

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case no: 26427/2021

In the matter between:

UNLAWFUL OCCUPIERS OF PORTION 2 OF ERF 813 ROSETTENVILLE SITUATED AT 18 HAIG STREET, ROSETTENVILLE	FIRST APPLICANT
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UNLAWFUL OCCUPIERS OF REMAINING EXTENT OF ERF 757 ROSETTENVILLE SITUATED AT 79 MABEL STREET, ROSETTENVILLE	SECOND APPLICANT
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THE UNLAWFUL OCCUPIERS OF REMAINING EXTENT OF ERF 758 ROSETTENVILLE SITUATED AT 81 MABEL STREET, ROSETTENVILLE	THIRD APPLICANT
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THE UNLAWFUL OCCUPIERS OF REMAINING EXTENT OF ERF 813 ROSETTENVILLE SITUATED AT 54 GEORGE STREET, ROSETTENVILLE	FOURTH APPLICANT
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THE UNLAWFUL OCCUPIERS OF REMAINING EXTENT OF ERF 814 ROSETTENVILLE SITUATED AT 52 GEORGE STREET, ROSETTENVILLE	FIFTH APPLICANT
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And

JOHANNESBURG WATER	FIRST RESPONDENT
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CITY OF JOHANNESBURG	SECOND RESPONDENT
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SIMON OKOYE	THIRD RESPONDENT
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SILINDILE IRENE IMMACULATE OKOYE	FOURTH RESPONDENT
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APPLICANTS' HEADS OF ARGUMENT

INTRODUCTION

1 The wise words of O'Regan J have never been more apt:

“Water is life. Without it, nothing organic grows. Human beings need water to drink, to cook, to wash and to grow our food. Without it, we will die. It is not surprising then that our Constitution entrenches the right of access to water.”¹ (Emphasis Added)

2 This is an urgent application for the immediate reconnection of water supply to the applicants' premises. The water supply was unlawfully disconnected by the first respondent on Wednesday 26 May 2021 around 16h00.

3 The water supply was disconnected allegedly because the property owners are owing the first and second respondents.

4 The property owners are cited in these proceedings as the third and fourth respondents respectively. The applicants are merely occupiers of the property. That the applicants are only occupiers of the premises is not in dispute, it is attested to by the eviction application that is still pending before this Honourable Court.

5 In these proceedings the applicants seek among others:

¹ *Mazibuko and Others v City of Johannesburg* 2010 (3) BCLR 239 (CC) at para 1.

- 5.1 that the decision of the first and second respondents to discontinue the water supply to the premises be declared unlawful in terms of section 21 of the Superior Courts Act²
- 5.2 that the first respondent be ordered to reconnect the water supply within two (2) calendar days of this Court's order;
- 5.3 *Alternatively*, that a mandatory interdict compelling the first respondent to reconnect the water supply within two (2) calendar days be granted; and
- 5.4 That costs of this application be paid by any or all respondents opposing it.

6 In what follows we deal with the following submissions in turn:

- 6.1 First, we address the basis for a declaratory order;
- 6.2 Second, we address the basis for a spoliation order;
- 6.3 Third, we address the procedural unfairness of the process to disconnect the water;
- 6.4 Fourth, we address the alternative argument of a mandatory interdict;
- 6.5 Fifth, we argue urgency; and
- 6.6 Lastly, we conclude by addressing remedy and costs.

² 10 of 2013

DECLARATORY ORDER

The Test

- 7 Section 21(1)(c) of the Superior Courts Act empowers this Court to, in its discretion and at the instance of any interested person, enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.
- 8 We submit that the applicants have an existing right to access to water and that the respondents have a corresponding obligation to supply such water to the applicants. We discuss the relevant legal obligations binding the first and second respondents below under “spoliation”.
- 9 To justify the granting of the declaratory order it suffices to state that the correct approach to a court’s exercise of its power under this section is well established. The Supreme Court of Appeal has confirmed this approach several times.³
- 10 The inquiry is two-staged. The first is that the Court must be satisfied that the applicant is a person interested in an “existing, future or contingent right or obligation” and then if satisfied on that point, the second is that the Court must decide whether the case is a proper one for the exercise of the discretion conferred on it.⁴

³ See *Langa v Hlophe* 2009 (4) SA 382 (SCA) at para 28, citing *Durban City Council v Association of Building Societies*.

