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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO:006225/2023

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: YES/NO

03/02/2023

In the matter between:

BEETHOVEN DE JESUS BARROS DO SACRAMENTO 1st Applicant

FABIANA BARRETO DOS SANTOS SACRAMENTO 2nd Applicant

And

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY Respondent

JUDGMENT

MOJAPELO AJ

1. The applicants who are property owners at Silver Woods Country Estate in Pretoria had their electricity supply disconnected by the City of Tshwane Metropolitan Municipality, the respondent in this matter. The applicants have brought this urgent application for an order that the electricity supply to their property be restored and further that the City be interdicted and restrained from terminating and/or in anyway interfering with the electricity supply to their property pending the

finalisation of a dispute. The applicants further request punitive costs against the City on the scale as between attorney and own client.

2. The applicants are husband and wife and are registered owners of the disputed property known as Erf [...], measuring 1055m², under Deed of Transfer Number T [...] which is situated at Silver Woods Country Estate in Pretoria. The property was registered in favour of the applicants on 15 October 2021, and they reside with their three (3) minor children.

3. It is the applicants' case that they have been residing in the property since they have acquired it and have never received any accounts for the services from the respondent whatsoever. It is the applicants' case that they rely on a prepaid electricity payment of which is up to date. The applicants state that they do not owe the City any amount as their accounts have been paid in full. However, there are no accounts from the City in the name of the applicants that has been attached to the papers. From the reading of the papers, it does not appear that the applicants have an existing services account with the City.

4. The first applicant states that; *"The amount that I allegedly owe to the respondent under account No. [...] is subject to a dispute whereby the outstanding accounts were not received by me and were addressed to the previous owner of the property, Mr. PA Terblanche, and not to myself nor the second applicant. I confirm that to date, such dispute has not been resolved"*. According to the Deed of Transfer that has been attached to the papers, Mr. Terblanche is the previous owner of the applicants' property.

5. The applicants are Brazilians citizens. They allege that they speak Portuguese, and struggle with English and further that they are not familiar with the processes in the country. They state that during the December 2022 holidays they left for Brazil on 08 December 2022 and returned to South Africa on 14 January 2023. On their return on 14 January 2023, it came to their attention that the City has during their absence delivered pre-termination and termination notices to their property. The said notices are:

5.1 A pre-termination notice dated 14 December 2022 claiming the amount of R99 132-76.

5.2 Another pre-termination notice dated 09 January 2023 claiming an amount of R107 272-99.

5.3 A disconnection notice dated 11 January 2023.

6. Although the said notices were apparently served at the applicants' premises, they were addressed to Mr. PA Terblanche. At the time those notices were served, the applicants were not around having traveled to Brazil for the December holidays. As stated hereinabove Mr. Terblanche is the previous owner of the property. The said notices were addressed to the property owned by the applicants, although the addressee was Mr. Terblanche. The pre-termination notices read thus:

"It has come to my attention that your municipal services and/or rates and taxes account was not paid by the due date. This is a final demand for payment for outstanding balance at the Financial Services Department. In the case of rates and taxes account, according to section 28(1) of the Municipal Property Rates Act 2004 (Act 6 of 2004 MPRA) the Municipality may recover the amount in whole or in part from the tenant or occupier of the property, despite any contractual obligation to the contrary on behalf of the tenant or the occupier.

*Please react to this demand within (14) fourteen days by either paying at the **MUNICIPAL CASHIERS** or by contacting the Financial Services Department to discuss the matter.*

If you fail to comply with the above, the City of Tshwane Municipality will regrettably be obliged to terminate/lower the level of services to your premises and to debit the relevant charges against your account."

7. There was no reaction by the applicants to these notices as they state that during that period, they were not in the country but in Brazil. The City issued another notice dated 09 January 2023 with a similar warning, but the amount owed has now increased to R107 272-99. There was no reaction to the second pre-termination notice either. The third notice was a disconnection notice to terminate the electricity supply services to the premises, and to further invite the submission of proof of payment for the services to be re-connected. All the three notices were served on the premises when the applicants were not in the country. The applicants only returned on 14 January 2023 and by that time the electricity supply was already disconnected.

8. The applicants then on 23 January 2023 instructed their attorneys who on their behalf wrote a letter of demand to the Municipality. In the said letter the attorneys for the applicants referred to the account number as being that of Mr. Terblanche. The applicants are referred in that letter as the owners of the property. The termination notices were addressed to Mr. Terblanche the previous owner. The applicants did not have any account in their name to give to their attorney who was now assisting them.

9. It does appear that during the transferring of the property from Mr. Terblanche into the names of the applicants the City did not transfer the services account of the property, including the electricity account from the names of the previous owner into those of the applicants. The transferring attorneys did give a notice to the City to change the names of the account holders to reflect the applicants' details as they are the new owners. The said notice from the transferring attorney is dated 21 October 2021. It is alleged that the said letter was delivered by hand to the City. Despite such notice it does not appear that the City opened a services account in the name of the applicants. They have been staying on the said property having obtained transfer during October 2021 and have to date not received an account in their own name. The allegations that their accounts with the City are up to date cannot be supported by any attachments. There is simply no account in the name of the applicants with the City that was attached to the papers.

