REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2022/026555

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: YES

03/02/2025
DATE

[redacted]
SIGNATURE

In the matter between:

DARRYL FURMAN	First Applicant
LINSEY MICHELE FURMAN	Second Applicant
and	
CITY OF JOHANNESBURG	First Respondent
THE CITY MANAGER (JOHANNESBURG)	Second Respondent
THE DIRECTOR, WATER SERVICES (CITY OF JOHANNESBURG)	Third Respondent

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JUDGMENT

SMIT, AJ

Introduction

[1] This is the sixth instalment of what appears to be protracted agony for the applicants.[1]

[2] Mr Darryl Furman and his wife, Ms Linsey Furman co-own a property in Linksfield North, Johannesburg. They have been in constant dispute since at least 2017 with the first respondent (City of Johannesburg or "City") over what they consider to be severely inflated and incorrect water and electricity accounts. This dispute has resulted in five previous hearings and several orders of court (detailed below), aspects of which the City has simply ignored.

[3] In their exasperation, the Furmans have now approached the Court for relief they say is justified by the City's obvious and repeated contempt of court. In what came before me as the return date of a *rule nisi* first issued on 26 February 2024, and later extended on 20 May 2024, they sought *inter alia* (as paraphrased) —

a. Relief aimed to compel the City to reflect that, as at 24 November 2023 (when the notice of motion was amended), the amount they owed to the City in respect of rates and taxes, refuse, sewerage, electricity and water is nil Rand;

b. Relief aimed at compelling the City to issue, on demand by a conveyancer, a clearance certificate in terms of section 118(1) of the Local Government: Municipal Systems Act (Systems Act);[2] and

c. Relief aimed at declaring that the City is in contempt of two previous orders of the Court and committing the second respondent (the City Manager) or the third respondent (the Director of Water Services) to direct imprisonment.

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[1] This matter (in various iterations) previously served before court on 5 March 2019, 17 January 2023, 4 September 2023, 26 February 2024 and 20 May 2024.
[2] 32 of 2000.

[4] As I explain below, the City remains in contempt of court. Nevertheless, I conclude that the Furmans are not entitled to any of the relief embodied in the rule *nisi*, given their cause of action and the way their application was framed.

[5] Without expressing any view in that regard, it may be that the Furmans are entitled to certain of the relief they sought (even if incrementally) by following the correct procedures – most importantly by applying for clearance figures from the City – and then, if aggrieved, by framing their cause of action correctly. Assessing whether the Furmans may be so entitled will, in my view, have to be the function of a different court hearing a differently-framed application.

[6] In what follows, I set out the protracted history of this application (even if briefly). I then explain why the Furmans' reliance on the City's contempt does not assist them in this application. Next, I explain why they are not entitled in the application as currently framed to the substantive relief they seek. Finally, I deal with the issue of costs.

Background and procedural history

[7] This matter first came before the urgent court on 5 March 2019. The founding affidavit in the urgent application explained that the Furmans had, in various ways, lodged disputes with the City over their water and electricity accounts, from March 2017 onwards. Despite the disputes, and the provisions of section 102(2) of the Systems Act,[3] the City took steps to disconnect their water and electricity.

[8] The urgent court granted an order by agreement that the City may not disconnect the Furmans' water and electricity supply. It also ordered the City to "*meaningfully engage the [Furmans] to reconcile the accurate amounts of their electricity and water consumption*".

[9] Following the urgent court's order, there were many engagements between the City and the Furmans. They were, from the Furmans' perspective, abortive. Despite admissions that one or more of the meters at the Furmans' property are

[3] Which, in essence, provides that a Municipality may not implement debt collection and credit control measures "*where there is a dispute between the municipality and a person [liable for payments to the municipality] concerning any specific amount claimed by the municipality from that person*".

inaccurate and undertakings to address this, the Furmans continued to experience what they allege to be inaccurate and severely inflated readings. The Furmans thus continued to lodge disputes with the City and to engage it, seemingly to little effect.

[10] At some stage in 2021, the water and electricity meters at the property were changed, for reasons that are not common cause. The Furmans allege that their readings remain inaccurate. They received many strange and, on their face, nonsensical accounts from the City. They hired a rates agent to engage with the City, also to little apparent effect. At some stage, they started receiving accounts referring to the meter number of what they say is a "*ghost meter*" (i.e. one which is not installed at their property).