⁴ *Durban City Council v Association of Building Societies* 1942 AD 27. The case was concerned with section 102 of Act 46 of 1935 contained exactly similar wording as the 2013 Superior Courts Act.

- 11 This position has been further confirmed as recently as 2019 by the SCA in *Moto Health Care Medical Scheme v HMI Healthcare Corporation (Pty) Ltd & others*.⁵

APPLICATION OF THE TEST

The First Leg

- 12 As for the first leg of the inquiry, we submit that the applicants have an interest in an existing right to access to water. This right is constitutionally and statutorily guaranteed.⁶
- 13 The applicants are in occupation of the premises and have been in occupation for roughly six (6) years.⁷ The applicants' living conditions have been made extremely unbearable by the unlawful interruption of water to the premises.
- 14 The discontinuation of water to the premises speaks to the applicants' ability to live a humane and dignified life. The applicants have been compelled to resort to alternative, somewhat degrading means, of sourcing water.⁸
- 15 Additionally, the discontinuation of water supply to the premises has put the applicants at a heightened risk of contracting Covid-19. Covid-19 protocol requires that everyone washes their hands continually and that surfaces within households be regularly cleaned. This is near impossible without access to continuous running water.

⁵ [2019] ZASCA 87.

⁶ See section 27(1)(b) of the Constitution and the Water Act which are discussed in detail below under "spoliation".

⁷ FA page 4 para 7.

⁸ Ibid page 20 from para 73.

- 16 Lastly, the discontinuation of water to the premises has adversely affected the applicants financially. This is because the applicants have had to use their extremely scarce money to secure the little water they can just to get by. This “solution” is obviously untenable. The applicants are poor, this is common cause, it is the reason why there is a pending eviction application against them, it is because they cannot afford to pay even rent.
- 17 This is precisely why the second respondent has identified applicants who qualify for temporary alternative accommodation.⁹
- 18 Consequently, it cannot reasonably be argued that the applicants have no interest in this matter and its consequent order.

The Second Leg

- 19 The second leg of the test concerns itself with an exercise of discretion by this Court when deciding whether to grant or refuse the declaratory order sought by the applicants. The consideration of whether to grant the order constitutes the second leg of the enquiry.¹⁰
- 20 We submit that the Court ought to exercise its discretion in favour of granting the order sought based on the following submissions.

⁹ The City’s report is attached to the FA as “CALS2”.

¹⁰ *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* [2005] ZASCA 50; [2006] 1 All SA 103 (SCA) at para 18.

- 21 The urgent intervention of this Court in this matter is a matter of grave importance for the lives of roughly 71 occupiers. The occupiers include the elderly, children and infants.¹¹ Some of the children attend school. Their ability to attend school in a fitting state of appearance is severely compromised by the respondents' decision to unlawfully discontinue the water supply.
- 22 Additionally, the applicants' ability to attend work or school is severely compromised by the respondents' unlawful decision. Surely, these are factors that sway the exercise of this Court's discretion in favour of granting the declaratory order sought.
- 23 We submit, therefore, that a just and equitable decision in the circumstances of this case is one that requires this Court to intervene in this matter and put an immediate stop to the applicants' unbearable suffering.
- 24 As a conclusion to this section, it is submitted that the existence of a dispute between the parties is not a pre-requisite for this Court's powers to be triggered in terms of section 21.¹² All that matter is that "*at least there must be interested parties on whom the declaratory order would be binding.*"¹³
- 25 The declaratory order – that the decision to disconnect the water supply is unlawful– would be binding on the first and second respondents. As a result, although not a requirement, the applicants seek consequential relief: an order

¹¹ FA page 13 para 46.

¹² Note 9 above *Cordiant* at para 16.

¹³ *Id.*

compelling reconnection of the water supply. It is to this consequential relief that we now address.

SPOLIATION

26 The applicants have sought an order of spoliation, to have the water supply reconnected. The requirements the applicants have to meet in this regard are trite. The first is proof that the applicants were in possession of the spoliated thing (water). The second is the wrongful deprivation of possession.¹⁴

Undisturbed Possession

27 On the first requirement, it can hardly be disputed that the applicants had access to and were in possession of running water before the respondents unlawfully decided to terminate the supply on 26 May 2021.