10. This fact is highlighted by the applicants' attorneys in their letter of demand in which they state that:

"10. It seems clear that these notices relate to an indebtedness of Terblanche, although it is not clear how that could have come about, given that the transfer of ownership would have required Tshwane to have issued a clearing certificate for such transfer and for Terblanche's account to have been paid up and three months in advance.

11. We have established from the transferring attorneys that they did give notice of transfer and change of ownership to the City of Tshwane, by hand on 21 October 2021.

12. Our clients have been making payment to the City of Tshwane since taking ownership, these payments relates to electricity consumed at the property in respect of the installed prepaid meters. Our clients made payments in respect of the prepaid meter charges without fail.

13. Our clients never received any other accounts from the City of Tshwane and being foreigners, without English or any other South African language as their first languages, they do not precisely understand the Tshwane system municipal systems.

14. Our clients are not unwilling to pay the accounts, but they do need to receive accounts, before they can be expected to make payment.

15. You have failed and/or neglected and/or refused to provide our clients with substantiated and detailed accounts as to what they allegedly owe you in municipal charges prior to disconnecting the electricity supply.

16. To be clear, our clients do not understand what the basis is for the disconnection of their electricity supply, because, to their minds they have been making their electricity payments.

17. It would seem that the electricity supply has been disconnected on account of some other indebtedness to yourselves, "municipal services or rates and taxes", but not electricity, and no accounts have been received from you in regards thereto.

18. You appear to have failed and/or neglected to open an account for clients upon transfer of the property into their names. Now the electricity

supply has been terminated upon the strength of notices sent to the previous owner, demanding payment and pre-termination notices, but once again, no accounts”.

11. The applicants’ letter of demand concludes by demanding that the City restore electricity, failing which an urgent application will be brought to the High Court. This is such an urgent application.

12. The applicants’ case is based on the principles of spoliation as it is alleged on behalf of the applicant that they were in an uninterrupted supply of electricity from the respondent to the property and the interference by the respondent with the applicants’ access to electricity is akin to deprivation of possession of property. It is not necessary to deal with the restoration of electricity supply based on what transpired during the hearing.

13. The City filed a notice to oppose but did not file any answering papers. Strangely enough, the City challenged the attorneys, Manly Inc’s authority to represent the applicants by filing a notice in terms of Rule 7(1) in which it was categorically stated that; “... *the respondent hereby disputes the authority of the applicants’ attorneys of record to act on behalf of the applicants and therefore request the applicants’ attorneys to provide a written power of attorney as proof of authority to act same*”. This is very odd as there is no evidence from the papers that suggest that the applicants’ attorneys do not have proper mandate to represent the applicants. It is extremely odd for a state institution to challenge the authority of an attorney who is representing ordinary applicants without any foundation for such. These are ordinary applicants who are litigating in their personal capacity and trying to exert their rights in Court against the Municipality in the protection of their households. This is not a prudent utilization of the rules of Court. This effort should have been properly utilized to file an answering affidavit. Unfortunately that was not done.

14. However, at the hearing of the matter, the City was represented by Counsel who informed the Court that the disputed amount has been paid by the applicants

and that the electricity has been restored to the premises. The applicants' Counsel, however, persisted with the application for an interdict as she stated that the money was paid under protest because the applicants have never received any accounts from the Municipality. Counsel for the City countered that by submitting that according to his instructions and what he has observed is that applicants have an account with the City in their own name and the said account bears the same account number as the account number that appeared on the above mentioned termination notices which were addressed to Mr. Terblanche. There is according to the City's Counsel one account number using the particulars of the applicants and also of the previous owner Mr. Terblanche. That explains the applicants predicament and complaint that they have never received any account from the Municipality.

15. It was submitted on behalf of the applicants that the said payment was made under protest in order to have the electricity connection to the premises restored. The amount paid can not be justified by reference to any specific account that the City has sent to the applicants as there is up to the date of the argument of this matter, according to the applicants' Counsel, no account ever received by the applicants. On the other hand, it cannot be denied by the applicants' Counsel that the applicants continued to receive services from the City for all the months that they have been the owners of this disputed premises. Those services surely must be paid for. The applicants' predicament is that they have not received any accounts for these services from the City.