[11] Throughout the period, the City's engagements with the Furmans were haphazard, opaque and inconclusive. The City did not adhere to its own dispute resolution mechanism, as set out in its by-laws.[4] It did not issue anything cognisable as a decision on the disputes submitted to it, although it did – from time to time – issue re-billed accounts which were confusing, inconsistent and further muddied the waters. In addition, the City levied interest on amounts it described as overdue, which now runs to several thousand rands per month.

[12] Again, at various times, the Furmans continued to be harassed by debt collection agencies and persons threatening to cut off their supply of water and electricity. (It is unclear whether these persons were authorised by the City to do so or were rogue actors taking advantage of the situation – the Furmans allege that they had to pay "*fees*" to these persons in what may amount to blackmail to stave off a disruption of their supply.)

[13] Although this had been threatened since June 2019, the Furmans brought a further application on 21 September 2022. They filed a comprehensive founding affidavit setting out the history of inconclusive engagements with the City following the order of the urgent court. As I explain below, the City (eventually) filed an answering affidavit on the day this matter was set down to be heard

[4] See section 11 of City's Credit Control and Debt Collection By-laws of 2004.

(19 November 2024). The answering affidavit did not meaningfully dispute most of the allegations in the founding affidavit.

[14] In their founding affidavit, the Furmans referred to correspondence of June 2022, in which they indicated to the City that they intended to sell the property and would need to resolve these issues in order to obtain rates clearance figures and a clearance certificate. Nevertheless, they did not – at the time – take any action or claim any relief in that regard.

[15] The September 2022 application came unopposed before this Court on 17 January 2023, which granted *inter alia* the following relief (paraphrased) —

a. The City was ordered to comply with the urgent court's order;

b. The City was ordered to cease threatening to cut off the Furmans' electricity and water supply or to actually disconnect it before complying with the urgent court's order;

c. The City was ordered to replace each defective water and electricity meter at the property and to dispatch properly experienced meter readers to the property co confirm that the meters have been correctly installed and are working properly;

d. The City was ordered to review its accounts from November 2015 onwards, and to provide correct meter readings to the applicants, "*so that the parties are able to meaningfully engage in an attempt to rectify the incorrect accounts*"; and

e. The City was ordered to render a full corrected account from November 2015 onwards, supported by documentation and vouchers and to debate it with the Furmans.

[16] The City did not comply with these orders.

[17] As a result, on 11 July 2023, the Furmans brought an application for contempt of court (under the same case number as the September 2022 application and under which this matter was heard). The contempt application cited the City

Manager and the Director of Water Services in their official capacities. Among other relief, the applicants asked for their committal to imprisonment or for the City to pay a fine.

[18] The founding affidavit in the contempt application flagged further harassment from debt collectors. It indicated that the sale of the property was "*imminent*" and that rates clearance figures and a rates clearance certificate would need to be obtained (but without having applied for these as yet). The Furmans anticipated that the amount reflected in the rates clearance figures would be inflated, not only because it would contain incorrect arrears amounts, but also because the prepayments required would be calculated on inflated historical figures.

[19] Thus, the Furmans said, they would be prejudiced by incorrect and inflated rates clearance figures. Had the City complied with the Court's previous orders, they would not have been in this position. The founding affidavit asked for the imprisonment of "*the [City] represented by its City Manager and/or the Director of Johannesburg Water*".

[20] The contempt application came unopposed before this Court on 4 September 2023. The Court granted an order (paraphrased) —

a. declaring the City to be in wilful contempt of the order granted on 17 January 2023 and ordering it to comply;

b. interdicting (again) the respondents from threatening to discontinue or restricting the water and electricity supply to the property;

c. postponing the relief regarding imprisonment *sine die*; and

d. ordering the City to publish this Court Order in writing to all its departments and employees, with the title "WARNING TO COMPLY WITH COURT ORDERS".

[21] This Court also ordered the City to pay the costs of the contempt application on a punitive scale.

[22] The court order of 4 September 2023 did not lead to any action on the part of the City either.

