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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 8538/2022

DATE:

In the matter between:

K2012190864 (PTY) LIMITED
(Registration No. 2012/190864/07)

Applicant

and

**THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Respondent

Coram: Ternent, AJ

Heard on: 22 May 2023

Delivered: 26 September 2023

Summary:

JUDGMENT

TERNENT, AJ:**INTRODUCTION**

[1] This is a matter in which the applicant is at loggerheads with the respondent over its billing of municipal services which commenced during February 2017 and remains unresolved to date.

[2] It was submitted to me it is glaringly apparent, from the monthly tax invoices issued by the respondent, that its billing system is shambolic, and the levels of frustration experienced by the sole director of the applicant, Jacobus Johannes Stols, in attempting to resolve the impasse, has come to nought.

[3] As a consequence, the applicant sought an interim interdict against the respondent preventing it from terminating the electricity and water supply to the applicant's premises which are situate at Erf [...], 32 Durban Street, City and Suburban. This, until such time as its municipal account number 553745968 for the period 1 May 2017 to the date of this order had been rectified by:

3.1 Reinstating the instalment plan that came into effect during 2016. In this regard, the applicant moved for an amendment on the basis that this was a typographical error and should be 2017;

3.2 Not adding the outstanding amount of the instalment plan to the monthly balance carried over;

3.3 Reflecting only the actual meter readings for the consumption of electricity and water;

- 3.4 In respect of the faulty electricity meter readings during the period May 2018 to March 2019, charging for the average electricity usage during the twelve months prior May 2018 and the twelve months subsequent March 2019;
- 3.5 Reflecting all actual payments made by the applicant.
- [4] The further relief was to the effect that once this had been done the respondent would debate the rectified account with the applicant within twenty days of the account having been rectified and rendered by the respondent to the applicant. Furthermore, on performing the statement and debatement, whichever party was then indebted to the other would pay that party so much as may be found to be owing. As anticipated, a costs order was sought against the respondent on an attorney client scale.
- [5] Prior to dealing with the merits of the application, two *in limine* points were raised by the respondent. The first of these pertain to the identity of the applicant. In this regard, the respondent contended that the applicant was not its customer and that it had not concluded any consumer agreement with the applicant as designated. As such, it was contended that the applicant had no *locus standi* to institute the action as it had no nexus to the respondent. Furthermore, it was submitted that in terms of the Local Government Municipal Systems Act No. 32 of 2003: City of Johannesburg Metropolitan Municipality Credit Control and Debt Collection by-laws (*"the credit control by-laws"*):
- "3(1) *No municipal service may be provided to any applicant, unless and until –*
- (a) *application for the service has been made in writing on a form substantially similar to the one prescribed;*

(b) *any information and documentation required by the Council has been furnished;*

(2) *A service agreement has been entered into between the customer and the Council.”*

[6] The trite submission was that the applicant is required to make out its case, in its founding affidavit. To the extent that confusion reigns over the identity of the applicant and its *locus standi*, the application falls to be dismissed, alternatively struck off the roll. The respondent says it does not have a consumer agreement with the applicant and therefore no contractual nexus to it.

[7] Stols, who deposed to the founding affidavit,¹ affirmed that the applicant, as cited in the founding affidavit, was registered on 23 October 2012. The reports reflect that its original directors comprised Warren Friedland, Alon Kinkel, Oren Kinkel, David Papert and Stols. They were appointed on 20 February 2014.

[8] The instalment plan history lists² furnished by the respondent reflect that the applicant allegedly fell into arrears with its electricity payments during November 2016. The first instalment plan³ allegedly concluded with the respondent, it says, reflects that an alleged amount was due of R497 187,10. It appears that in terms of this alleged plan that a deposit of R70 000,00 would be paid on 21 November 2016 and a further thirty-six monthly instalments of R12 205,34 would be paid over the period 21 November 2016 to 21 October 2019 to settle the debt.