28 The respondents' job card expressly states, "the water supply to this property has been discontinued/restricted because the account is in arrears." This means that the water supply to the premises was continuous and unrestricted before the respondents decided to unlawfully cut the supply.¹⁵

Wrongful Dispossession

29 On the second requirement, the dispossession is clearly wrongful because it exposes the applicants to a heightened level of exposure to Covid-19. South Africa is in the midst of a pandemic. That the President of the Republic has

¹⁴ *Ivanov v North West Gambling Board and Others* 2012 (6) SA 67 (SCA) at para 19.

¹⁵ FA page 12 para 40.

recently moved the country to an adjusted Alert Level 2 on 30 May 2021 is further proof of how much of a threat Covid-19 still is.

30 As such, the applicants, like everybody else are in constant need of water to keep themselves and the premises hygienic. The ever-increasing threat of Covid-19 is an additional factor as to why the water needs to be reconnected urgently.¹⁶

31 The disconnection of the water is also unlawful because it violates the respondents' constitutional and statutory obligations to provide water to the premises. The second respondent has an obligation to ensure the realization of the right of access to water. It is common cause in the main action that some of the occupiers are destitute and in need of the City's assistance.¹⁷

Legal Obligations

32 The decision to disconnect the water supply to the premises is also unlawful because it violates the second respondent's duties in terms of the Constitution and the Water Service Act¹⁸ ("Act").

33 The Constitution recognises that everyone has the right to have access to sufficient food and water.¹⁹ Schedule 4 of Part B of the Constitution also recognises the second respondent's duty to provide water for domestic purposes.

¹⁶ Ibid page 12 para 41.

¹⁷ See the City's report at para 14 and the FA page 12 para 41.

¹⁸ 108 of 1997.

¹⁹ Section 27(1)(b).

- 34 On the other hand, the Act was adopted to, *inter alia*, “provide for the rights of access to basic water supply and basic sanitation necessary to ensure sufficient water and an environment not harmful to health or wellbeing.” This means that the absence of basic water supply is conducive to an environment that is harmful to the applicants’ health and well-being. This harm to the applicants’ health is exacerbated by the presence of Covid-19 in the circumstances of this case.
- 35 The Preamble to the Act acknowledges that water and sanitation services must be provided by all spheres of government “in a manner which is efficient, equitable and sustainable.” This includes the second respondent.
- 36 The Act further designated municipalities as water services authorities responsible for progressively ensuring access to water services by consumers in their areas of jurisdiction.²⁰
- 37 The Act further entrenches the right to water by stating in section 3 that everyone has a right of access to basic water supply and basic sanitation; every water services institution must take reasonable measures to realise these rights. Further, that every water services authority must, in its water services development plan, provide for measures to realise these rights.
- 38 The second respondents’ duty to deliver water is incontrovertible.

²⁰ *Merafong City Local Municipality v AngloGold Ashanti Limited* [2016] ZACC 35; 2017 (2) BCLR 182 (CC); 2017 (2) SA 211 (CC) at para 4.

39 That the second respondent might have acted lawfully by disconnecting the water supply is irrelevant for the purposes of a spoliation because spoliation proceedings are “preliminary to any enquiry or investigation into the merits of the dispute.”²¹ *“The fact that possession is wrongful or illegal is irrelevant as that would go to the merits of the dispute.”*²²

40 We submit therefore, that even if the applicants were in possession of or had access to the water unlawfully because the water account is unpaid, the non-payment of the account is “irrelevant” for the purposes of a spoliation. This application is ill-suited for the raising of such a defence. It is a matter to be considered should the decision to discontinue the water be challenged.

41 Given that this is the only reason why the water supply was discontinued, it follows axiomatically that the spoliation order should be granted. We submit therefore, that the spoliation order should be granted on this basis alone.

42 As if this was not enough, the first and second respondents’ action was wrongful because it flies on the face of the spirit and purport of the Government Covid-19 Regulations applicable at the time the decision was made and carried out.

