

**IN THE HIGH COURT OF SOUTH AFRICA
(Witwatersrand Local Division)**

Case No 13865/06

In the matter between:

LINDIWE MAZIBUKO

First applicant

GRACE MUNYAI

Second applicant

JENNIFER MAKOATSANE

Third applicant

SOPHIA MALEKUTU

Fourth applicant

VUSIMUZI PAKI

Fifth applicant

and

THE CITY OF JOHANNESBURG

First respondent

JOHANNESBURG WATER (PTY) LTD

Second respondent

**THE MINISTER OF WATER AFFAIRS
AND FORESTRY**

Third respondent



SUPPLEMENTARY AFFIDAVIT

I, the undersigned

LINDIWE MAZIBUKO

state under oath that:

1. I am the first applicant in this matter. I am authorised to depose to this supplementary affidavit on behalf of the second to fifth applicants.

2. The facts contained in this affidavit are within my personal knowledge, unless it is clear from the context that they are not, and are, to the best of my belief, true and correct. All submissions of law are made on the advice of the applicants' legal representatives.

3. The First and Second Respondents have filed a notice in terms of Rule 53 (1)(b) of the Uniform Rules of Court, enclosing the record of two decisions made by the City of Johannesburg ("**the City**"), alternatively Johannesburg Water (Pty) Ltd ("**Johannesburg Water**"):
 - 3.1. First, the decision to limit free basic water supply to 6 kilolitres per household per month (notice of motion paragraph 1.1);
 - 3.2. Second, the decision to discontinue in Phiri, Soweto a full-pressure, unmetered, uncontrolled volume water supply for which a fixed charge is levied and to install a controlled volume water supply system operated by means of a prepayment water meter. (notice of motion paragraph 1.2)

4. In light of the above record, I hereby supplement my founding affidavit pursuant to Rule 53 (4) of the Uniform Rules of Court.

5. I will deal with the record of each decision in turn. For the sake of convenience I attach a paginated copy of the complete record as filed by the first and second respondents as "**LM46**".

PART 1

THE DECISION TO LIMIT FREE WATER TO 6 KL PER HOUSEHOLD

6. The first and second respondents filed a record of the first decision consisting of:
 - 6.1. Version 1 of the Department of Water Affairs and Forestry (“**DWAF**”) “*Free Basic Water Implementation Strategy Document*” dated May 2001 (File 1 p 139 to 175) (“**the Implementation Strategy**”)(I point out that this is the same document referred to in paragraphs 41 to 46 of my founding affidavit);
 - 6.2. The interim business plan of Johannesburg Water for 2001/2002 dated 10 June 2001 (File 1 page 11 to 138);
 - 6.3. The City’s resolution dated 28 June 2001 approving the interim business plan (File 1 page 1), including an earlier resolution concerning Free Basic Water dated April 2001 (File 1 page 2 to 10) in which the interim business plan was recommended for approval;
 - 6.4. The Johannesburg Water business plan for 2002 dated January 2002 (File 1 page 176 to 399);
 - 6.5. The City’s resolution dated 22 August 2002 approving the 2002 business plan (File 1 p 179).

The chronology of the decision

7. The decision by Johannesburg Water to limit free basic water supply to 6 kilolitres per household appears to have been made some time before April 2001. In the review of the Johannesburg Water interim business plan by the Contract Management Unit in or about April 2001 (File 1 p 2 to 10) there is already reference (at p 4) to the fact that provision has been made for 6 kilolitres free water. This decision continues to be reflected in the later version of the business plan dated 10 June 2001 (File 1 p 24).
8. The City Council's decision to limit the free basic water supply to 6 kilolitres per household appears from the record to have been made on 28 June 2001, when it approved the interim business plan of Johannesburg Water. (File 1 p 1). It appears that in approving this decision, it had regard only to the interim business plan dated 10 June 2001 (File 1 p 11 to 138).
9. There is no reference in the subsequent business plan dated January 2002 (File 1 p 176 to 399) approved by the Council on 22 August 2002 that any subsequent decisions were taken regarding the level of free water supply. This business plan simply refers to the decision ostensibly made prior to April 2001 that the free water policy would provide for 6 kilolitres (File 1 p 334).
10. The record shows that the decision of the City and Johannesburg Water to limit free water supply to 6 kilolitres per household per month must, in addition to what is stated in paragraph 151 of my founding affidavit, also be reviewed and set aside on the following grounds:

