



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

CASE NO: UM 271/2020

Held at MMABATHO on this the 18th day of DECEMBER 2020
BEFORE the Honourable Mr Justice GURA

In the matter between:

THE KGETLENGRIVIER CONCERNED CITIZENS

1st Applicant

MR. CAREL VAN HEERDEN

2nd Applicant

and

THE KGETLENGRIVIER LOCAL MUNICIPALITY

1st Respondent

**THE MUNICIPAL MANAGER: KGETLENGRIVIER
LOCAL MUNICIPALITY**

2nd Respondent

**EXECUTIVE MAYOR: BOJANALA PLATINUM
DISTRICT MUNICIPALITY**

3rd Respondent

MEC ENVIRONMENTAL AFFAIRS, NORTH WEST

4th Respondent

**MINISTER OF HUMAN SETTLEMENTS, WATER &
SANITATION**

5th Respondent

MINISTER OF ENVIRONMENTAL AFFAIRS6th Respondent

HAVING HEARD ADV WIJNBEEK on behalf of the Applicant and having read the Notice of Motion and other documents filed of record;

IT IS ORDERED THAT:

1. The forms and service provided for in terms of the rules of the above Honourable court is condoned and that the matter is heard as an urgent application in terms of the provisions of rule 6(12) of the Uniform rules of Court.

PART A:

2. It is declared that raw sewerage from the sewerage works at Koster and Swartruggens are flowing into and is contaminating the Koster and Elands rivers respectively.
3. The First Respondent and Second Respondent are hereby ordered to immediately cease their usage of a raw sewer trench/ pipe or furrow to divert the flow of raw sewage into the Koster River.
4. It is declared that the Kgetlengrivier Local Municipality ("KLM") is in breach of its obligations to prevent contamination of the environment whilst allowing raw sewage to spill.
5. The First and Second Respondents are interdicted from allowing raw sewerage to overflow into the Koster and Elands rivers.

6. It is declared that the MEC for Environmental Affairs, despite a visit of the Provincial Government to the KLM, has not resolved the spillage of raw sewage.
7. The First and Second Respondents are compelled and ordered to urgently take remedial steps to stop the pollution by immediately fixing the causes to the spillages and to remedy the effects of the pollution caused, and to rehabilitate the affected areas.
8. The Applicants are authorised to employ an expert(s) to monitor the sewerage works and waterworks from date of this order for a period of 10 weeks and to compile a comprehensive report for the court, with the First respondent being liable to pay all such reasonable costs of the said expert. To the extent that costs are disputed, is the taxing master to be approached for resolution thereof.
9. The Municipal Manager of the KLM is ordered to imprisonment for 90 days, suspended on the following terms:
 - a. That the spillage of raw sewage into the Elandsriver and the Koster river be cleared up within 10 week days from the date of the order and that the First Respondent, duly assisted by the Second to Fourth Respondents, is ordered to take all necessary steps to ensure that raw sewage is not discharged into the aforesaid rivers or onto land surrounding the respective sewerage works at Koster and Swartruggens;
 - b. That the First Respondent is ordered to immediately cease the usage of raw sewer trenches / pypes or furrows to divert the flow of raw sewer from Koster and Swartruggens that finds way to the Koster and/or Elands rivers respectively.

- c. The Municipal Manager of the KLM is to file a report at Court 11 week days from the date of this order on steps taken to resolve the spillage of raw sewage and the prevention of similar incidents in the near future.
- 10. That, in the event that the spills are not resolved within 10 days of this order:
 - a. The order in 9 above be put into effect; and
 - b. The Applicant be authorised to take control of the sewerage works at Koster and Swartruggens, to appoint or employ suitably qualified people to operate the sewerage works and that the reasonable costs for such work be paid jointly and severally by the MEC responsible for Environmental Affairs, KLM and the Bojanala Platinum District Municipality ("Bojanala").