[9] On 14 November 2016, Stols representing Seabatt Trading (Pty) Limited

¹ Two WinDeed reports dated 5 October 2018 and 9 February 2022 respectively

² CaseLines 011-23 to 011-25, Annexures “CoJ1” to “CoJ5”

³ CaseLines 011-24, Annexure “CoJ4”

concluded a sale of shares agreement,⁴ in terms whereof Seabatt purchased 20% of the issued share capital in the applicant for a sum of R1 000 000,00, paid on 15 November 2016. The agreement was concluded between Kinkel, Papert, a Milton Lutrin, I&TK Properties (Pty) Limited, Seabatt Trading (Pty) Limited and the applicant. In accordance with the agreement, Friedland, the Kinkels and Papert were required to resign as directors. This appears to have been complied with as the WinDeed documents reflect their resignation on 11 November 2016. As such, Stols remained as the only director.

- [10] The confusion as to the identity of the applicant arises from documents which emanate from the respondent. The respondent's tax invoices, and the consumer agreement penned by the respondent reflect an entity "*South Africa (Pty) Limited*" and not the applicant as cited. The consumer agreement is also concluded with "*South Africa (Pty) Limited*".

- [11] Stols says that the municipal services rendered by the respondent are rendered to the properties owned by the applicant. These properties are Erf [...], held under Title Deed No. 2741015 and, situate at 32 Durban Street, City and Suburban and the adjoining properties and buildings stretching from 30 Durban Street through to 11 Meikle Street, City and Suburban.

- [12] The applicant identifies itself as the respondent's customer, albeit misdescribed in its tax invoices and consumer agreement.

- [13] Stols, in the replying affidavit, says that the trading name of the applicant is correct albeit that in the Deed of Transfer, in relation to the properties and, the Deed of Sale of shares, the applicant is referred to as "*2012/190864/07 South Africa (Pty) Limited (2012190864) and 2012/190864/07 South Africa (Proprietary) Limited (Registration No.*

⁴ CaseLines 004-33 to 004-45, Annexure "JJ5"

2012/190864/07).” He affirms that the reference to South Africa on the respondent’s tax invoices corresponds therewith and makes it clear that the consumer account is that of the applicant and that it has the requisite *locus standi* to bring the application.

- [14] The Court accepts that the municipal accounts have misdescribed the applicant. How this misdescription arose is unclear to the Court but it is reasonably probable that as the company’s designated name is its registration number, when opening the consumer account, the name “*South Africa*” was transposed with the registration number and the resulting confusion ensued.
- [15] Does this confusion in the face of the positive averments that the municipal account is that of the applicant (and in respect of which the applicant is making monthly payments) sustain the *in limine* point? The common law reveals that the description of a party to a suit does not immutably determine the nature and identity of the party. The law reports are replete with instances where amendments are brought to correctly reflect the citation of a party be it a plaintiff or a defendant. The incorrect description is rectified by amendment, in the absence of prejudice to the other parties involved.⁵
- [16] As set out in these cases, a misdescription does not render a summons void or in this instance, an application invalid. There is no suggestion, that the applicant, as cited, does not exist or that its name is incorrect. Rather, the documents which emanate from the respondent have misdescribed the applicant.
- [17] The absence of prejudice to the respondent is clear. The applicant says that the account is its account and that it is liable for the municipal services rendered and will pay whatever is owing once a statement and

⁵ See for instance ***Four Tower Investments (Pty) Ltd v Andrea’s Motors*** 2005 (3) SA 39 (NPD) at para [15]

debatement of account has been completed.

[18] As set out in the ***Four Tower Investments*** case:

“[15] *The function of a court is, of course, to resolve disputes between litigating parties, and justice can only be done if the real issues are defined in the pleadings and ventilated in court. For this reason it is by now well-established that an application for amendment will always be allowed unless it is made mala fide or would cause prejudice to the other party which cannot be compensated for by an order for costs or by some other suitable order such as a postponement.*”

[19] Here, no application for an amendment is necessary, and the respondent need only rectify its consumer list. I find that there is no merit in the first *in limine* point, and it is dismissed.

[20] Before dealing with the second *in limine* point, I was advised by counsel that the supplementary affidavit which had been delivered by the applicant was no longer in issue and the delay in the delivery of the answering affidavit, contrary to the Court order granted by Crutchfield J, was also no longer an issue before this Court. As such, the Court could take judicial cognisance of the supplementary affidavit and the answering affidavit.

