

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

CASE NO: 22/9258

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED.
26 April 2022

In the matter between:

Idola (PTY) LTD

(Registration No:2014/216003/07)

First Applicant

TWIN CITY REALITY (PTY) LTD

(Registration No: 2016/253832/07)

Second Applicant

and

**THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

First Respondent

**THE MUNICIPAL MANAGER OF THE CITY OF
JOHANNESBURG METROPOLITAN MUNICIPALITY**

Second Respondent

JUDGMENT

CRUTCHFIELD J:

[1] This application came before me urgently on 22 March 2022. The first applicant is Idola (Pty) Ltd and the second applicant is Twin City Realty (Pty) Ltd.

[2] The applicants sought an interim interdict prohibiting the first respondent, the City of Johannesburg Metropolitan Municipality, and the second respondent, the Municipal Manager of the City of Johannesburg Metropolitan Municipality, (jointly referred to as the “municipality”), from disconnecting or reducing the supply of

municipal services to Erf [...], Halfway House Ext 127, Johannesburg (“the property”), pending finalisation and final determination of:

- 2.1 The pending dispute in terms of Section 102(2) read with Section 95(f) of the Local Government Municipal Systems Act, 32 of 2000 lodged in respect of account number [...]; and
- 2.2 The pending dispute in this Court under case number 59297/2021, and
- 2.3 Costs of this application on the scale as between attorney and client in the event of opposition to the relief sought.

[3] The applicants are the registered owners of the property. The applicants are responsible for payment of the municipality’s accounts.

[4] An existing order was granted by Siwendu J, by agreement between the parties, on 20 October 2020 under case number 18237/2020.

[5] This application deals with facts that arose subsequent to the granting of the order of Siwendu J.

[6] There is a longstanding dispute between the applicants and the municipality in respect of the municipality’s charges levied in respect of the property. The dispute includes issues in respect of the valuation roll and the scale of the charges levied by the municipality against the property, the municipality’s previous termination of services to the property and the applicants’ alleged illegal reconnection thereof.

[7] Siwendu J’s order provides *inter alia* that upon restoration of the municipal services to the property pursuant to the order, the municipality would be interdicted from disconnecting or limiting the municipal services to the property pending the outcome and finalisation of a meeting to be convened by the municipality with the applicants within thirty (30) days of Siwendu J’s order relating to the dispute, referred to therein and hereinafter as the ‘MSA dispute’. Furthermore, Siwendu J’s order provides that the municipality adjudicate and decide on the MSA dispute and advise

the applicants of the outcome thereof, within thirty (30) days of the period after the meeting having lapsed.

[8] The applicants allege that finality as envisaged in the order of Siwendu J was not achieved and the applicants launched what they termed “comprehensive” proceedings, currently pending in this Court under case number 59297/2021, to resolve the MSA dispute and ancillary issues in respect of the municipality.

[9] The applicants allege that they have substantial prospects of success under case number 59297/2021 and thus that the balance of convenience favours them in this application.

[10] The MSA dispute and the parties’ compliance or otherwise with Siwendu J’s order is before this Court under case number 59297/2021.

[11] I do not intend dealing with the issues covered by the MSA dispute, the order of Siwendu J or the proceedings under case number 59297/2021, issued during December 2021. Those disputes are before this Court for adjudication under the stated case number.

[12] The municipality concedes that it is not entitled to terminate the municipal services to the property in violation of Siwendu J’s order. However, the applicants last paid their municipal account in June 2021 and the municipality argues that that fact entitles the municipality to terminate the municipal services to the property.

[13] The applicants allege that the municipality’s representatives or contractors on behalf of the municipality, attended at the property on 24 February 2022, intending to terminate the electricity supply to the property.

[14] The representatives and/or contractors on behalf of the municipality allegedly did not have a necessary key in their possession and left, alleging that they would return to the property with the key subsequently.

[15] The applicants allege that the municipality's attempt to terminate the electricity supply on 24 February 2022 aforementioned violated the municipality's by-laws in that a pre-termination notice was not given by the municipality to the applicants.

[16] The municipality concedes that it is not entitled to terminate the electricity supply to the property or indeed the municipal services without having fulfilled the applicable requirements for doing so.