[23] As a result, the Furmans amended their notice of motion in the contempt application and filed a further affidavit on 27 November 2023. They now sought the relief outlined in paragraph [3] above, which serves before me, as well as a further interdict (in roughly the same terms as before). They sought to support the relief in the accompanying affidavit with the following further[5] allegations:

a. The previous order was served on the City, the City Manager and the Director of Water Services.[6]

b. In response, attorneys acting for the City requested CaseLines access. There was correspondence with these attorneys, but ultimately these attorneys failed to respond to the Furmans' demands.

c. Evidently, the granting of further contempt orders against the City would not afford the Furmans real relief.

d. The inability to obtain (correct) clearance figures and hence a clearance certificate based upon such figures causes prejudice.

[24] The matter came before this Court again on 26 February 2024. This Court issued the interdict (without qualification) and made the rest of the relief subject to a rule *nisi*, requiring the City to show cause on 20 May 2024 why the orders sought before me should not granted.

[25] The rule *nisi* came before this Court on 20 May 2024. For reasons which do not appear from the record, the Court extended the rule *nisi* to 18 November 2024, when it was directed to be set down on the opposed motion roll.

[26] On 5 November 2024, the applicants filed a further supplementary affidavit. They indicated that the property had been sold on 1 November 2024 and that they would suffer loss if the City does not (speedily) issue a rates clearance certificate.

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[5] The further affidavit referred to and incorporated the preceding affidavits, including in the urgent application, by reference. There was no debate before me as to whether that was appropriate.
[6] The returns of service show that the papers were served on officials in the City's legal department.

They further indicated that, to date, the City had made no effort to comply with the previous orders. They further explained that they were being charged interest on disputed overdue amounts of between R3,500 and R4,000 per month.

[27] The matter came before me on the opposed motion roll for the week of 18 November. I directed that it be heard on Tuesday 19 November. Minutes before the hearing was due to commence, the City filed an unsigned answering affidavit (replaced by a signed version through the course of the hearing). Counsel also appeared for the City at the hearing. There was no intimation before the morning of 19 November 2024 that the City had briefed counsel.

[28] Upon enquiry, the City's counsel indicated that he had been instructed to appear for the City five days prior to the hearing, on 14 November 2024. The answering affidavit tendered no explanation for the belated opposition to the application or the belated instruction of counsel. It also did not include an application for condonation. With some understatement, it stated as follows: "*This affidavit is delivered late and the Municipality together with its representatives apologise.*"

[29] The Furmans' counsel opposed the admission of the City's answering affidavit for these reasons. I heard argument on the issue. The City's counsel argued that his clients have been ordered, through the rule *nisi*, to show cause on a particular date (being the date on the matter was heard again). He thus argued that the City was acting within its rights to show cause by means of an affidavit filed on the day of the hearing.

[30] After hearing argument solely on the admission of the answering affidavit, the matter stood down briefly for the Court to consider this issue. In the event, and on the same day (19 November 2024), I ruled that the City's answering affidavit was admitted before this Court without prejudice to the Furmans' right to object against the contents thereof. (I included this proviso, for reasons I explain below.)

[31] I ruled that the affidavit would be admitted, because the issuance of a rule *nisi* seemingly does permit the procedure – however potentially undesirable, discourteous and wasteful – adopted by the City.[7]

[32] The parties then agreed that the Furmans would file a replying affidavit and that both parties would file heads of argument by Thursday 21 November 2024. This meant that the matter would be heard on Friday 22 November 2024. The City's course of action thus created significant inconvenience and time pressure for all concerned.

[33] I included the proviso in my ruling admitting the affidavit, because much of the answering affidavit constitutes hearsay evidence by a legal advisor in the employ of the City. In it, she recounts "*discussions*" with City officials giving rise to many of her allegations, without naming such officials. No confirmatory affidavits were filed for such officials.

[34] This practice has been deprecated by Sutherland DJP in a similar matter, where the City was represented by the same counsel.[8] The Deputy Judge President indicated, in no uncertain terms, that this practice – designed to shield officials from accountability – must stop.[9] Yet, this instruction was flouted.