The nature of the discretion was misunderstood

11. The decision by the City and Johannesburg Water to limit the free basic water supply to 6 kilolitres did not take into account the provisions of the Regulations Relating to Compulsory National Standards and Measures to Conserve Water (GN R509 of 8 June 2001) ("**the National Standards Regulation**") which, in regulation 3(b) provides for the minimum standard for basic water supply services. This is apparent from the fact that both the interim business plan dated 10 June 2001 (File 1 p 37) and the business plan dated January 2002 (File 1 p 201) refer to the fact that "*there are currently no statutory minimum levels of services standards in force for basic water and sanitation in South Africa*".
12. Neither Johannesburg Water, nor the City, therefore took into account either the fact that the National Standards Regulation does prescribe minimum levels of services standards for basic water and sanitation, or the fact that the standards were in the nature of a *minimum* basic water supply.
13. Either the City and Johannesburg Water did not take into account the DWAF Implementation Strategy, or alternatively, that it did not comply with the policy as contained therein. In particular, it appears from the record that neither the City, nor Johannesburg Water paid any regard to the fact that the Implementation Strategy makes specific reference to the discretion of municipalities to provide a greater amount than the minimum amount of 6 kilolitres per household (File 1 p 144 paragraph 3.3).

The overlap between free basic water and sanitation

14. The Implementation Strategy calls upon local authorities to give special consideration to the fact that the minimum should be increased where the free basic supply would also be used for flushing in households that have waterborne sanitation. It says that in such circumstances, “*where financially feasible*”, the basic supply “*may need to be adjusted upwards*”. (File 1 p 144 paragraph 3.3 – 3.4) The policy states that certain local authorities have defined free basic water as 9 kilolitres per month to take into account the effects of waterborne sanitation.
15. The record shows that neither the City, nor Johannesburg Water gave any consideration either to the effect of waterborne sanitation on the free basic water supply, or on the feasibility for the City to adjust the basic minimum upwards.
16. I refer to paragraphs 19, 24, 56 and 144 of my founding affidavit, in which I point out that the 6 kilolitres of free water is also being used for sanitation purposes by the residents of Phiri.

Ignoring relevant considerations

17. In determining the level of free basic water, the City and Johannesburg Water paid no regard to the particular and localised needs of the poor who reside within its jurisdiction. In particular, it appears from the record that no consideration was given to the socio-economic factors relevant to determining the basic minimum water supply for the poor of Johannesburg, including:

- 17.1. The prevalence of HIV, AIDS and AIDS-related diseases among those who would be affected by the basic minimum water policy;
- 17.2. The density of living conditions;
- 17.3. The high level of unemployment in Johannesburg, in particular in poor areas;
- 17.4. The number of people who would have to rely exclusively on the free basic minimum.
18. It also failed to take into account the particular geographical reality of the poor urban areas in Johannesburg, including the absence of rivers, and the hot, dry climate that prevails. I refer in this regard to the supplementary affidavits of Gleick and Martin attached to my founding affidavit.
19. It is further clear from the record that at no stage did the City or JW consider the effect that setting the free basic minimum standard at only 6 kilolitres per households would have on
- 19.1. the fundamental rights of the poor, including the right of access to sufficient water in terms of s 27(1)(b) of the Constitution of the Republic of South Africa, 1996;
- 19.2. the duty on the City and Johannesburg to respect, protect, promote and fulfil our Constitutional rights in terms of s 7 (2) of the Constitution.