[17] Over and above the order of Siwendu J and the alleged failure to provide the required pre-termination notice, the municipality relies on the non-payment by the applicants for municipal services consumed by the applicants at the point of supply, being the property.

[18] The applicants allege that in the event of a termination by the municipality of the electricity supply to the property, riots, damage to the property and the loss of leases will occur, effectively amounting to damage to the applicants as envisaged in the requirements for an interim interdict. In this regard, the applicants allege that on previous occasions when the municipality terminated the electricity supply to the property, damage such as that abovementioned occurred.

[19] The applicants dispute that they are liable to the municipality for payment of municipal service charges, levies and a related penalty concerning the property and allege a *prima facie* right to the relief sought in the notice of motion, a *prima facie* right being the first requirement of an interim interdict.

[20] The issue of the penalty referred to immediately above relates to the MSA dispute and the applicants' alleged prior unlawful reconnection of the electricity supply to the property.

[21] The existence of disputes between the applicants and the municipality however, does not permit the applicants to cease payment for the municipal services consumed at the property. Nor is there anything in the order of Siwendu J that permits the applicants to stop paying for the services consumed by it.

[22] Furthermore, the order of Siwendu J does not serve to protect the applicants against non-payment for consumption.

[23] The municipality ought not to have sought to terminate the electricity supply to the property 24 February 2022, without giving the appropriate pre-termination notice to the applicants and the applicants are entitled to an order to that extent.

[24] As to the applicants alleged *prima facie* right to the relief sought in the notice of motion, the applicants were indebted to the municipality in respect of arrears, the “previous account balance”, in the amount of R3 202 578.17, the due date of which was allegedly 31 December 2021. The applicants were indebted to the municipality as at 9 December 2021 in respect of current charges, in the amount of R1 036 349.70.

[25] Furthermore, the applicants were indebted allegedly to the municipality as at March 2022, in the amount of R5 170 046.82 in respect of electricity and water consumption, allegedly based on the actual reading of the electricity and water consumption meters. Part of that amount includes the disputed amounts referred to by the applicants hereunder. Even taking into account the disputed amounts regarding water and electricity consumption as at 20 October 2020, the date of Siwendu J’s order, the applicants remain indebted to the municipality, particularly but not only in respect of the period subsequent to Siwendu J’s order.

[26] The municipality is entitled to receive payment pending finalisation of the disputes between the parties and the applicants are not entitled to stop paying as they did, during June 2021.

[27] Whilst it appears that the applicants do enjoy prospects of success under the MSA dispute, they are not entitled to take the law into their own hands and simply stop paying for the services consumed at the property. This is notwithstanding the alleged overcharge by the municipality in the amount of R2 748 849.01 as at 8 July 2021 for electricity consumption that is common cause between the parties. An amount of R1 828 542.54 remains in dispute.

[28] As regards water and sewerage, the applicants tendered to pay an amount of R1 600 000.00 in respect of the disputed sewerage charges.

[29] Whilst the municipality is not entitled to terminate services to the property in violation of Siwendu J's order and its own by-laws, including prior notice to the applicants, the applicants are not entitled to simply stop paying for all services consumed by it.

[30] Nothing entitles the applicants to the interim interdict sought by it in circumstances where it unilaterally elected to stop paying for the services consumed by it. This is notwithstanding the substantive disputes between the applicants and the municipality and the alleged overcharge by the municipality.

[31] At the very least, the applicants ought to have paid the amounts they contended were due for actual consumption at the property in respect of the municipal services, from June 2021. The applicants however failed to pay anything at all.

[32] In the circumstances, the applicants failed to show a *prima facie* right to the relief sought by them and the application stands to be dismissed.

[33] As regards the costs of the application, the municipality was not entitled to terminate electricity supply to the property without giving the applicant's due notice thereof.

[34] In the circumstances, I am of the view that each party should pay its own costs of this application.

[35] By reason of the aforementioned, I grant the following order:

1. The application is dismissed;
2. Each party is ordered to pay its own costs of the application.

I hand down the judgment.

CRUTCHFIELD J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

Electronically submitted therefore unsigned

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 26 April 2022.

COUNSEL FOR THE APPLICANTS:	Mr J A Venter & Ms A Craucamp
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COUNSEL FOR THE RESPONDENTS:	Mr E Sithole
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