16. Section 95 of the Municipal Systems Act 32 of 2000 provide for customer care and management by the Municipality. It provides that:

"In relation to the levying of rates and other taxes by a municipality and the charging of fees for municipal services, a municipality must, within its financial and administrative capacity-

(a) establish a sound customer management system that aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality, and where applicable, a service provider,

- (b) establish mechanisms for users of services and ratepayers to give feedback to the municipality or other service provider regarding the quality of the services and the performance of the service provider;*
- (c) take reasonable steps to ensure that users of services are informed of the costs involved in service provision, the reasons for the payment of service fees, and the manner in which monies raised from the service are utilised;*
- (d) where the consumption of services has to be measured, take reasonable steps to ensure that the consumption by individual users of services is measured through accurate and verifiable metering systems;*
- (e) ensure that persons liable for payments, receive regular and accurate accounts that indicate the basis for calculating the amounts due;*
- (f) provide accessible mechanisms for those persons to query or verify accounts and metered consumption, and appeal procedures which allow such persons to receive prompt redress for inaccurate accounts;*
- (g) provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the municipality;*
- (h) provide mechanisms to monitor the response time and efficiency in complying with paragraph (g); and*
- (i) provide accessible pay points and other mechanisms for settling accounts or for making pre-payments for services.*

17. It is quite clear that the provisions of section 95 of the Municipal Systems Act obligates the Municipality to provide the applicants with regular and accurate accounts that indicate the basis for calculating the amounts due. That has not been complied with in this particular matter as the applicants have to date not yet received an account in their name from the Municipality. There is no account received by the applicants in relation to the monies that the applicants have paid in protest to have their electricity supply restored.

18. The applicants are entitled to know the exact amount that they are liable for. In that regard the applicants are entitled to the full accounts of the amounts that it is

alleged they owe to the City which amounts should be verified against the amounts already paid.

19. If the applicants are not receiving any accounts from the City, the applicants will not be able to pay for the services that they receive from the City. They are therefore at the risk of having their services discontinued or disconnected once again. The risk is real as it is evidenced by the abovementioned disconnection of the electricity supply to the applicant's premises.

20. Of course, the Municipality is entitled to enforce payment for the services received. In terms of section 102(1)(c) of the Municipal System Act, the Municipality is entitled to implement any of the debt collection and credit control measures in relation to any arrears on any of the accounts of persons utilizing their services. Such credit control measure will include the disconnection of electricity supply as it has been evidenced in this matter. However, if there is a dispute, the Municipality may not implement the credit control measures as section 102(2) of the Municipal System Act provides that; *"Subsection (1) does not apply where there is a dispute between the Municipality and a person referred to in that subsection concerning any specific amount claimed by the Municipality from that person"*. The debt collection and credit control measures are referred to in subsection 1.

21. There is no definition of the "dispute" in the Municipal Systems Act. It has been held that section 102(2) of the Systems Act requires that the dispute must relate to a 'specific amount' claimed by the municipality. (**Body Corporate Croftdene Mall v Ethekwini Municipality 2012(4) SA 169 SCA**).

22. The Court in the matter of **Body Corporate Croftdene Mall (supra)** went on to state that; *Whether a dispute has been properly raised must be a factual enquiry requiring determination on a case-by-case basis*.

23. In this matter the applicants have paid an amount for the restoration of electricity to their house without receiving an account. It is quite clear that what is before Court and the Municipality is a dispute by the applicants who have now paid

for municipal services but they still do not have an account from the Municipality in their own names. The dispute pertains to whether the amount that has been paid is the accurate amount that is due and payable and further the statutory obligation of the City to ensure that the applicants receive regular and accurate accounts. As stated hereinabove, the City did not file any answering affidavit. The only version before Court is that of the applicants.

24. Under the circumstances the City should be given an opportunity to comply with its obligation in terms of section 95 of the Municipal Systems Act of providing a detailed and accurate accounts to the applicants. And to resolve whether the amount that was demanded from the applicants which was eventually paid is the accurate amount owed to the City. And going forward to ensure that the applicants will receive accounts in their own names at the addresses that they have given to the City.

25. It is my view that until such time that this dispute is resolved, the City should not implement its debt collection or credit control measures against the applicants. This much is dictated by the provisions of section 102(2) of the Municipal Systems Act. I am therefore satisfied that the applicants are entitled to an interdict along the terms provided for in section 102(2) of the Municipal Systems Act. In this matter the City is not prejudiced as it has received what it regards to be a full settlement of the amounts due to the City by the applicants, although the applicants state that the said amount were paid in protest.

26. I therefore make the following order:

1. The non-compliance with the Uniform Rules of the Court are herewith condoned in terms of Rule 6(12) and this matter is dealt with as a matter of urgency.
2. The respondent is ordered to:

2.1 Furnish the applicants with a detailed and accurate accounts of municipal services from 15 October 2021, alternatively, from the date which the applicants became owners of the disputed property up to date.

2.2 Attend to the reconciliation of the accounts as reflected in subparagraph 2.1 hereinabove against the payment that has already been made by the applicants.

2.3 Ensure that going forward the applicants are provided with regular and accurate accounts that indicate the rate of the consumption of the services in terms of the applicable legislation.

3. That pending compliance with paragraph 2 hereinabove, the respondent is interdicted from implementing any credit control measures, which include the termination of electricity supply to the applicants premises.

4. The above interdict shall automatically lapse upon the compliance with the provisions of paragraph 2 hereinabove.

5. The respondent to pay the costs of this application.

MM MOJAPELO AJ

ACTING JUDGE

HIGH COURT GAUTENG DIVISION, PRETORIA

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