20. The decision in fact violated my rights and those of the other applicants and people who are in the same position as us, including our rights of access to sufficient water in terms of s 27(1)(b) as well as the right to administrative action that is lawful, reasonable and procedurally fair in terms of section 33(1) of the Constitution.

No fair procedure followed

21. The decision to limit the free basic water supply only to 6 kilolitres per household materially and adversely affected my rights, as well as those of the other applicants and other people who are in the same position as us.
22. Neither the City, nor Johannesburg Water, however, made their decisions in a procedurally fair manner, and in particular did not do any of the following:
- 22.1. No notice was given that the decision would be taken or what the purpose or nature of the decision would be;
- 22.2. No opportunity was given to those of us affected by the decision to make any representations to the City or Johannesburg Water about the free minimum water supply;
- 22.3. Those of us affected by the decision were not told that we could challenge the decision, or request reasons for the decision.

23. The decision to limit the free water supply to 6 kl also materially and adversely affected the rights of the public, particularly those members of the public who are poor and rely on the free basic water supply as their only source of water.
24. Neither the City, nor Johannesburg Water held a public inquiry regarding what the amount of free basic water supply ought to be. Neither provided for notice and comment procedure in which we could participate.

Legal grounds

25. It is accordingly clear that the first decision of the City and Johannesburg Water to determine the free basic minimum level must be reviewed and set aside on one or all of the additional grounds, namely that:
 - 25.1. the decision was procedurally unfair;
 - 25.2. relevant considerations were not considered in the making the decision;
 - 25.3. the decision was arbitrary;
 - 25.4. the decision was irrational;
 - 25.5. in making the decision, the City and Johannesburg Water failed to appreciate the nature of its discretion, alternatively unduly fettered its own discretion;

25.6. the decision was unconstitutional and unlawful.

26. In relation to the allegations made in paragraph 121 and 151 of my founding affidavit in relation to the interpretation of National Standards Regulation 3(b), I wish to add that it appears from Johannesburg Water's business plan that the ubiquitous 'backyard shacks' in Phiri are not considered as separate households for the purposes of the allocation of the 6 kilolitres per household per month free basic water amount. (File 1 p 25) This means that two or more households, with a combined total of 16 or more people, would receive only one amount of 6 kilolitres free basic water monthly.

PART 2

THE DECISION TO DISCONTINUE DEEMED CONSUMPTION AND INSTALL PREPAYMENT WATER METERS IN PHIRI

27. The first and second respondents filed a record of the second decision consisting of the following documents:

27.1. In relation to the decision by Johannesburg Water:

27.1.1. Minutes of the meetings of the Board of Directors and internal committee meetings dated 16 August 2002 (File 2 p 400 to 415); 17 October 2002 (File 2 p 416 to 426), 27 November 2002 (File 2 p 427 to 482) and 8 May 2003 (p 488 to 514); and

27.1.2. Business Plans 2003 to 2005 (p 515 to 707) and 2004/2005 (p 709 to 810).

27.2. In relation to the City's decision:

27.2.1. Minutes of meetings of the meetings of the City's municipal entities committee dated 17 September 2002 (File 2 p 483 to 486), 19 November 2002 (p 487) and presentation to the committee regarding prepayment metering on 22 July 2003 (p 958 to 985);

27.2.2. The City Council resolution dated 28/29 May 2003 (p 708) and 19 June 2003 (p 852 to 946); and

27.2.3. Documents tabled to Council regarding the Master Plan for the Provision of Water and Sanitation Services for Informal Settlement, January/February 2005 (26 February 2004) (p 811 to 851) and the Implementation Policy for Prepayment Metering for Deemed Consumption Areas (p 947 to 957).

The chronology of the second decision

28. The Board of Johannesburg Water considered a presentation on a proposed project called "*Operation Gcin'amanzi*" on 16 August 2002 (File 2 p 403 paragraph 4.2). The record does not include any presentation made to the Board in writing and it must accordingly be assumed that no written presentation was made. It is minuted (file 2 p 403) that it was agreed that "*a detailed report on this*

matter should be submitted to the Operations and Procurement Committee prior to the next Board Meeting on 7 November 2002”.