[21] The second *in limine* point involves the merits of the application. As appears from the supplementary affidavit, the respondent disconnected the supply of electricity and water to the applicant's premises on 20 and 21 July 2022 respectively. This disconnection of services occurred subsequent the institution of this application and in the face of a series of termination notices. I was informed by the applicant's counsel that the water supply to the premises had been reconnected but that the electricity supply remained disconnected. The application came before

me on 22 May 2023 at which time some ten months had elapsed since the termination of the electricity supply. It is in this context, that the respondent contends that the order for an interim interdict is moot.

[22] I debated with the applicant's counsel whether the interim interdict was factually and legally sound in the face of the lapse of this lengthy period of time and in circumstances where the applicant had not taken any steps to urgently seek the restoration of its electricity supply. The applicant's counsel accepted that no such steps had been taken and, as such, at the date of the hearing of the application, it was in effect too late to seek an interdict as the disconnection had already taken place. In the face thereof, the applicant's counsel did not persist with the interim interdict.

[23] Of course, the heart of the matter before this Court is whether or not monies are owed by the applicant to the respondent and to the extent, that monies are owed, the respondent would be well within its rights to have terminated services to the applicant. Correspondingly, the termination of the services may well be unlawful, if in fact the respondent has overcharged the applicant and no monies are owing to it.

[24] This takes me to the merits of the application and whether the respondent has properly accounted to the applicant for the municipal services rendered and addressed the queries which have been raised by the applicant in respect of the charges levied. This is certainly not the first motion proceeding against the respondent in relation to the provision of proper accounts and will no doubt not be the last.

[25] The applicant annexed to its founding affidavits a number of invoices to demonstrate the inaccuracy of the respondent's billing. These invoices are for the following periods:

25.1 From April 2017 to November 2017 (there was no invoice for

October 2017, the applicant contending that no invoice had been issued);

25.2 March 2018 to December 2018;

25.3 January 2019 to March 2019.

[26] The respondent, in an effort to substantiate its counter-application, provided only four invoices for the periods August, December 2021, May 2022 and August 2022.

[27] During argument, the respondent's counsel informed me that the applicant was not pursuing its counter-application and that the Court should make no order as to costs pursuant to the withdrawal of this application. I will address the issue of the costs of the counter-application later in this judgment.

[28] In essence, the applicant's complaints relate to historical billing. If one considers the aforesaid invoices what is glaringly apparent therefrom, says the applicant, is that the respondent:

28.1 Unilaterally and having agreed an instalment plan concluded in 2017⁶ terminated the instalment plan with good reason and in the face of payment compliance by the applicant;

28.2 Then proceeded to add the total instalment plan balance then due to the current monthly amounts due;

28.3 Continued to unilaterally impose instalment plans in quick

⁶ This corresponds with the instalment plan history, CaseLines 011-23, Annexure "CoJ1"

succession, namely on 14 June 2017⁷ and again on 28 July 2017⁸ and again on 9 February 2018⁹;

28.4 Basic arithmetical errors in calculating monthly balances due¹⁰;

28.5 In the light of the deactivation and reactivation of new instalment plans then charges excessive interest¹¹ where interest of R4 060,00 is now levied on the deactivated balance from the prior instalment plan which is now added to the total due;

28.6 Received double statements in certain months which reflected different closing balances¹². March 2018 statement carried over balance of R513 318,80 which did not accord with the closing balance of R662 991,62 for February 2018¹³. Statement dated 15 March 2018 where the statement starts with a zero balance appear to reflect a reversal of charges of R1 229 635,65 and a re-debiting charges of R1 483 875,91 leaving a balance of R469 230,31. Statement dated 3 May 2018¹⁴ which has a closing balance of R489 557,41 and statement dated 17 May 2018¹⁵ which commences with a zero

⁷ CaseLines 011-24, Annexure “**CoJ3**”; instalment total R599 884.45 (deposit of R25 000,000) 14 June 2017 and instalments of R16 425,27

⁸ CaseLines 011-23, Annexure “**CoJ2**”; instalment total R628 905,47 and instalment of R17 968,73 from 30 August 2022