[35] In substance, the City's answering affidavit denies that this Court has the power to make the orders sought. It stated that the court could not order a clearance certificate to be issued without the prescribed procedures in the Systems Act having been followed. In this regard, the City stated: "*The law is very clear that upon receipt of a full compliant application for clearance figures and payment of the amount determined by the Municipality the clearance certificate may then be issued.*"

[36] The City further argued that the contempt relief against the City Manager and the Director of Water Services was incompetent, because those officials were not properly joined to this application.

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[7] *Manton v Croucamp NO* 2001 (4) SA 374 (W) at 382G-383A. See also *Eichhoff v Eichhoff* 1980 (4) SA 389 (SWA) at 391H and *Bergboerdery v Makgoro* 2000 (4) SA 575 (LCC) at para 11.
[8] *Millu v City of Johannesburg Metropolitan Municipality* [2024] ZAGPJHC 419 (18 March 2024).
[9] *Millu* fn 8 above para 45.

[37] In addition, the City alleges that the Furmans did not follow the proper dispute resolution procedures, without explaining why or what the procedure entailed. It indicated that (perhaps in the view of the unnamed officials) the water and electricity meters at the property were functioning correctly. It annexed several unsigned and seemingly incomprehensible "*reports*" prepared by equally unnamed officials, apparently prepared after the court order of 4 September 2023, but which was not provided to the Furmans before they were annexed to the answering affidavit.

[38] Finally, the City alleges that the Furmans owe the City R484 753.93 in arrear water and electricity charges as at November 2024. The answering affidavit annexed a full payment history of the Furmans from November 2015 onwards, which their counsel accepted as substantially correct. The payment history showed fairly regular payments of amounts estimated by the Furmans (on what basis is not explained) to be owing to the City. Latterly, these amounted to R7,500 per month, although it was higher in some previous periods.

[39] On the view I take of the matter, it is unnecessary to delve further into the issues of fact raised by the City (on the flimsy basis of the say-so of its legal advisor) and the contentions in the replying affidavit that the City's version could be rejected on the papers.

The City's contempt is not the appropriate cause of action for the relief sought

[40] After this regrettably long recitation of the background to this application, it is necessary to revisit the relief the Furmans seek, through the confirmation of the rule *nisi*. Its essence is to set the amount owing to the City to nil Rand (as of 24 November 2023); to compel the City to issue on demand a clearance certificate in terms of section 118(1) of the Systems Act; and to commit the City Manager or the Director of Water Services to imprisonment.

[41] The Furmans' counsel did not press for an order relating to the officials' imprisonment at the hearing, rightly so. Although this was not the Furmans' stated reason for not pressing the issue, the prayer for imprisonment could not

be granted without these officials being joined to the contempt application in their personal names (not solely their official capacities).[10]

[42] There was some debate before me whether the Furmans had likewise abandoned a prayer declaring the City to be in (continued) contempt of court. It is unnecessary to resolve that debate, because that order had already been granted on 4 September 2023. It remains in effect. In my view, the City has not demonstrated that it had in any way purged this contempt. Nothing further needs to be said on the subject.

[43] The City's continued (and in my view unassailable) contempt forms the cause of action for the further substantive relief the Furmans seek, namely the setting of their account to nil Rand and the issuance of the clearance certificate.

[44] In my view, this was misguided. Contempt of court is a crime;[11] not a cause of action for substantive relief:

> "It permits a private litigant who has obtained a court order requiring an opponent to do or not do something (*ad factum praestandum*), to approach the court again, in the event of non-compliance, for a further order declaring the non-compliant party in contempt of court, and imposing a sanction. The sanction usually, though not invariably, has the object of inducing the non-complier to fulfil the terms of the previous order."[12]

[45] Our courts have made it clear that contempt of court may give rise to two types of orders (although they may overlap): either orders coercing compliance with previous orders of court;[13] or orders punishing a contemnor for the contempt.[14]

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[10] *Matjhabeng Local Municipality v Eskom Holdings Ltd* 2018 (1) SA 1 (CC); 2017 (11) BCLR 1408 (CC); [2017] ZACC 35 at paras 101-103. In addition, paragraph 9.19 of this court's Practice Manual requires personal service of a contempt application that contains a prayer for the imprisonment of the respondent. See also *Body Corporate of the Tuzla Mews Scheme v Yang* [2001] 3 All SA 427 (W) at 430; *Millu v City of Johannesburg Metropolitan Municipality (supplemental judgment)* at para 8.