29. The agenda for the meeting of the Operations and Procurement Committee of Johannesburg Water of 17 October 2002 included an item 8 “*Operation Gcin’amanzi*”. It appears, however, that no discussion was held at that meeting, but that the item was held in abeyance for consideration of a meeting of the committee on 27 November 2002 (File 2 p 422).

30. At the meeting of the Operations and Procurement Committee dated 27 November 2002, a report “*providing background, motivation, costing, proposals, current initiatives and an implementation plan*” was “*noted*”. (File 2 p 431) The record contains a document, with the comment in script that “*Johannesburg Water believes this is the document referred to in item 3*”. This report (file 2 p 439 to p 482) appears from the record to be the first written presentation to have been made to the Johannesburg Water decision-makers regarding the issue. Yet, the minute of the meeting of 27 November 2002 notes “*the approval given by the Board on the 16 August 2002 to proceed in principle with the project and especially the planning phase*”. (File 1 p 431) First, no such “*approval in principle*” is recorded in the minutes of the Board meeting of 16 August 2002. Second, if such “*in principle*” approval had been given, it appears to have been done not even on the basis of a written presentation and proposal, and the record includes no reference to the basis for such a decision.

31. The minutes of the Board meeting of 8 May 2003 merely records a report on the Gcin’amanzi project (File 2 p 494), as well as the fact that the proposal regarding three different service levels (File 2 p 498 - 514) was noted. (File 2 p 490) At that

meeting, the business plan for 2003 – 2005, which refers to the Gcin'amanzi project (File 2 p 592) was also approved (File 2 p 492).

32. On 28/29 May 2003, the City also approved the business plan, including its references to the Gcin'amanzi project.
33. The updated Johannesburg Water business plan 2004/2005 (p 709 ff) refers to the fact that Operation Gcin'amanzi was launched in Phiri in July 2003 (File 2 p 757). There is nothing in the record reflecting a decision being taken, or the reason for a decision, to launch the project in Phiri.
34. After the decision to launch Operation Gcin'amanzi in Phiri, on 22 July 2003, Johannesburg Water made a presentation to the Municipal Services Entities Committee regarding prepayment metering. (File 2 p 958 to 985). The City also adopted its
 - 34.1. "Master Plan" for provision of water and sanitation services to informal settlements on 12 February 2004; and
 - 34.2. The Water Services By-Laws on 19 June 2003. (File 2 p 852) These by-laws are those referred to in paragraphs 59 to 63 of my founding affidavit.
35. On 3 March 2005, Johannesburg Water sought approval from the City for its implementation policy (p 949 to 956). The City resolved to "note" this policy on 17 March 2005.

36. There are a number of additional facts that appear from the record of this second decision, which support the review and setting aside of the decision to discontinue deemed consumption, and to introduce prepayment water meters in Phiri:

36.1. First, the introduction of prepayment water meters was an inappropriate mechanism to address the particular problems which Operation Gcin'amanzi was supposed to address;

36.2. Second, Operation Gcin'amanzi was introduced and approved for one purpose, namely water-saving, but was circuitously used for another, namely cost-recovery;

36.3. Third, the water-saving and cost-recovery aspects of Gcin'amanzi were unrelated and ought to have been severed;

36.4. Fourth, there was no reason to introduce this project in Phiri and no proper decision taken in this regard;

36.5. Fifth, the manner in which the decision was finally implemented did not comply with the requirement of Johannesburg Water, namely that it could only happen with the participation and consent of the community, and where it was the choice of the particular customer; and

36.6. Sixth, the manner in which the decision was taken was procedurally unfair.

37. I deal with each of these issues in turn below. Before doing so, I briefly consider the stated reasons for the introduction of Operation Gcin'amanzi, as they appear from the record.