PART B:

- 11. It is declared that the KLM fails to supply potable water sustainably to the residents of Koster and Swartruggens.
- 12. It is declared that the water purifying works at Koster and Swartruggens ("the water works") are in states of disrepair and are mismanaged.
- 13. It is accordingly declared that Bojanala and the KLM are in breach of their constitutional obligations for providing potable water sustainably.
- 14. The Municipal Manager of the KLM is ordered to imprisonment for 90 days, suspended on the following terms:
 - a. That the systems for the provision of clear potable water is repaired and clear potable water, in sufficient quantities, is sustainably supplied to the

residents of Koster and Swartruggens within 10 week days from the date of this order;

- b. The Municipal Manager of the KLM is to file a report at Court 11 week days from the date of this order on steps taken to resolve the issues with supply of potable water to residents in Swartruggens and Koster.

- 15. That, in the event that the KLM fails to continuously supply potable water to the towns of Koster and Swartruggens within 10 week days of this order, that:

- a. The order in 14 above be put into effect; and
- b. The Applicant is authorised to take control of the water works, to appoint or employ suitably qualified people to operate the water works at Koster and Swartruggens and that the reasonable costs for such work be paid jointly and severally by the MEC for environmental affairs, KLM and Bojanala.

- 16. To the extent that the Court does not grant final orders aforesaid under **Part A and Part B**, that

- a. the prayers above per Part A and Part B to serve as interim order with immediate effect returnable on 1 March 2021, whereat the Respondents be called upon to show cause why the interim order should not be made final.
- b. The Applicant be granted leave to supplement the papers prior to the return date.

Other:

17. The Respondents are, jointly and severally ordered to pay the costs of the Application on the attorney and client scale including the cost of one (1) counsel where so employed.

BY THE COURT

REGISTRAR



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

CASE NO: UM 271/2020

Held at MMABATHO on this the 12th day of JANUARY 2021

BEFORE the Honourable Mr Justice GURA

In the matter between:

THE KGETLENG RIVIER CONCERNED CITIZENS

1st Applicant

CAREL VAN HEERDEN

2nd Applicant

and

KGETLENG RIVIER LOCAL MUNICIPALITY

1st Respondent

THE MUNICIPAL MANAGER: KGETLENG RIVIER
LOCAL MUNICIPALITY

2nd Respondent

THE EXECUTIVE MAYOR: BOJANALA PLATINUM
DISTRICT MUNICIPALITY

3rd Respondent

MEC ENVIRONMENTAL AFFAIRS, NORTH WEST

4th Respondent

MINISTER OF HUMAN SETTLEMENTS, WATER &
SANITATION

5th Respondent

MINISTER OF ENVIRONMENTAL AFFAIRS

6th Respondent

HAVING HEARD ADV WIJNBEEK on behalf of the Applicants and ADV LUSENGA on behalf of the Respondents and having read the Notice of Motion and other documents filed of record;

IT IS ORDERED

(By agreement)

1. THAT: The interim order granted on the 18th DECEMBER 2020 is hereby amended and amplified by this order on terms detailed hereunder.
2. THAT: The Respondent shall appoint a suitable implementing agent to operate and manage the 1st Respondent's water provision and sanitation services by no later than the end of JANUARY 2021.
3. THAT: Upon the appointment of the implementing agent by the 1st Respondent, the parties agree that the Applicants' shall handover the operation of the plants to the implementing agent in accordance with a handover plan developed between the Applicants and the implementing agent.
4. THAT: The Responsibility of appointing contractors shall remain that of the implementing agent in consultation with the 1st Respondent.
5. THAT: The 1st Respondent shall be liable to pay the costs of the Applicants and their contractors for their monitoring, preparation to render the services and the actual costs of rendering services until the handover to a suitable provider.

5.1 Payment of invoices are to be made by the 1st Respondent within 30 days from the rendering thereof.

6. THAT: The 1st Respondent shall be liable to pay the legal costs incurred on a party and party scale, from 19 DECEMBER 2020 to the date of the order.

7. THAT: The costs up to and including 18 DECEMBER 2020 shall be paid as ordered on 18 DECEMBER 2020.

8. THAT: This order shall constitute a full and final settlement of the Application by the Parties.

BY THE COURT

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