



IN THE HIGH COURT OF SOUTH AFRICA /ES
(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NO: 67520/2010

DATE: 17/11/2010

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/~~NO~~.

(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~.

(3) REVISED.

16-11-2010

DATE

SIGNATURE

IN THE MATTER BETWEEN

THE RESIDENTS OF ELOFF SOCIAL HOUSING COMPLEX APPLICANT

AND

HOUSING COMPANY TSHWANE

1ST RESPONDENT

TRIPLE "M" METERING SERVICES CC

2ND RESPONDENT

CITY OF TSHWANE

3RD RESPONDENT

REASONS FOR JUDGMENT

MAKGOBA, J

This matter came before me in the urgent court on 3 November 2010. After argument I gave an order dismissing the application with costs and indicated to the parties that my reasons for judgment would follow in due course.

The following are my reasons.

Introduction

- [1] The applicant brought an urgent application against the respondents seeking an order in the following terms:
- 1.1 that the first and second respondents be interdicted and/or restrained from disconnecting the supply of water and/or electricity to any of the residents pursuant to the decision of the first respondent to change the conditions of the residents' stay at Eloff Social Housing Complex;
 - 1.2 in the event that the supply of water and/or electricity has already been disconnected by the time this order is made, that the first and second respondents be instructed and required to reconnect the supply of water and/or electricity at no charge to the residents;
 - 1.3 that the first and second respondents be instructed and required to re-install the prepaid electricity meters to each of the units from which they were removed together with the respective electricity credits;

- 1.4 that the first respondent be instructed and required to continue to sell electricity to the residents of Eloff Social Housing Complex;
- 1.5 that the first respondent be instructed and required to suspend the implementation of additional water supply charges to the residents of Eloff Social Housing Complex;
- 1.6 that the appointment of the second respondent by the first respondent or any other institution to handle electricity and water metering at Eloff Social Housing Complex be suspended and/or operate to the extent that same does not infringe or threaten the rights of the residents of Eloff Social Housing Complex, until the court has pronounced on the validity of the first respondent's decision.

[2] The above orders sought by the applicant in Part A of the notice of motion are interim in nature in as much as the applicant in Part B of the notice of motion indicated that within thirty days of the finalisation of Part A, the applicant will bring an application to review, correct and/or set aside the first respondent's decision to change the conditions of the stay at the Eloff Social Housing Complex.

Factual background

- [3] The first respondent is an association incorporated under section 21 of the Companies Act 61 of 1973 with the purpose to develop and manage social and/or rental housing for qualifying beneficiaries/tenants. It was established in 2001 by the third respondent for the sole purpose of developing and managing social/rental housing. The Eloff Social Housing Complex is a building with 91 residential units over seven floors and four commercial units. This building used to be the property of the third respondent but was donated to the first respondent.
- [4] The first respondent is therefore the landlord of Eloff Building and each of the individual tenants has lease agreements in place with the first respondent. The residents are required to renew these agreements annually. In terms of clause 3.1 of the agreements the rental amount payable by the residents to the landlord (first respondent) does not include any municipal charges (water, electricity, sewage and refuse removal).
- [5] In the past a pre-paid electricity meter was installed at each residential unit, and residents used to buy their electricity from a shop known as "Food 2 Riches", located a block away from Eloff Building. According to the first respondent tremendous problems were experienced with these pre-paid meters: these meters were installed in 2002-2003 but became outdated and unserviceable. The technology is obsolete and the meter units cannot be serviced anymore. It was also possible to "rig" the pre-paid meters. Some of the meters were bypassed, which resulted in tenants having had electricity for months without paying for it.

- [3] The system had become very expensive and cheaper electricity could be obtained by installing new and conventional meters provided by the second respondent. The electricity and water meters currently installed at Eloff Building are provided and managed by the second respondent. The second respondent is a reseller of electricity provided in bulk by the third respondent. The price per kwh on the pre-paid system is currently R1,01. The price offered by the second respondent per kwh is 88c. There is therefore a saving of 13 cents per kwh for the residents with the new system. The first respondent avers that by changing to the new system, it acted in the best interest of all the residents of Eloff Building.
- [4] The first respondent as the landlord entered into an agreement with the second respondent to provide electricity and water to the tenants until 2013. The tenants are individually billed by the second respondent monthly in arrears for their individual electricity usage. Each individual tenant/resident should enter into and sign an agreement with the second respondent for him to be billed by the second respondent.
- [5] The deadline for removing the prepaid meters from each unit and linking each tenant to the conventional electricity metering system was 30 October 2010. As on 2 November 2010 only six units and four shops had entered into agreements with the second respondent to migrate to the new electricity billing system. The rest of the units and/or tenants who had not done so had their

electricity supply disconnected by the second respondent. It is against that background that the residents brought the present application before court.