The stated purpose of Operation Gcin'amanzi

38. It is clear from the record that Operation Gcin'amanzi was introduced as a project aimed at "*the reduction of unaccounted for water*". (File 2 p 441) It is described as a "*demand reduction*" mechanism. Johannesburg Water wanted to reduce unaccounted for water in order to "*realise the additional profit that would result from such reduction*". (File 2 p 558)
39. Operation Gcin'amanzi specifically targeted communities which had up to that stage been treated as deemed consumption areas by the City. (File 2 p 439) Such deemed consumption areas were poor communities like mine where we were paying for water on the basis of a deemed monthly consumption of 20 kilolitres on a property, rather than on the basis of metered consumption. I refer to this in paragraph 78 of my founding affidavit.
40. According to Johannesburg Water at the time that it approved the decision to introduce Operation Gcin'amanzi, the "*deemed consumption*" areas were in fact consuming approximately three times more per property than the deemed consumption of 20 kilolitres. (File 2 p 444)
41. The report points to a number of reasons for this discrepancy between deemed and actual consumption:

- 41.1. The “*deemed consumption*” was calculated on the basis of the total supply volume divided by the number of only formal erven in the area. This resulted in a “*fictitious average*”. (File 2 p 439, p 444);
- 41.2. The use of “*properties*” as the basis of the calculation is also inappropriate, considering the number of households, often housed in “*backyard shacks*”, on each property (File 2 p 444);
- 41.3. There was a perceived “*lack of ownership*” in the consumption of water in these areas (File 2 p 439);
- 41.4. There existed a non-payment paradigm – both for political reasons and due to “*socio-economic conditions*” (File 2 p 439, p 455);
- 41.5. A “*major factor contributing to the water demand management problem in Soweto*” is “*pure operational water supply issues*”. These issues include bulk purchases, bulk supply, bulk storage and distribution (File 2 p 440, p 454);
- 41.6. The disrepair of the network and plumbing. A “*limited intervention*” on a pilot project involving only network renewals, “*partial repair*” and retrofitting of private plumbing fixtures already reduced the consumption to just above the deemed consumption rate (23 kl) (File 2 p 445).
42. Other reasons for the “*uncontained water supply*” problem in Soweto given in the report are:

- Historical lack of management capacity;
- Shortage of technical and engineering management;
- Insufficient systems, procedures, programmes, policies, processes and readily available plant and material to perform operation and maintenance functions;
- Shortage of and/or inappropriate capital expenditure to renovate and rehabilitate infrastructure;
- Neglect of billing, metering, customer management and customer service (File 2 p 455).

43. These problems, according to the report, resulted in actual supply per property being in excess of the deemed consumption amount, particularly in areas like Alexandra and Soweto.

Prepayment water meters do not address most of the identified problems

44. The introduction of prepayment water meters is entirely unrelated to the majority of the problems listed above. Most of the problems could, in fact, not be solved by the introduction of prepayment water meters.
45. It is clear from the report that Johannesburg Water was nevertheless “*intent on adopting prepayment water metering as the preferred service delivery option to be implemented in the deemed consumption areas of supply.*” (File 2 p 441).

46. It is further stated that prepayment “*can be considered to be a water demand management tool and will greatly assist Johannesburg Water in achieving many of the objectives set for this project*”.
47. This statement cannot, however, be accepted. The introduction of prepayment addresses, in the main, non-payment. The choice of prepayment water meters to address the Johannesburg Water list of concerns is accordingly irrational and unreasonable.
48. It is particularly irrational in light of the fact that Operation Gcin’amanzi was, at least ostensibly, only indirectly concerned with non-payment, as I explain below.
49. Johannesburg Water refers to the Operation Gcin’amanzi as limiting the water “*demand*” in Soweto. Considering, however, that the use of prepayment meter limits “*demand*” by cutting off supply (called a “*proactive intervention in the water supply of Soweto*”, File 2 p 455), the euphemistic use of the term “*demand management*” has a cynical slant.

