Reportable:	**NO**
Circulate to Judges:	**NO**
Circulate to Magistrates:	**NO**
Circulate to Regional Magistrates:	**NO**

IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

CASE NO: 6521-24

In the matter between:-

TSOTSI PIET PHELELO	1st Applicant
SOLLY MOJAKGOMA	2nd Applicant
ESTHER VORSTER	3rd Applicant
CATHARINA ELIZABETH MARAIS	4th Applicant
CLEAN UP SA NPC	5th Applicant
(Reg. No. 2024/547909/08)	

and

KGETLENGRIVIER LOCAL MUNICIPALITY	1st Respondent
MUNICIPAL MANAGER – MR CLEMENT LETSWALO	2nd Respondent
BOJANALA PLATINUM DISTRICT MUNICIPALITY	3rd Respondent
MINISTER OF WATER & SANITATION	4th Respondent
MEMBER OF THE EXECUTIVE COUNCIL-COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, NORTH WEST	5th Respondent

Coram: Mfenyana J

This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down is deemed to be **02 April 2025**.

JUDGMENT

[1] The applicants approached this court on an urgent basis, seeking various orders against the respondents. The application is set in three parts. In Part A, the applicants seek an order declaring that raw sewerage is flowing and contaminating the Koster Onderdorp area in the proximity of the first applicant's residence, and into the Elands River within the resort of the Kgetlengrivier Local Municipality. Secondly, they seek an order declaring that the respondents are in breach of their obligations to prevent contamination of the environment, and in allowing raw sewerage to spill into the Elands River and the environment. Thirdly, they seek an order directing the applicants to cease the usage of a raw sewer trench /pipe / furrow to divert the flow of raw sewerage to the open fields in the proximity of the first applicant's residence leading to the Elands River. Lastly, the applicants seek an order interdicting the respondents from allowing raw sewerage to overflow into the Koster Onderdorp environment, particularly near the first applicant's residence and into the Elands River.

[2] In Part B, the applicants seek an order authorising them to employ an expert to monitor the Koster Onderdorp and inflow into the Elands River for a period of

10 weeks from date of this order and compile a comprehensive report to this court. The costs associated with the employment of the said expert are to be paid by the first respondent, and in case of a dispute, that the taxing master be approached to resolve the dispute.

[3] In Part C, the applicants seek an order authorising the appointment of AGT (Pty) Ltd (AGT)and / or EPF Services (EPF) to resolve the sewerage spillages should such not be resolved within a period of 10 days of this order. The applicants further seek an order that the JBMLM and the district municipality be directed to pay for the services to be provided by AGT and EPF.

[4] The notice of motion further stipulates that in the event that this court does not grant a final order in Part B and C, an interim order should be granted, presumably in the form of a rule *nisi*, calling upon the respondents to show cause the orders should not be made final, and permitting the applicants to supplement their papers before the return date.

[5] Finally, the applicants seek a cost order against the first, second, and third respondents on attorney and client scale, jointly and severally, and any respondent who opposes the application, which costs should include the costs of two counsel where so employed.

[6] It is necessary to point out that the applicants are all related or associated with each other in that the first and second applicants live in the same household,

while the third and fourth applicants live together in another household. The first applicant is the fourth applicant's son, and the third applicant is a caregiver to the fourth applicant who is reportedly bedridden. The second to fourth applicants have all deposed to confirmatory affidavits in support of the application.

[7] The fifth applicant is a non- profit organisation responsible for addressing environmental issues and hazards within the borders of South Africa.

[8] The application is opposed by the first, second, third and fifth respondents (the respondents). The fourth respondent has filed a notice of intention to abide the decision of this court.

[9] On the issue of urgency, the applicant's case is that by its very nature, the application is urgent. They aver that the sewerage spillages directly into the streets of Koster pose a threat to the lives of communities, pets and livestock. The first applicant further contends that his life has already been impacted by the spillages, which are likely to affect future generations and the environment if left unattended. Essentially, the applicants contend that they face continuing harm, and the respondents have failed in their statutory duty to take reasonable steps to prevent pollution. In this regard the applicants aver that all the respondents, and not only the municipal respondents, are in breach of their duties to effectively address the issues complained of.

[10] They further aver that because the application affects their constitutional rights, their health and environmental safety, the matter should be regarded as urgent. It is the applicant's contention further that they should not be expected to contend with the smell from the sewerage spillage as this poses contamination risks to people and animals. They aver that five people have already died as a result of the manhole blockages and they cannot be expected to fold their arms in the circumstances.

[11] Pertaining to the time it took for the applicants to approach the court, they state that they did not rush to court immediately, and allowed the respondents sufficient time to plan, secure funds, appoint contractors and resolve the issue of sewer spillages. In what appears to be a suggestion that the applicants tried to avoid the costs of litigation by informally approaching the municipality, they aver that they were compelled to institute proceedings, as their requests fell on deaf ears. They argue that no real steps were taken by the municipality save to remove asbestos pipes on 5 December 2024. Notably, the applicants assert that "none of the applicants' health deteriorated substantially since end of October 2024" as weather conditions were extremely dry(*sic*). Should there be increased rainfall, it would worsen the situation, the applicants further contend.

[12] The common thread in the opposition of all the respondents is the contention that the matter is not urgent. They aver that the applicants have failed to set out explicitly the circumstances they aver render the matter so urgent that

they cannot be afforded substantial redress at a hearing in due course. The first and second respondents (Kgetleng respondents), in particular, argue that the applicants do not say when they became aware of the alleged sewerage spillages which form the basis of the application. They argue that the applicants only afforded them 8 days to file their notice of intention to oppose, and 19 days to file their answering affidavit, which time was during the court recess. The Kgetleng respondents contend further that the applicants have not explained the degree of urgency which warranted the abridgment of the timeframes stipulated in the Rules, which they argue is unjustified. Thus, they aver that the application amounts to an abuse of the rules of court and that urgency is self- created. Notably, these respondents point out that the fifth applicant took a resolution as long ago as 20 September 2024, to appoint its current attorneys of record. However the applicants did not approach the court at that stage to seek the relief they now seek, which came to their knowledge at that stage.

[13] The first and second respondents contend that the applicants had always been aware that the respondents did not comply with any of the ultimatums imposed by the applicants, from October to December 2024, yet they did not approach this court. They only approached court on 11 December 2024, even then, after the first and second respondents had attended to their complaints and unblocked the manhole that was causing a sewerage spillage. This is denied by the applicants who aver that the respondents.

[14] Relying on the decision of this Division in *Johannes Jacobus Roets NO and Another v SB Guarantee Company (RF) (Pty) Ltd and Others*[1] the Kgetleng respondents contend that the applicants have failed to state when they became aware of the alleged sewerage spillage and thus the degree of such urgency has not been set out by the applicants, and by their own admission, the conduct complained of has been a long-standing issue. They argue that a long-standing issue would have triggered urgency much earlier. On that basis, they contend that urgency is self- created.

[15] In respect of the third respondent, the opposition with regard to urgency is that urgency is contrived, for the same reasons relied on by the first and second respondents that the applicants do not state when they started experiencing the issue of sewerage spillages. The third respondent avers that on the applicants' own version, the issue started long before 25 October 2024, and possibly on 20 September 2024. As such, the applicants had ample time to bring the application, but did not, and chose to do so at their own leisure. The third respondent, likewise, contends that the application falls to be struck off on the basis that the applicants created their own urgency.

[16] As for the fifth respondent, an additional contention is that an applicant seeking urgent relief is required to act expeditiously and without delay. However

[1] (36515/2021) [2022] ZAGPJHC 720 (6 October 2022) par 26.

the applicants in this matter have been litigating on a luxurious scale without any exigency. Importantly, the fifth respondent takes issue with the applicants' assertion as set out in their founding affidavit, that 'on 18 December 2020, the High Court declared that there were sewerage spillages'. Similarly, the fifth applicant makes common cause with the first, second and third respondents that the application does not meet the requirements for urgency.

[17] The question is whether if there was urgency, it dissipated when the applicants did not approach the court when they first became aware of the issue, presumably sometime before 20 September 2024. The answer in my view lies in the requisites for urgency. Notably, the founding papers make no attempt to explain why the applicants would not be afforded substantial redress in due course. They also do not state the degree of urgency which is a *sine qua non* for the granting of the order sought. They simply aver that by its nature, the matter is urgent without setting out reasons why. Urgency, however, does not follow automatically.

[18] In *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC*[2] this court held that "there is no particular kind of matter that enjoys "inherent urgency". Urgency is determined by the circumstances in which an application is brought, not the kind of right being enforced".[3] Were this not so,

[2] (2023/067290) [2023] ZAGPJHC 848 (1 August 2023).

[3] Para 6.

applicants would be at liberty to bring any applications on a whim, under the guise of urgency.