Applicable Covid-19 Regulations

43 On 30 May 2021 the President of the Republic moved the country to an adjusted national alert level 2 with effect from 31 May 2021.²³

²¹ *Eskom Holdings SOC Limited v Masinda* [2019] ZASCA 98 at para 8. Also see *Ivanov* at para 19, note 13 above.

²² *Ibid Ivanov*.

²³ [Coronavirus COVID-19 Alert level 2 | South African Government \(www.gov.za\)](https://www.gov.za/news/health/2021/05/30/coronavirus-covid-19-alert-level-2)

- 44 Before then, the country was on national alert level 1. The impugned decision was taken and implemented on 26 May 2021 during level 1. The regulations which were in place and applicable to the impugned decision are the regulations dated 28 February 2021.²⁴ It is these submissions that we are concerned with.
- 45 Our submission on the regulations is confined only to regulations 73 and 74. We will establish, through an analysis of these two regulations, that the respondents' conduct of disconnecting the water supply is contrary to government policy in the form of Covid-19 Regulations.
- 46 We refer to these regulations not so much because they precisely speak to water cuts by the respondents, but because how the regulations have been drafted underscores the importance of water as a basic, necessary service that people should not be deprived of.
- 47 This Court ought to opt for a generous application of the regulations in a way that promotes their purpose and gives effect to the wishes of the executive and Parliament. As will be apparent *supra*, the undisputed purpose of the regulations is to avoid the spread of Covid-19 by regulating instances that put citizens in danger of contracting the virus. The respondents' action does the exact opposite by forcing the applicants to move around in search of usable water.
- 48 We submit that the fact that the regulations do not expressly prohibit water cuts is neither here nor there in an instance such as this one where the government

²⁴ They were published on GG number 44201 dated 28 February 2021 available here [Disaster Management Act: Regulations to address, prevent and combat the spread of Coronavirus COVID-19: Adjusted alert level 1 \(www.gov.za\)](#)

purpose aimed at by the regulations is clear on the face of the regulations. The respondents have acted contrary to this legitimate government purpose.

- 49 These regulations are subordinate legislation.²⁵ In the same way courts are constitutionally enjoined to interpret legislation purposively²⁶ in order to afford maximum benefit and protection to citizens, we submit that same ought to apply to subordinate legislation such the regulations aimed at quelling the spread of Covid-19.

Regulation 73

- 50 Regulation 73 speaks to “eviction and demolition of places of residence”. It prohibits the eviction of occupiers without a court order. The regulation goes further to allow a court to stay an order of eviction at its discretion pending the conclusion of the national state of disaster.²⁷

- 51 Importantly, the regulation enumerates an open-ended array of factors a court must consider when deciding whether to suspend an order of eviction. I am advised that the most important factors for purposes of this application are (a), (f), (h) and (i), which state, respectively:

“(a) The need, in the public interest for all persons to have access to a place of residence and basic services to protect their health”

²⁵ Section 239 of the Constitution.

²⁶ *Bertie Van Zyl (Pty) Ltd And Another V Minister For Safety And Security* and Others [2009] ZACC 11 para 21. Also see *African Christian Democratic Party v Electoral Commission and Others* [2006] ZACC 1; 2006(3) SA 305 (CC); 2006(5) BCLR 579 (CC) especially at para 27.

²⁷ Sub-regulation 2.

and the health of others and to avoid unnecessary movement and gathering with other persons.

(f) whether affected persons will have immediate access to alternative place of residence and basic services.

(h) whether any occupier is causing harm to others or there is a threat to life: and

(i) whether the party applying for such an order has taken reasonable steps in good faith to make alternative arrangements with all affected persons including but not limited to payment arrangements that would preclude the need for any relocation during the national state of disaster.” (Emphasis added)

52 As is apparent from the underlined sections of the regulations, the regulations do not merely refer to “a place of residence”, they speak of a place of residence “with basic services” so as to protect lives and avoid unnecessary movement.

53 It is also equally apparent from the text of the regulations that reasonable steps must be taken to “preclude the need for any relocation during the national state of disaster.”

54 Yes, these are not eviction proceedings, it is not suggested that they are. But to suggest that the regulations aim to protect vulnerable groups in the context of evictions, but not so in the context of water cuts, yet the water cuts affect an equally vulnerable group would be absurd.