The ostensible and real aims of Operation Gcin’amanzi

50. The factors listed in the report as resulting in the discrepancy between deemed and actual consumption in Soweto included “*hard*” (operational) and “*soft*” (political, social and consumer-related) issues. The report approved by the Board, however, recommended that the issues of “*demand management*” be separated from the issues of non-payment – i.e. that the approval to proceed with Operation Gcin’amanzi should not be based on reasons relating to non-payment (File 2 p 441).

51. Despite this, the report states that it would be “*very short-sighted*” of Johannesburg Water not to use the opportunity also “*to address issues relating to non-payment in tandem with the implementation of the proposed initiatives to address water wastage*” (File 2 p 441).
52. It appears from this part of the record (on which the initial “*in principle*” approval was apparently based) that, although the reason for the introduction for Operation Gcin’amanzi was in the main to address water wastage, it was considered prudent also to address “*concurrently*” with this the problem of non-payment as “*a natural progression to the project*” and a “*part and parcel of the implementation process*”.
53. While the Operation Gcin’amanzi process would accordingly be presented as a water wastage intervention, and while “*success should largely be measured against reduction in water demand*” rather than increase in payment, it would be the project’s “*concurrent*” aim to address the more “*political*” issue of non-payment for services. It appears that the advantage of approaching the project in this way was that it would not be “*bogged down in the issues relating purely to non-payment*” (File 2 p 441).
54. The problem with the decision to deal with the issues “*concurrently*”, even though they were separable, is that the two issues – water wastage and non-payment – are in fact unrelated and not rationally linked.
55. Non-payment often relates, at least in the case of those people in my community who live in absolute poverty, to the inability to pay. Water wastage relates to

issues of defunct physical infrastructure, leakages, and to some extent, lack of public education regarding the need to conserve water.

56. It is apparent from the record that Johannesburg Water and the City
- 56.1. used an ostensible water conservation mechanism to limit our water supply only to the basic minimum;
- 56.2. recognised that the basic minimum of 6 kl is not enough (it considers 20 kl to be “*an acceptable monthly household consumption for a working class region similar to Soweto with similar socio-economic conditions*”) (File 2 p 444);
- 56.3. recognise that a substantial percentage of households cannot afford more than the free basic minimum (File 2 p 580).
57. To use measures ostensibly (and publicly) aimed to address the one purpose, namely water wastage, while it is also (rather circuitously) used to address the other (payment) is an irrational and inappropriate use of public power. It also illustrates why people in my community have been left without access to water for substantial periods as a result of what is ostensibly a “*water conservation*” campaign.
58. It is apparent from the record that in approving “*in principle*” this “*concurrent*” approach, and in particular the use of prepaid water meters, the City and Johannesburg Water acted irrationally and unreasonably. Neither the City, nor Johannesburg Water gave any consideration to effect that this “*demand*

reduction” would have on the standard of living of the poor, or on our constitutional rights. In fact, this decision resulted in a violation of our rights, as is set out in my founding affidavit.

The issues of conservation and non-payment are separable

59. The applicants in this matter do not argue with the need to conserve water. Johannesburg Water and the City could, and should however, have achieved their goal to reduce water wastage without limiting our access to sufficient water due to the draconian measure of a prepayment water meter.
60. Such was the distinction between the matters related to wastage and those relating to non-payment that it was said that *“should the project become bogged down in the issues relating purely to non-payment”, “a reassessment may be necessary with a view to continuing with those initiatives that only address water wastage and that can be motivated strongly on financial grounds.”*
61. Of the eight “technical interventions” involved in Operation Gcin’amanzi, only one relates to the installation of metering infrastructure (File 2 p 468 to 469).
62. It is apparent, accordingly, that politically and technically, the primary goal of Operation Gcin’amanzi (to reduce water wastage) was entirely separable from the secondary goal (to increase payment percentages).
63. It was irrational and unreasonable not to have separated the two issues in order to avoid the grave hardship that the *“concurrent”* process has caused.