[11] *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA); [2006] ZASCA 52 at para 6; *Matjhabeng* fn 10 at para 50.

[12] *Fakie* fn 11 at para 7.

[13] The relief sought by the Furmans (resetting their account and issuing the clearance certificate) do not seek to coerce compliance with the previous orders. They seek to bypass such non-compliance.

[14] *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma* 2021 (5) SA 327 (CC); 2021 (9) BCLR 992 (CC); [2021] ZACC 18 at paras 47 and 54-55.

The Furmans seek neither. They seek substantive relief (in the form of resetting their account and issuance of a clearance certificate).[15]

[46] There is no question that the City's obvious and continued contempt sullies the authority of the court, detracts from the rule of law and prejudices the Furmans.[16] Neither opprobrium nor sympathy are causes of action for substantive relief, however.

[47] It should be noted that the City's contempt is not without consequences. A declarator to that effect has been issued; and it may yet ground other relief, brought in appropriate proceedings, such as barring the contemnor from access to civil courts until the contempt is purged.[17]

[48] The Constitutional Court has, in this regard, noted that civil contempt could give rise to remedies other than criminal sanctions, including a declaratory order, mandamus and a structural interdict.[18] It seems to me that these remedies must be calculated to coerce compliance with the previous court orders; not to bypass non-compliance by granting substantive relief. It was not argued before me, and no case was made out, that the law should be developed in this regard.

The Furmans did not make out a cause of action for the relief they seek

[49] In seeking to reset their account balance to nil Rand and to compel the City to issue a clearance certificate, the Furmans seek an order through which the court assumes the power of the City to make determinations in terms of statute.

[50] This can, in my view, be achieved in proceedings in which the Furmans makes out a case (in general terms) that, in relation to the relief they seek, they had made an application to the City (following the correct procedures); their application had not been processed or had been processed incorrectly; and that

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[15] It was not argued before me that issuing the substantive relief would constitute punishment for the City's contempt. It seems, in any event, that such punishment usually takes the form of a fine or imprisonment: *Cape Times Ltd v Union Trades Directories (Pty) Ltd* 1956 (1) SA 105 (N) at 120D–E. See also *Burchell v Burchell* [2005] ZAECHC 35 (3 November 2005) at para 27 for the possibility of other civil sanctions.

[16] Compare *Fakie* fn 11 para 8.

[17] *Fakie* fn 11 at para 16 referring to *Burchell* fn 15 at para 27. See also *Matjhabeng* fn 10 at para 66. The Furmans did not seek an order barring the City from being heard until it has purged itself from its contempt.

[18] *Matjhabeng* fn 10 at paras 53-54 and para 67.

it is appropriate (notwithstanding the doctrine of separation of powers) for the Court to order the resetting the account and/or issuing the clearance certificate.

[51] In this regard, it is incontrovertible that the relationship between the Furmans and the City "*is contractual in nature but also has administrative and statutory components.*"[19]. Thus, in seeking relief which amounts to the Court assuming the power to exercise the statutory functions of the City, applicants must pay attention to "*the court's function and powers in the context of the relationship between municipalities and citizens and the understanding that relief sought must comply with the legal prescripts which govern this relationship*".[20]

[52] The Furmans did not do so. They acted under the misapprehension that the City's contempt in itself would afford them the relief sought.

[53] I considered whether it would be open to the court nevertheless to reach the conclusion that the facts set out in the Furmans' application (including all the preceding affidavits incorporated by reference) would ground the relief sought – notwithstanding that their papers contain no reference to public law remedies which would permit the Court to exercise the City's statutory powers on its behalf.[21]

[54] In my view there is at least one major obstacle to doing so.[22]

[55] The Furmans have never approached the City to request the relief now sought from the court. For example, as counsel for the City noted in argument, the Furmans have not even applied for clearance figures, let alone a clearance certificate. The facts underlying this judgment strongly suggests that the City may not respond to such a request in the manner the Furmans desire, but it seems to me that the Court cannot presume what the City's response would be. The doctrine of separation of powers demands that courts should not usurp the

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[19] *Joseph v City of Johannesburg* 2010 (4) SA 55 (CC); 2010 (3) BCLR 212 (CC); [2009] ZACC 30; *Body Corporate of Willow and Aloe Grove v City of Johannesburg* [2023] ZAGPJHC 1451 para 94.
[20] *Body Corporate of Willow and Aloe Grove* fn 19 para 1. See also paras 6 and 19.
[21] See e.g. *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd* 2015 (5) SA 245 (CC), 2015 (10) BCLR 1199 (CC); [2015] ZACC 22 at para 32.
[22] I express no view on whether this is the only obstacle. There may well be others.

functions of the executive before the latter had been given a reasonable opportunity to exercise the power in question.[23]

[56] This is particularly so in circumstances where —

a. Section 118(1) of the Systems Act limits the amount to be paid to a municipality to obtain a clearance certificate to "*all amounts that became due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate*";

b. It is trite that disputed debts flowing from consumption charges older than three years have prescribed;[24]

c. Interest on overdue amounts do not form part of the amounts contemplated in section 118(1);[25] and

d. There is precedent for an order made after clearance figures had been requested and produced to reset the values in those figures according to legal prescripts and/or to compel issuance of such certificate based upon corrected figures or after payment under protest.[26]

[57] In setting the requirement first to approach the City for clearance figures or a clearance certificate, the Court is not setting an impossible hurdle. It seeks to ensure that the matter comes to court in the correct posture, which allows for: a structured debate on whether internal remedies had been exhausted (or require to be exhausted);[27] an assessment whether the City had acted in accordance

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[23] Compare *Body Corporate of Willow and Aloe Grove* fn 19 at para 105.
[24] See *Argent Industrial Investment (Pty) Ltd v Ekurhuleni Metropolitan Municipality* 2017 (3) SA 146 (GJ).
[25] *Moatshi v City of Tshwane Metropolitan Municipality* [2024] ZAGPPHC 331 (11 April 2024) at para 38.
[26] *YST Properties CC v Ethekwini Municipality* 2010 (2) SA 98 (D); *Akasia Road Surfacing (Pty) Ltd v City of Tshwane Metropolitan Municipality* [2023] ZAGPPHC 668 (10 August 2023) para 55; *Sienaert Prop CC v The City of Johannesburg Metropolitan Municipality* [2021] ZAGPJHC 490 (23 September 2021).
[27] There is a large body of case law, in this court and others, as to whether a cognisable "*dispute*" exists between a property owner or occupier and a municipality regarding consumption and other charges and which would have the effect of suspending a municipality's right to enforce debt collection and credit control measures. A recent judgment which is of considerable assistance is *Ackerman v City of Johannesburg* [2024] ZAGPJHC 334 (5 April 2024). While these issues were

with the applicable statutory prescripts, in particular in calculating the outstanding amounts; and an assessment whether the circumstances demand that the Court should exercise the City's statutory powers notwithstanding the doctrine of separation of powers.

[58] The Furmans' counsel referred me to a passage from the Constitutional Court's judgment in *Mkontwana* to make out a case for the relief sought.[28] *Mkontwana* concerned the constitutional validity of (*inter alia*) section 118(1) of the Systems Act insofar as it limited the right of an owner of property from transferring that property due to outstanding consumption charges due by occupiers other than the owner. The passage in *Mkontwana* on which counsel relied, reads as follows:

> "[73] This judgment holds that the owner of property is, in effect, obliged to ensure that certain consumption charges owing to the municipality in connection with a property are paid before that property can be validly transferred. The facts of the cases before us show that there is the possibility of a whole range of disputes that might arise in the process of the application of ... s 118(1) . . . . . Some of the disputes that may arise in connection with the consumption charges alleged by the municipality to remain owing in connection with the property may concern the accuracy of the amount, whether the sum relates to consumption charges as contemplated by each of the provisions and whether the amount alleged is limited to the relevant period of two . . . . years. In the nature of things, the resolution of these disputes can take time. The passage of more than a reasonable time between the sale of property and its transfer can be unduly onerous to both the parties to the sale. The delay could be considerable if the dispute between the parties cannot be resolved without resorting to court proceedings. If municipalities keep accurate and full records and supply information to owners, the time taken to resolve any disputes that may arise would be minimal in most cases. It must be pointed out however that the owner who wishes to effect transfer of property reasonably quickly in circumstances where it is not possible to resolve a dispute in connection with the amount of consumption charges required to be paid to facilitate transfer is not necessarily in an impossible position. It may be possible, in appropriate cases, for an owner to demonstrate that she has a clear right

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extensively debated before me, they are ultimately not relevant in light of my conclusion, and I prefer not to express views in that regard.