55 The regulations are clearly aimed at avoiding the spread of Covid-19 under whatever circumstances. Not all factual circumstances were going to be – nor could they possibly be – accommodated expressly by the regulations.

56 It is the role of a court faced with a set of facts to assess whether the regulations apply to such facts and whether the legitimate government purpose aimed at by the regulations is not defeated in such circumstances.

Regulation 74

57 This regulation speaks to rental housing and the functioning of the Rental Housing Tribunals. Sub-regulation 2 speaks of conduct that is presumed to be automatically unfair in terms of the Rental Housing Act during the national state of disaster. Regulation 74(2) (d) states:

“ . . . the following conduct is presumed to be unfair for the purpose of the Act:

(d) Any other conduct prejudicing the ongoing occupancy of a place of residence, prejudicing the health of any person or prejudicing the ability of any person to comply with the applicable restrictions on movement that is unreasonable or oppressive having regard to the prevailing circumstances.” (Emphasis added)

58 Once again, these are not proceedings before the Rental Housing Tribunal. The applicants do not suggest otherwise.

59 Regulation 74 is cited to make the simple point that in the context of Rental Housing Tribunals an automatic resumption of unfairness applies in case where:

59.1 conduct prejudicing the ongoing occupancy of a place of residence (such as disconnecting the water supply) is present;

59.2 there is conduct prejudicing the health of any person (such as water scarcity); or

59.3 there is conduct prejudicing the ability of any person to comply with the applicable restrictions on movement that is unreasonable or oppressive having regard to the prevailing circumstances.

60 The respondents cannot reasonably argue that the above conduct is unfair and therefore unlawful in the context of housing tribunals **only**, but fair in the present context. To say so would lead to an absurdity that regulations promulgated to give effect to a “national” state of disaster **do not** apply with equal force in similar circumstances that exist while the state of disaster is still in place.

61 In conclusion, we respectfully submit that the conduct of the first and second respondents to disconnect the water supply to the premises is unlawful as it is in contravention of the regulations. The second leg of the test of spoliation (wrongful deprivation) has been met.

62 A clear reading of the regulations evidences an obvious legitimate government purpose: the stemming of the spread of Covid-19 nationally and in all

circumstances where it is possible to do so whether those circumstances are mentioned expressly or not.

63 We submit that the first and second respondents' action is contrary to this legitimate government purpose. Therefore, the conduct complained of is unlawful.

64 On this basis too, the spoliation order ought to be granted.

PROCEDURALLY UNFAIR MANNER OF THE DISCONNECTION

65 Even if it were to be said that the respondents decision to discontinue the water supply was lawful. We submit that the manner in which the decision was implemented was procedurally unfair for failure to comply with the provisions of fairness guaranteed by the Water Services Act and the Water Service By-Laws.²⁸

66 Section 4 of the Act provides for conditions for provision of water services by water suppliers such as the first and second respondents. It states, in relevant parts:

“(1) Water services must be provided in terms of conditions set by the water services provider.

(2) These conditions must—

(c)provide for—

²⁸ Published in *Provincial Gazette Extraordinary* No. 179 dated 21 May 2004.

(iv) the circumstances under which water services may be limited or discontinued;

(v) procedures for limiting or discontinuing water services; and

(3) Procedures for the limitation or discontinuation of water services must—

(a) be fair and equitable;

(b) provide for reasonable notice of intention to limit or discontinue water services and for an opportunity to make representations, unless—

(i) other consumers would be prejudiced;

(ii) there is an emergency situation; or

(iii) the consumer has interfered with a limited or discontinued service; and

(c) not result in a person being denied access to basic water services for nonpayment, where that person proves, to the satisfaction of the relevant water services authority, that he or she is unable to pay for basic services.”

67 On the other hand, section 9C of the City’s Water Services By-Laws provides for methods of handling “arrears” of water payments. It requires that a final notice be given to the customer and an opportunity to make representations allowed, followed by the discontinuation of the water supply. If the customer can establish

that he or she is indigent, the customer will continue to be provided with a basic water supply (6 kilolitres per month) but any water beyond that amount will have to be paid for by the customer.²⁹

68 In the present case, we submit, the first respondents never issued the mandatory notice required by section 9C of the By-laws, at the very least, the applicants never received it.