No basis for choosing Phiri

64. In the earlier presentations, it is stated that Soweto generally is “*the worst water supply area*”, and that it should, accordingly be “*tackled first*”. (File 2 p 439) It was proposed that the Board of Johannesburg Water approve a “*prototype phase*” of the proposed intervention. (File 2 p 440). Although reference is made to a “*Soweto Discussion Document*” (File 2 p 440, p 442) setting out the problems, context, proposed options and concept solutions etc. specifically relating to this area, this document is not included in the record, and it must accordingly be assumed that it was not considered by either Johannesburg Water or the City in making its decision.
65. At the stage of the so-called “*in principle approval*” of the Gcin’amanzi project, it was envisaged that a smaller-scale “*prototype*” would be implemented first, in the course of which the methodology would be developed (File 2 p 440).
66. The record shows no basis for the decision to select Phiri as prototype. In the report on which the decision to approve Gcin’amanzi was based, the criteria for a prototype project are articulated as follows (File 2 p 465):
- Community leadership and community organisations;
 - Maximum participation by the community, as well as buy-in;
 - A socio-economic structure and homogeneous and representative of the greater Soweto;
 - Between 1500 and 2500 erven;
 - No previous upgrading must have occurred;

– The water supply zones and sewer sub-catchments should coincide.

67. I don't know whether Phiri complies with some of these criteria. I do know, however, that there has not been maximum participation or buy-in by the community. The community organisations have clearly expressed their objection to the project.

68. I also know that Phiri is not "*representative*" of the greater Soweto. This area is poorer than most.

69. In any event, there appears from the record not to have been any rational consideration of the process. There is no record of any consideration being given to establish the prototype area here in Phiri.

70. In fact, from Johannesburg Water's own analysis it seems that the decision to introduce pre-payment meters at all in Phiri was an entirely irrational one, if measured against the original motivation for the project.

71. In Phiri, before implementation of Operation Gcin'amanzi, the average water demand per stand was 55 kl per month. This is much less than what was considered to be the water demand in Soweto generally (61 kl) (File 2 p 758; see also p 444).

72. According to the Johannesburg Water 2004/2005 business plan dated 11 May 2004, before the implementation of Gcin'amanzi 45 kl of the average 55 kl water demand per month per stand in Phiri was due to "*excessive leaks/wastage*".

Only 10 kl per month per stand accordingly was actual “consumption” (File 2 p 758). This is only half what the deemed consumption was for those areas, namely 20 kl per month.

73. The very reason for the introduction of Gcin’amanzi was because actual consumption was considered to be much higher than deemed consumption. It is clear that in the case of Phiri, it was necessary only to address the infrastructural problems in order to bring the actual consumption well below the deemed consumption. There was no rational connection between the further introduction of the prepaid water meters, and the stated aim to eliminate the discrepancy between actual and deemed consumption.

74. The introduction of prepayment meters in Phiri was accordingly irrational, unreasonable and unjustifiable, particularly in light of the immense hardship that it has caused to my fellow applicants and me, and to every resident of Phiri.

The violation of the “consultation” and “choice” principle

75. There are recurring references in the record of this decision to the need for communication and broad-level consultation with the community. (File 2 p 494, p 527, p 581, p 597; See also File 1 p 344).

76. The report on which the apparent “*in principle*” approval of the Board of Johannesburg Water was based emphasised that “*prepayment should not be enforced on customers until such time as majority acceptance (critical mass) was obtained*”. In addition, the point is made that “*the installation of a prepayment meter on any property should be by choice of the customer*”.

77. The report also warns that violation of this principle of choice would “*in all likelihood lead to confrontation.*” It is apparent from the contents of paragraph 86 to 90 of my founding affidavit not only that this principle was in fact violated, but that the warning was not heeded.

DEPONENT

I CERTIFY that this affidavit was signed and sworn to before me at _____ on this the _____ day of _____

2006, by the deponent who acknowledged that she knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on her conscience and who uttered the following words: "I swear that the contents of this affidavit are true, so help me God". I certify that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

Name:

Address:

Capacity: