THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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City of Tshwane Metropolitan Municipality v Vresthena (Pty) Ltd (Registration No 2001/05148/07) and Others (1346/2022) [2024] ZASCA 51 (18 April 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding with costs an appeal against the decision of the Gauteng Division of the High Court, Pretoria (the high court).

The brief facts were as follows: The Zambezi Retail Park Centre (the Retail Centre) was a large commercial property situated at Erf 5 Derdepoort, R573 Meloto & R513 Zambezi. The Zambezi Retail Park Sectional Title Scheme was established in 2006 comprising of eight sections. On 8 July 2010 the scheme was extended to include section 9. Section 1 to 4, 7 and 8 in the building were owned by the First Respondent, Vresthena (Pty) Ltd (Vresthena), which leased the sections to various business entities. The management of the scheme in terms of the Sectional Titles Act 95 of 1986 (the Act) vested in the Body Corporate's trustees elected on 19 June 2018. The City provided electricity to the aforementioned properties, through the Body Corporate of Zambezi Retail Park (the Body Corporate). It was common cause that historically a petrol station, situated within the scheme, had always had a separate account with the City and a separate electricity connection. Save for the petrol station, the owner of which was not a party to this appeal, the City supplies electricity through a single supply point to the different sectional title units. The Body Corporate was billed accordingly. As of January 2022 due to the continuous failure by the Body Corporate to pay for services, the City implemented credit control measures, which included the disconnection of electricity in an attempt to collect the outstanding revenue. These measures were resisted by Vresthena. Consequently, it filed an urgent application in the high court. In part A, which was directed at the urgent relief, it sought an order compelling the City to accept and reconsider its application for a separate electricity connection for its sections of the retail complex. In addition, it sought restoration of the electricity and water supply to the retail complex. The relief in part B, which was not sought urgently, was conditional on the application for a separate electricity connection being rejected by the City. In that case, Vresthena recorded in part B that it would seek an order reviewing the rejection.

On 20 June 2022, the high court granted the order in favour of Vresthena. Dissatisfied with the outcome of the application the City sought leave to appeal. The appeal served before us with leave of the high court.

The issues before this court were whether the order granted by the High Court Pretoria (the high court) was appealable and if so, whether this Court should have granted condonation and reinstated the appeal and considered the merits thereof.

Regarding the appealability of the order, Vresthena submitted that the order was not appealable on the basis of its interim nature and fell outside the *Zweni* triad, whereas, the City submitted that the order was appealable in that it was final in effect and fell inside of the *Zweni* triad.

In its findings, the SCA held that, the jurisprudence as it stood, stated that an interim order may be appealable, taking into account a range of factors. The *Zweni* requirements played an important role in determining the issue of appealability in a particular case, but they were not immutable. The interests of justice continued to play a substantial role in the inquiry. What those interests were, involved a finely-weighed consideration the relevant factors in each case. The SCA further held that the orders that were granted by the high court have a number of short comings. First, the order did not make reference to the application for an additional electricity service connection as sought by Vresthena. Second, the duration of the order was indefinite which meant that it would endure until such time that the legal process in Part B was completed which left all the parties in a state of uncertainty. Third, there was no causal link between the order granted by the court under Part A and Part B of the notice of motion. Part A directed the City to continue to supply electricity and water to the entire Retail Park pending the resolution of Part B. However, Part B was directed only at a possible review of a possible decision by the City to refuse Vresthena's application for a separate supply to the units or sections owned by it. What was more held the SCA, w that, there was no time frame laid down for the anticipated review or for Vresthena to file its application with the City for a separate electricity supply as contemplated in s 7 of its By-Laws. Therefore, the court order did not set out steps to regulate Part B of the application. Fourth, the restoration of electricity without the provision for the payment of arrears creates an anomaly in that the City was forced to provide electricity to the property where payment was not being made. Lastly, the chilling effect of the order was that the order compelled the City to act contrary to the prevailing law and its constitutional mandate: it must continue to supply electricity to users who were in arrears and had a history of non-payment for the foreseeable future, and they were denied their statutory power to terminate services without approaching a court to obtain leave to do so. These characteristics of the order demonstrated that its effect was final in nature. The Court, further held that Vresthena and the other owners of the sections had no right, even prima facie, to continue to receive electricity without payment for those services. On the other hand, the City was enjoined to implement the credit and debt collection measures against the Body Corporate and terminate the supply of electricity to the retail complex. The order of the court a quo failed to take this into account. It assumed that Vresthena and the other owners had a right to receive electricity and ordered the restoration of its supply without imposing the reciprocal obligation on the owners for payment of the substantial arrear amount, and despite the history of ongoing non-payment over many years. In addition, the SCA also held that the court a quo failed to consider whether Vresthena had other alternatives. Which it clearly did. The SCA found that, Vresthena and the other owners had recourse against the Body Corporate. It further held that, it was not enough for them to say that it was dysfunctional and therefore they could not take steps to rectify the situation regarding payment to the City for the electricity consumed by the commercial owners of the sections in the Retail Park. In effect held the SCA, the high court's order impermissibly interfered with the Constitutional obligation on the City to ensure the collection of revenue for the services it provided. Consequently, the high court should not have granted the order as it did not satisfy the requirements of an interdict.

As a result, the following order was made: Condonation was granted and the appeal reinstated; the appeal was upheld with costs and the high court order was set aside and replaced with the following orders: 'The application is dismissed with costs.'

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