⁹ CaseLines 011-25, Annexure “**CoJ5**”; instalment total R662 991,62 (deposit made on 9 February 2018) and instalments of R25 782,24 from 9 March 2018

¹⁰ CaseLines 004-57, Annexure “**JJ4**”, total due reflected as R23 588,35 but actual amount due is R92 491,17

¹¹ CaseLines 004-62; Annexure “**JJ6**”

¹² CaseLines 004-66

¹³ CaseLines 004-69

¹⁴ CaseLines 004-97

balance and after credits given and charges debited has a balance of R485 023,40;

28.7 In the face of the applicant's faulty electricity meter levied electricity charges wholly unrelated to the applicant's use of electricity during the period May 2018 to March 2019 and which have not been rectified¹⁶;

28.8 Has omitted to reflect all of the payments made by the applicant to it in payment of services rendered¹⁷.

[29] It is in these circumstances that the applicant calls for a rectification of the account.

[30] To the extent that it was submitted by the respondent's counsel that there is no valid dispute and no case has been made out in the founding affidavit, this submission is wholly unsupported by the undisputed facts in this matter. A consideration of the answering affidavit, which in the main consists of bare denials and conclusions that the accounts as submitted are accurate without so much as engaging with the inconsistencies which are spelt out in great detail by Stols establishes, under the ***Palscon Evans rule***¹⁸, that there is no *bona fide* dispute of fact, and I can reject the respondent's version.

¹⁵ CaseLines 004-101

¹⁶ In this regard, the applicant averred that its average charges for electricity consumption was between R25 000,00 and R50 000,00 per month, CaseLines 004-97, 3 May 2018 statement reflects an electricity charge of R83 795,83

¹⁷ CaseLines 004-121, September 2018 statement reflects a balance due of R369 733,33 but CaseLines 004-125 October 2018 statement reflects a carried over balance of R481 777,26; CaseLines 004-125, applicant duress payment R435 495,09, 18 September 2018; CaseLines 004-125, Annexure "JJ16", October 2018 statement respondent charges R396 070,07 for electricity usage and again CaseLines 004-130, 10 November 2018 R416 867,64 for restoration of electricity which was disconnected during November 2018 by respondent; CaseLines 004-130, November 2018 statement, electricity usage R572 440,39; CaseLines 004-134, December 2018 statement, R132 760,06 for electricity usage

¹⁸ ***Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd***

[31] As also referred to in **NDPP v Zuma** 2009 (2) SA 277 SC, para [26]:

“[26] Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts, unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes the fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant’s (Mr Zuma’s affidavits) which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent’s version consists of bold or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, farfetched or so clearly untenable where the court is justified in rejecting them merely on the papers.”

[32] The respondent does no more than attach a schedule which reflects a list of alleged installment plans which appear to have been extracted from its computer system. It does not explain how these plans were concluded, with whom they were concluded and why, if the plans were concluded and payments were being made by the applicant, it terminated the plans and then imposed a new payment plan or how, in certain instances, the payment plans which were supposedly concluded were not even reflected on the invoices raised by the respondent.

[33] The deponent to the answering affidavit, Mr. Tuwane Ngwana, the respondent’s legal advisor, does little to set out any defences to the inconsistencies in the invoices provided to demonstrate the confusion. Ngwana makes bald and general allegations that customers breach payment plans and then run to the respondent to change and conclude new payment plans. In addition, and in the same vein, he says that the invoices reflect that these payment plans were applied but then not

complied with. A payment history¹⁹ which is wholly unhelpful to the Court is referred to. It is not substantiated and cross-referenced by the invoices which are raised and simply reflects a list of payments over a period from 13 May 2016 to 25 August 2022 without identifying whether these payments related to the installment plans, related to the current billing and why certain payments made under duress by the applicant and which are not disputed on 18 September 2018, in the sum of R435 495,09, to clear the account and R416 867.64 on 10 November 2018 to restore the disconnected electricity supply and bring the accounts up to date are not reflected at all. The respondent simply levied charges of R396 070.07 in October 2018 and R572 440.39 in November 2018. Again in December 2018 the respondent levied charges of R132 760.07. The applicant says that it became clear that the respondent was charging double sometimes triple for the same usage when the meter was faulty during the period May 2018 to March 2019. Having dispatched an employee to investigate the faulty meter on 12 December 2018, the grossly high meter readings persisted through January to March 2019. The meter was replaced in April 2019 and the readings and charges reverted to anticipated average consumption which the applicant expected to pay every month. Needless to say, the applicant's bill kept escalating and the respondent failed to address the flawed account. Instead it chose to threaten the applicant with disconnection of its electricity supply until payment in full was received and ultimately did so. The payment schedule²⁰ reflects the spike contended for by the applicant and yet the respondent implausibly brought a counter application and averred that the amount was due.

- [34] There are a number of emails attached to the founding affidavit addressed by Adele Petzer, a Human Resources and Operations Manager in the employ of the applicant. The respondent did not object to these e-mails as hearsay as no confirmatory affidavit was provided by

¹⁹ CaseLines 011-34 to 011-035, Annexure "CoJ6"

²⁰ CaseLines 011-34 to 011-035, Annexure "CoJ6"

the author thereof. The emails commence on 23 August 2019 and reflect a persistent attempt to contact the respondent by telephone, by email, under reference numbers which were furnished, and by attendances at the respondent's offices, all to no avail. The persons in the main who feature in these emails, as representatives of the respondent, are Glenda Skosana and Andile Bofo.

[35] Pertinently though Stols says that he met with a representative of the respondent at its Jorrison Street offices and obtained a query sheet which recorded all of the complaints logged with the respondent.

[36] To no avail, however, because as at 14 November 2019 the applicant's account had escalated to R957 682.07 and once again the respondent threatened to disconnect the applicant's electricity supply. Stols logged a call and was provided with a valid reference number. Stols followed up on 13 December 2019 and was advised that the query had been closed. As already mentioned, the respondent on numerous occasions, namely, 7 November 2018, 25 June 2019, 3 March 2020, 12 November 2021 and 30 May 2021 attempted to disconnect the applicant's electricity supply. Stols persisted and on six occasions between March and July 2021 tried to find resolution. As anticipated a letter of demand was received from Nozuko attorneys on 7 August 2020. Stols again tried to deal with the respondent, on 18 August 2020, but received no reply. Petzer then approached the collection attorneys telephonically and by e-mail on 24 December 2020. They could not assist and directed Stols to engage with the respondent's Regional Director. Armed with all of the reference numbers issued to the applicant and, on 12 January 2021, Stols endeavoured to do so with no success. Eventually the respondent succeeded in disconnecting the electricity supply on 20 July 2022. In addition the water supply was disconnected on 21 July 2022 but this has been reconnected. In the result the applicant seeks costs on the attorney-client scale.

[37] The respondent's counsel submitted that there is no proof that the applicant is paying for reasonable consumption of services and the last payment was received on 25 August 2022. Of course there is no electricity supply to the property as it was disconnected on 21 July 2022 and there is no updated evidence placed before me that the water consumed on the property is being paid for either post August 2022, when the replying affidavit was delivered. However the applicant did annex invoices, in reply, to show that it was indeed paying what appears to be reasonable monthly charges levied by the respondent so that in July 2021 it paid R27 130,43, in November 2021 it paid R41 735,36, in April 2022 it paid R26 293,36, and in July 2022 it paid R27 643,53. In the invoices furnished by the respondent a payment of R 31 965,95 is reflected in December 2021, a payment of R33 742,34 and in August 2021 a payment of R40 321,59. In addition, the respondent's own payment schedule for the period 13 April 2016 to 25 August 2022 reflects that save for October 2017, July 2018, April 2018, April 2020, September 2020, and April 2021 monthly payments are recorded as having been made by the applicant. Payments are also reflected on the invoices attached to the founding affidavit. As such on the evidence placed before me there is no merit in this defence. In fact the applicant, in reply, asserts that it is the historical inflated charges in excess of R 900 000,00 with which it takes issue and for which it requires a debatement.

[38] It is apparent to me that the applicant has established that the respondent's invoices are incorrect and that excessive charges have been levied in circumstances where it is common cause that the electricity meter was faulty. Yet the respondent, brought an ill-fated counter- application seeking payment of arrears of R972 307,79 which in my view was wisely withdrawn by the respondent's counsel.

[39] The dispute is clear, yet the respondent appears to have unilaterally terminated instalment plans and cancelled the 2017 plan, at whim,

despite payments being made by the applicant, and then added the amounts to the current charges levied which then attract interest and which the applicant legitimately disputes.

[40] The respondent's counsel conceded that a statement and debatement of account should be ordered but that no order should be made as to costs.

[41] I do not intend to repeat the obligations placed on municipalities in regard to the provision of municipal services. These obligations are comprehensively set out in many matters.²¹ Quoting from the **Amacasa** judgment:

“[10] The largest city in South Africa did not seek to convince me that it is not within its financial and administrative capacity to render accurate accounts to ratepayers. The facts of this matter are that the municipality's accounts are clearly inaccurate. I thus do not address this [in] judgment the degree of accuracy required. I also accept that there are instances where a municipality may have to estimate consumption charges (as opposed to meter charges), and I do not seek to address what those circumstances are in this judgment. I also do not seek to address how close to accurate such estimates of consumption must be. I need not to do so as I have illustrated the summary of the facts that the estimates in this matter bore no resemblance to actual use.

[11] Reverting to the facts of this matter. In essence, in issue is an accounting matter and the alleged failure by the municipality to comply with its obligations to render accurate accounts. In this matter that failure impacts on the supply of electricity to the property, may impact on the supply of water to the property,

²¹ **Amacasa Properties 129 (Pty) Ltd v The City of Johannesburg** 2021 JDR 2799 (GJ) at paras [5] to [9]

and impacts on the applicant's ability to pay what is due. It is no trifling dispute."

[42] In this matter, the deponent to the answering affidavit is also the self-same Ngwane. As the learned judge set out, without even accepting that there is a "*heightened duty*" on the respondent to assess the application and address the real issues, the affidavit delivered here too did nothing to raise a dispute of fact.

[43] As is also clear, the onus rested on the respondent to provide correct accounts, which it patently failed to do even conceding that the counter-application for payment was not being proceeded with and that there should be a statement and debatement of account.²²

THE RELIEF SOUGHT

[44] The relief which is requested by the applicant includes that the respondent reinstate the 2017 payment plan and isolate the arrears agreed to be due from the monthly balance carried over and reflected on the invoices. This is easy for the respondent because this is the way that its payment plans are usually dealt with. The respondent contends that this relief is impermissible in the face of a *bona fide* dispute, and that it appears that four payment plans were concluded as reflected in its computerised print out. I was asked to apply the principles in the ***Room Hire***²³ case. As I understand this case, it does not favour the respondent in this matter. This respondent cannot content itself with bare and unsubstantiated denials in the face of the onus upon it and I am obliged to accept the applicant's allegations as correct. For the reasons above it appears that the respondent unilaterally terminated the 2017 payment plan when the applicant was complying therewith. I am of the view that

²² ***Euphorbia (Pty) Ltd t/a Gallagher Estates v The City of Johannesburg*** [2016] ZAGPHC 548 at paras [10] and [17]

²³ ***Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd*** 1949 (3) SA 1155 (T)

this relief should be granted. As a consequence then the arrears should be isolated from the invoice as the payment plan permits.

[45] The notice of motion contained a typographical error as it refers to the 2016 instalment plan and should have referred to the 2017 instalment plan. The applicant's counsel moved for an amendment by the deletion of "2016" and the substitution with "2017". I have no reservations in granting the amendment. It was not opposed by the respondent. There is no prejudice to the respondent, and the amendment is granted.

[46] In so far as the applicant requests that the actual readings be reflected, I am aware that the respondent is entitled in terms of its relevant by-laws to charge estimated amounts and then reverse the charges once the actual meter readings are received. As such, and with the lapse of time, the applicant must be charged in accordance with the actual meter readings, which the respondent must surely have obtained, and as such I am inclined to grant this relief. It appears that the respondent in fact has now placed systems in place for customers to submit their monthly readings which will alleviate the load on it to conduct physical readings of the respective meters.

