

Specific averments of urgency must be made and facts upon which such averments are based must be set out in the affidavit where it is not otherwise apparent that the matter is urgent.

It does not follow that an application is necessarily defective if the form referred to in the rule is not strictly adhered to.”

And now to emphasize this aspect where the judge

20 said:

“In my opinion it is the substance of the affidavit not its form which will weigh with the court. If an affidavit sets out facts upon which a court can decide that an applicant is entitled to relief in terms of the sub rule

the court will entertain the application.

If the only reasonable inference from facts set out in the affidavit is that the matter is one of urgency then an applicant would comply with the requirements of the sub rule even though it does not make a specific averment that it is urgent.”

This position was confirmed in the unreported matter of *N v S & Others* it is 1940/2013 2014 which was
10 handed down in the Eastern High Court which judgment was delivered on 24 April 2014 where the court held and I quote from paragraph 36:

“In my view if the only reasonable inference from the averment set forth in the founding affidavit is that the matter is one of urgency then the applicant will have temporarily complied with the requirements of the sub rule even though he does not make a specific averment that it is urgent.”

20 So these two decisions tell us that if the court is presented with an application and from the content of the affidavit although there is no specific averments that the matter is urgent and there is no specific averment setting out the urgency the court can still consider the application as a matter which is urgent.

Now the supply of electricity to an individual or individuals is a basic right. Where the right has been suspended or terminated unlawfully then irreparable harm can be anticipated.

From the facts set out in the applicants affidavit it can be inferred that the matter was urgent because they are saying that they have no electricity or the electricity supply is terminated or suspended. So therefore the point *in limine* regarding urgency is therefore dismissed.

10 The second point *in limine* deals with non-compliance of Rule 55(3) of the Magistrate's Court Act which reads as follows:

“No application in which relief is claimed against another party shall be considered ex parte unless the court is satisfied that:

1. The giving of notice to the other party against whom the order is claimed would defeat the purpose of the application and,

2. The degree of urgency is so great that it
20 justifies dispensing with notice.”

As I have already indicated above that the supply of electricity is a basic human right I also indicated above that it could be inferred from the applicants' affidavit that the matter was urgent. It is also prudent to state at this stage that the court also took into account that had the

matter proceeded by way of notice, in other words in the normal course of events of an application keeping in mind the time prescripts in the rules, it would have been a minimum of two months before the matter could be placed on either the opposed or unopposed roll.

So what the court is saying here that the court considered this aspect that had the court refused to entertain this matter as one of being urgent it would have meant that the applicants would have had to wait for at
10 least another two months before the matter could be heard either on the opposed or unopposed roll because the rules have time limits and time prescribes.

In any event the respondents were not prejudiced as they could in terms of Rules 55(3)(d) anticipated the return date on 24 hour notice. So this point *in limine* is also dismissed.

Regarding the requirements of an interim interdict the applicants established a *prime facie* right and the apprehension of irreparable harm. The balance favoured the
20 granting of an interim interdict as there was no other suitable remedy, so this point *in limine* regarding the requirements of an interim interdict is also dismissed.

Turning to the merits of the matter respondent states that the electricity supply was disconnected because of arrears in rates refuse sewerage and water payments.

Respondents further states that this suspension took place on 18 October 2019 and at the time the applicants declared a dispute the electricity supply was already suspended for several months.

The court must consider the evidence in its totality. Applicants admit that the electricity supply was suspended long before they declared a dispute, but taking the evidence in its totality and obviously when I mean refer to evidence I am referring to the founding answering and replying
10 affidavits.

Applicants' state in their answering affidavit it was in February 2021 that they discovered that the respondent had not promulgated property rates as required by Section 14(2) of Act 6 of 2004. It is at this stage in February 2021 that they realised that the respondent was owing them an amount of R49801.28 and declared a dispute.

Now put into context the applicants did not bring an application earlier which is logical because at that stage they were under the impression that we are owing the
20 municipality monies and therefore the municipality is entitled to suspend or disconnect our electrical supply.

And it is when they discovered in February 2021 that in fact there was money being owed to them by the respondent this is when they declared a dispute. Under these circumstances they are fully entitled to reinstatement

of the electricity supply which in any event is on a pre-paid basis until such time the dispute is resolved.

So what the court is saying that there is logic in the applicants affidavits where they present the case to say we admit that the electricity supply was disconnected in October 2019, and obviously it can be inferred from the affidavits that absolutely nothing was done because at that stage the applicants were under the impression that they owed money to the respondent that is the municipality in
10 February 2021 when they discovered that certain rates and taxes legislation was not promulgated they realised that there was money being owed to them so they declared a dispute.

Now under these circumstances the applicants are entitled for the reinstatement of electricity supply until such time the resolution or the dispute is resolved. So consequently the interim order is confirmed with costs.

MS MOKGOBOTLO: As the court pleases.

MR MATLALA: As the court pleases.

COURT: I note that it is ten past ten so our time is from 10:55 sorry I made a mistake it is supposed to be 09:55, 09:55 to ten past ten. Thank you people.

COURT ADJOURNS

[08:04]