69 Further, section 4(3)(c) of the Act expressly states that the procedure for limitation and discontinuation of water must “be fair and equitable” and must “not result in a person being denied access to basic water services for non-payment.

70 This is exactly what has happened in this case, the applicants have been denied basic water through a process that was procedurally unfair for failure to issue a notice by the respondents.

71 In *Mazibuko* the Constitutional Court held that:

“The purpose of section 4(3) of the Water Services Act is to ensure that where a water service is limited or discontinued, that it will be done in a fair and equitable manner, that reasonable notice and an opportunity to be heard will be provided for, and finally that the discontinuation will not result in an indigent person being denied access to basic water services.”³⁰

²⁹ Section 9(3)(g) of the By-laws. Also see *Mazibuko* above at para 116.

³⁰ *Mazibuko* at para 121.

- 72 The concepts of procedural fairness and issuing of an adequate notice is well-established in our law.³¹ It is precisely why the Act and By-laws pay particular attention to procedural fairness in the way the City discontinues the supply of basic services.
- 73 The applicants were granted a right to be heard before the discontinuation.
- 74 On this basis too, the City's action in this regard is legally wanting.

MANDATORY INTERDICT³²

- 75 The requirements of an interim interdict are also well-established.³³
- 76 They are (a) a prima facie right even if it is open to some doubt; (b) a reasonable apprehension of irreparable and imminent harm to the right if an interdict is not granted; (c) the balance of convenience must favour the grant of the interdict and (d) the applicant must have no other remedy.³⁴
- 77 The Constitutional Court has held that when a court considers whether to grant an interim interdict it must do so in a way that promotes the objects, spirit and purport of the Constitution.³⁵
- 78 In the circumstances of this case an order that would best promote the object, spirit and purport of the Constitution is one that would order the respondents to

³¹ *Joseph and Others v City of Johannesburg and Others* [2009] ZACC 30; 2010 (3) BCLR 212 (CC); 2010 (4) SA 55 (CC) at para 61.

³² FA page 18 para 63.

³³ *Zokufa v Compuscan (Credit Bureau)* [2011] 1 All SA 203; 2011 (1) SA 272 (ECM) at para 14.

³⁴ *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) at para 41.

³⁵ *Id* para 45.

reconnect the water immediately. This is because of the centrality of water to the function of humans generally, particularly so during the outbreak of a pandemic.

79 A dignified and fulfilled life as envisaged by the Constitution is achieved where basic services such as water are accessible.

80 The applicants have a clear, constitutionally protected right to have access to sufficient water. Section 27(1(b) of the Constitution and the Water Services Act are instructive in this regard. Everyone has the right to have access to sufficient food water. When the right asserted in a claim for an interim interdict is sourced from the Constitution it is redundant to enquire whether that right exists.³⁶

81 The respondents have infringed on this right without consent or following due legal process. The right of access to water is made all the more important by Covid-19. This a right to which, if not protected by an interdict, continuous irreparable harm would ensue.³⁷

82 The respondents have injured and/or harmed the applicants' rights by discontinuing the supply of water to the premises. This discontinuation has made the life of all occupiers of the premises a living hell, literally. The Constitutional Court has held that *"one important consideration is whether the harm apprehended by the claimant/applicants amounts to a breach of one or more fundamental rights warranted by the Bill of Rights."*³⁸

³⁶ Id para 46.

³⁷ Erasmus *Superior Court Practice* at E8-10.

³⁸ Id para 47.

- 83 We submit that presently, the harm apprehended – and indeed experienced – by the applicants breaches numerous fundamental rights warranted by the Bill of Rights. These are the rights to equality³⁹, human dignity⁴⁰, adequate housing⁴¹ and access to sufficient water.⁴²
- 84 Had the respondents allowed the main (eviction) application to run its course, the applicants would have been provided alternative temporary accommodation by the City. Such temporary accommodation would have been fit for human habitation because it would have basic services such as water. Only then the respondents would be entitled to discontinue water supply to the premises.
- 85 Regarding the balance of convenience, this Court is called upon to first weigh the harm to be endured by the applicants if interim relief is not granted as against the harm respondent will bear if the interdict is granted. Thus, this Court must assess all relevant factors carefully in order to decide where the balance of convenience rests.⁴³
- 86 It is submitted, with respect, that the harm endured by the applicants ever since the water was disconnected is incomparable against whatever harm the City might suffer by disconnecting the water only when the eviction application has been concluded.