[47] In so far as the applicant seeks to impose that the respondent charge average readings for the period March 2018 to May 2019, when it is common cause, the electricity meter was faulty the respondent informed me that there is a formula, which is used but which the Court was not provided with, that will apply to the period in which no readings were achievable due to the faulty meter. It appears to me from the by-laws²⁴:

"Section 13

²⁴ The Greater Johannesburg Metropolitan Council Standardisation of Electricity By-Laws, *Gazette Notice* 1610 of 1999

- (i) *When the Council is satisfied that a meter has ceased to register correctly, the reading shown thereby shall be disregarded and the consumer –*
 - (a) *Shall be charged, in respect of the current meter reading period, the same amount as the consumer has paid in respect of the corresponding period in the preceding year subject to the adjustment necessitated by any alteration to the electrical installation or the charge determined by the Council; or*
 - (b) *If the consumer was not in occupation of the premises during the corresponding period referred to in paragraph (a), shall be charged on the basis of his consumption during the three months preceding the last date on which the meter was found to be registering correctly; or*
 - (c) *If the consumer was not in occupation of the premises during the whole of the period referred to in paragraph (b), shall be charged on the basis of his consumption during the three months following the date from which the meter was again registering correctly.*
- (ii) *If it can be established that the meter has been registering incorrectly for a longer period than the meter reading period referred to in sub clause (i), the consumer may be charged with the amount determined in accordance with the said subsection or for a longer period: Provided that no amount shall be so charged in respect of a period in excess of 38 months prior to the date on which the meter was found to be registering incorrectly”.*

[48] As such I am inclined to order relief that the respondent apply the provisions of section 13 and correct the readings for that period.

[49] In so far as relief is sought that all payments made by the applicant are captured in reduction of any disputed indebtedness it was conceded that this is a simple exercise and the applicant itself can furnish proof of the payments made by it to facilitate this exercise. This process is imminently reasonable and in any event the onus always remains on the applicant to prove payments made by it.

[50] In so far as the costs are concerned, it is clear that the respondent's defence to this application has floundered. It has put the applicant to unnecessary time and costs in bringing this application in circumstances where the applicant has exhausted all other avenues open to it to resolve the account which it is common cause is inaccurate in the face of the faulty electricity meter. The respondent abandoned its counterclaim for payment. I am alive to the fact that the imposition of costs on a punitive scale is ultimately funded by taxpayers. Granting costs on an attorney/client scale remains extraordinary relief. At the end of the day, the applicant should not be out of pocket and, accordingly, I am inclined to make an attorney/client costs order as prayed for.

[51] I accordingly make an order in the following terms:

51.1 The respondent shall within 30 days of the date of this order rectify the applicant's municipal account, Account No.: 553745968 ("the account") in respect of electricity, water, sanitation and refuse charges for the period 1 May 2017 to date of this order by:

51.1.1 reinstating the 2017 instalment plan that came into effect during February 2017;

51.1.2 not adding the outstanding amount of the instalment plan to the monthly balance carried over;

- 51.1.3 reflecting the actual meter readings for the consumption of electricity and water save for the period May 2018 to March 2019;
 - 51.1.4 in respect of the faulty electricity meter readings during the period May 2018 to March 2019, charging for electricity in accordance with the provisions of paragraph 13 of the Greater Johannesburg Metropolitan Council Standardisation of Electricity By-Laws, *Gazette Notice* 1610 of 1999;
 - 51.1.5 reflecting all actual payments made by the applicant and in respect of which the applicant shall provide proof to the respondent of the payments so made.
- 51.2 The respondent shall debate the rectified account with the applicant within 20 days of the rectified account having been rendered by the respondent to the applicant.
- 51.3 That party which is found to be indebted to the other shall pay the other party such amount as may be found to be owing pursuant to the debatement of the account within 10 days thereof.
- 51.4 Costs of the application are to be paid by the respondent on the attorney/client scale.

P V TERNENT

*Acting Judge of the High Court of South Africa
Gauteng Division, Johannesburg*

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 for hand-down is deemed to be on 26 September 2023.

HEARD ON: 22 May 2023

DATE OF JUDGMENT: 26 September 2023

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