[19] To avert the striking off of the matter, as contended by the respondents, the applicants state that they did not rush to court, but attempted to resolve the matter amicably, to no avail. They further aver that it was after they exhausted all avenues for the respondents to resolve the situation, which culminated in the 'purported' actions of December 2024 that they approached court. However they do not join issue with the respondents' contention that the issue was resolved. It was after the applicants allowed the respondents a period of one month which they consider reasonable for administrative organs to attend to the spillages and remedy the situation, but the situation carries on, the further contend. Presumably, this is to suggest that the harm is ongoing. They in any event say as much.

[20] While at first blush one may be tempted to conclude that issues of sewer spillages and blockages justify urgency, this is not a foregone conclusion. Urgency must be established. In accordance with the provisions of rule 6(12)(b), the circumstances averred to render the matter urgent, must be set forth explicitly, as well the reasons why the applicants claim that they would not be afforded substantial redress if the matter is heard in the ordinary course. This is what the applicants fail to do.

[21] In their founding affidavit, the applicants do not make any averment that they would not obtain substantial redress in due course or why that is so. They do

not dispute the first and second respondents' assertion that their sanitation maintenance team attended at the scene of the incident on 5 December 2024. What they contend is that the respondents did not resolve the sewerage spillages. They further do not deny the assertion that human conduct is a trigger to the problems faced by the community. What they say is that in that case the respondents should attend to the hotspots daily. The question is "at what cost'? What justification could there be for municipal resources to be employed at one site, 365 days a year? Certainly, this is untenable.

[22] Something needs to be said about the relief sought by the applicants. Not only is it incoherent, but it is also incompetent. This is so because the applicants in Part A seek a final order in the form of declaratory orders, as well as interdictory relief. There is also no correlation between the relief in Part A and Part B. The relief in Part B is simply to authorize the applicant to employ experts at the expense of the first respondent, to monitor the situation for a period of 10 weeks and report to the court. Part C on the other hand, and contrary to the relief sought in Part B, seeks an order authorising the appointment of two service providers to resolve the issue, if it is not resolved within 10 days. The costs associated with these service providers are to be borne by the 'JBMLM' and /or the third respondent. The only reference to interim relief is contained in Part C. Even then, it is sought only in the event that the court does not grant a final order in Part B and Part C.

[23] I agree with the respondents that the relief sought by the applicants seems to be a conflation of interim and final relief. While Part A seems to be a stand-alone relief for a final interdict, there appears to be a conflict between Part B and Part C in that while an expert would be appointed to monitor the situation and report to the court in 10 weeks, already the applicants seek the appointment of another service provider within 10 days to resolve the situation. This, in my view, renders the appointment of the expert contemplated in Part B, and the requirement of reporting to the court, nugatory or vice versa.

[24] It is also not stated on what basis this court is called upon to step into the shoes of the administrator and involve itself in procurement processes and appointment of service providers which must necessarily follow the prescripts of section 217 of the Constitution, notably, the requirements of fairness, transparency and competitiveness.

[25] The question is, to what case should the respondents answer? There can thus be no doubt in those circumstances that this is prejudicial to the respondents as they are left to guess what relief the applicants seek. The court, no less. That they have to do so on an urgent basis adds insult to injury.

[26] In *Voigt NO and Another v EGH IP (Pty) Ltd and Others*[4] Lowe J noted that matters factual and legal usually require thought and careful consideration by clients and the legal team. In that matter the court observed that the respondents

[4] (1076/2021) [2021] ZAECGHC 40 (4 May 2021).

and their legal team had been substantially denied that opportunity for absolutely no good reason while the applicants had afforded themselves a considerable period to consider and draft their papers. I find this to be the case in the present application. The founding papers run into some 208 pages. The applicants fail to provide a justification for the curtailment of the timeframes and procedures set out in the Rule 6(12) save to merely state that the matter is urgent. That urgency has not been established. In the circumstances the application stands to be struck off.

Costs

[27] The general rule in respect of costs is that costs should follow the result. I cannot find any reason in the circumstances of this case which justifies a deviation from this established principle. As regards the scale of costs, it was submitted on behalf of all the respondents that the application is an abuse of the process of court. They seek costs on attorney and client scale.

[28] In my view attorney and client costs are not warranted. Apart from the issue of urgency which the applicants failed to establish, and the sorry state of the founding papers, this is without saying that the application was frivolous. Party and party costs are appropriate in the circumstances.

Order

[29] In the result, I make the following order:

a. The application is struck off the roll for want of urgency.

b. The costs of the application shall be borne by the applicants on a party and party scale on Scale C.

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JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

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Date reserved :	17 January 2025
Date of judgment :	02 April 2025