[28] *Mkontwana v Nelson Mandela Metropolitan Municipality; Bissett v Buffalo City Municipality; Transfer Rights Action Campaign v MEC, Local Government and Housing, Gauteng (Kwazulu-Natal Law Society and Msunduzi Municipality as amici curiae)* 2005 (1) SA 530 (CC); 2005 (2) BCLR 150 (CC); [2004] ZACC 9.

to transfer, that there is a dispute about this and that the balance of convenience justifies the grant of an order compelling a municipality to issue a certificate subject to appropriate conditions pending the final determination of court proceedings aimed at resolving the dispute. A municipality or owner found, at the end of the day, to have been wrong in the attitude taken at the time of transfer will have to face the appropriate consequences. It is therefore appropriate for all owners and municipalities to negotiate meaningfully and in good faith when disputes around the application of s 118(1) . . . arise." (Emphasis added.)

[59] This passage clearly refers to a situation where there is a dispute between a property owner and a municipality about the owner's right to transfer a property following a sale. On the papers before me, there is no such dispute as yet. The Furmans entered into a sale agreement on 1 November 2024, 18 days before this matter was set down for hearing. No clearance figures had been applied for or furnished. The Furmans also did not attempt to make out a case in their papers for "*a clear right to transfer, that there is a dispute about this and that the balance of convenience justifies the grant of an order compelling a municipality to issue a certificate subject to appropriate conditions pending the final determination of court proceedings aimed at resolving the dispute*" (in the words of *Mkontwana*).

[60] It seems to me, from the language employed by the passage in *Mkontwana*, what is envisaged is an interdict pending appropriate proceedings aimed at resolving the dispute between the property owner and the municipality. It may well be possible to make out such a case, but it was not the Furmans' case before me, fairly assessed. For example, what is the "*clear right*" they sought to rely on? In the Furmans' case, it was only the City's contempt, which for the reasons already addressed does not ground a right to substantive relief.

[61] It follows that the Furmans are not entitled to the relief they sought before me, i.e. the confirmation of the rule *nisi* issued on 26 February 2024 and extended on 20 May 2024.

[62] This conclusion does not detract from (or seek to qualify, in any way) the orders made by this Court on 4 September 2023 which, *inter alia* declared the City to be in wilful contempt of court and which issued an interdict against disconnection of the Furmans' water and electricity supply. Likewise, this conclusion does not

detract from the (same) interdict granted by this Court on 26 February 2024, which was not subject to the rule *nisi*.

Costs

[63] Certain of the previous orders made in favour of the Furmans – including the order of 24 February 2024 – had ordered the City to pay the Furmans' costs, in some instances on a punitive scale. The current costs order is therefore only concerned with the costs of this application insofar as they were incurred after 26 February 2024.

[64] As I explain above, the City remains in continued and unpurged contempt of court. The City has paid little regard to either its procedural obligations appropriately to defend the matter or its substantive obligations to comply with previous court orders. This is not, however, enough reason to saddle the City with yet another costs order in respect of relief sought that was premature. I will therefore not make an order as to costs insofar as they were incurred after 26 February 2024.

Order

[65] I make the following order:

a. The rule *nisi* issued on 26 February 2024 and extended on 20 May 2024 is discharged.

b. The application embodied in the applicants' supplementary notice of motion dated 24 November 2023 is dismissed without detracting from the orders made on 4 September 2023 and paragraphs 1 and 3 of the order on 26 February 2024.

c. Each party is to pay their own costs incurred after 26 February 2024.

[redacted]

DJ SMIT
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of hearing: 19 and 22 November 2024

Date of judgment: 3 February 2025

For the Applicant:	JM Heher instructed by Fluxmans Inc.
For the Respondent:	EN Sithole instructed by Kunene Ramalapa Inc.