³⁹ Section 9.

⁴⁰ Section 10.

⁴¹ Section 26.

⁴² Section 27(1)(b).

⁴³ *Outa* at para 55.

87 The threat to life posed by the water disconnection cannot seriously be compared by any financial loss the City might be experiencing. The balance of convenience strongly favours the granting of the interdict.

88 It is submitted that the applicants have no alternative remedy but to approach this Court on an urgent basis. They are in no position to settle the outstanding debt with the first and second respondents. A hearing on the normal roll would be futile given the daily, heightened exposure to Covid-19. Furthermore, a spoliation application might be overtaken by events if the pending eviction application is concluded before this matter is heard on the normal roll.

89 No alternative, equally effective remedy, exists.

URGENCY

90 We submit that this application is urgent for several reasons.

91 First, the applicants have been without access to water since 26 May 2021. By the time the matter is heard they will have been without water for over a week. During this period, they have been unable to attend to daily matters such as cleaning, bathing, cooking etc. The scarcity of water poses a continuous health hazard.⁴⁴

92 Second, the respondents' unlawful action of discontinuing water supply to the premises exposes the applicants to a heightened risk of catching Covid-19. This

⁴⁴ FA page 16 from para 69.

risk is more pronounced given that the applicants are made up of elderly and children among others.

93 Some occupiers leave the premises to go to work, some leave in search of work and food. As a result, they are in no position to minimize the spread of Covid-19 within the premises by, for instance, washing their hands, clothes and surfaces.

94 Third, the occupiers are compelled to engage in unnecessary movement in search of water and food in violation of the Regulations.

95 Further, the applicants have been forced to buy water for cooking purposes and at times are forced to ask neighbours to provide water them with water. Sometimes the neighbours refuse because there are roughly 71 individuals residing on the premises.

96 The toilets at the premises are blocked, filthy and a health-hazard at the moment.⁴⁵

97 It is submitted that most of the applicants are unemployed and do not have enough money to buy water for bathing and food. The financial inabilities of the applicants are reflected in the City's own report which is annexed to the founding affidavit of these proceedings.

⁴⁵ FA page 20 para 75.

98 Further, other occupiers have resorted to going to work without bathing, children are unable to go to school because there is no water. The elderly people are struggling to buy the water to enable them to take their medication.

99 This degrading state of affairs warrants an urgent intervention by this Honourable Court

100 Lastly, the applicants cannot obtain redress through the normal roll. This is because by that time some, if not all of the occupiers, would have maybe contracted Covid-19. Under the normal roll this application will be heard after many months. The proverbial horse will have bolted by then.

101 A hearing at a later point will neither undo nor repair the suffering that will have been suffered by occupiers who will have had to live for months without water.

102 In any event, the determination of the main (eviction) application will render this application moot should it be placed on the normal roll.

103 It is respectfully submitted that an urgent hearing is necessary so that this Honourable Court intervenes at the earliest convenience.

CONCLUSION

104 The respondents' conduct is in contravention of the City's statutory and constitutional obligations. It further contradicts the Covid-19 regulations. The applicants have not consented to the discontinuation of the water supply. The

applicants had undisturbed access to water before the respondents took the law into their hands.

105 A spoliation order is justified in these circumstances pending the finalisation of the main action. In the alternative, the respondents ought to be ordered to reconnect the water supply.

106 For all of these reasons, it is respectfully submitted that a case has been made out, on the basis of which this Court should grant the relief sought in the notice of motion.

107 We submit that costs should follow the course should the applicants succeed. Should the Court find in favour of the respondents, *Biowatch* applies. The applicants are attempting to vindicate their constitutional rights by approaching this Court.

108 It cannot be reasonably said that they are abusing court process.

SD MBEKI
Counsel for the Applicants
PABASA Chambers, Sandton

3 June 2021