Points in limine

- [9] The first respondent has raised a point *in limine* and asked for dismissal of the application on the basis that it (the first respondent) has no *locus standi* to be sued in this matter. It is submitted that the first respondent is not a provider of municipal services in terms of its lease agreement with the tenants and an interdict against it for provision connecting municipal services will therefore have no practical effect or enforceability.
- [10] The first respondent is merely a landlord, and also cannot install prepaid electricity meters or provide services. The first respondent is not a registered electricity vendor and cannot sell electricity to the residents of Eloff Building. Therefore the prayers sought in the notice of motion have no practical effect and will be unenforceable.
- [11] All new meters have already been installed at Eloff Building. The installation was completed on 30 September 2010. Such installation was done by the second respondent. An order against the first respondent to suspend the implementation of meters will therefore have no practical effect and will be unenforceable.

- [12] I agree with the submissions made by the first respondent. From the above it is clear that the relief asked against the first respondent is not executable due to the fact that the first respondent is not the provider of municipal services. The first respondent is merely the landlord and should not be before the court with regard to the provision of municipal services. On this ground alone, the application will not succeed against the first respondent.
- [13] The second respondent raised a point *in limine* regarding the uncertainty as to the identity of the applicant. In other words, that the applicant has no *locus standi* to bring this application on behalf of the tenants/residents of Eloff Social Housing Complex (Eloff Building). The second respondent submits that it is unclear who the applicant is. No resolution has been provided by all the tenants of Eloff Building (95 in number) authorising the deponent, Mapula Lebia, to depose to the founding affidavit on behalf of "the collective residents". More so, not all residents' electricity had been cut by the second respondent.
- [14] The applicant is cited as "THE RESIDENTS OF ELOFF SOCIAL HOUSING COMPLEX". It is not alleged that the applicant is an association which, by its constitution, provides that it has the capacity to acquire rights and obligations in its own name, and which has perpetual succession, can acquire legal personality and become what is known as a *universitas personarum*. See: *Interim Ward S 19 Council v Premier, Western Cape Province and Others* 1998 3 SA 1056 (CPD) at

1060G-1061A. Compare: *Molotlegi & Another v President of Bophuthatswana* 1989 3 SA 119 (B).

- [15] It is trite that where an association institutes legal proceedings by way of notice of motion, it must appear that the person who brings the application on behalf of that association is duly authorised by it to do so. See: *Yiba and Others v African Gospel Church* 1999 2 SA 949 (CPD).
- [16] A further submission made by counsel for the second respondent is that the supply of electricity by the second respondent to the residents is governed by the agreements between the parties. *In casu*, the defaulting residents have not signed agreements with the second respondent. In fact, they refused to enter into such agreements.
- [17] In the decision of *Soshanguve Residents Joint Committee v Noordelike Pretoria Metropolitaanse Substrukture* case no 1034/2000 (T) (unreported) which was delivered in June 2000 by VAN DER WESTHUIZEN, J (then a member of this court) the following was said:
- "If the real cause of action is a matter of contract (and in that case the electricity supply was the cause of action just as it is here) there can be no class action. It is correct that the contract between the first respondent and members of the applicant is governed by several statutes, but so are virtually all contracts. The mere fact that contracts are governed by

statutes does not elevate the issues between the parties to a constitutional issue. Under the circumstances the applicant has no *locus standi* and while I am convinced that the matter ought to be struck off the roll because it is not urgent, I dismiss it with costs because the applicant does not have *locus standi*."

[18] Further reference in this regard can be made to the matter of *Pretoria Belastingbetalersvereniging v Tshwane Metropolitan Municipality*, (unreported judgment of BERTELSMANN, J in the North Gauteng High Court under case no 48320/09). This decision was followed in the matter of *Very N.O. v City of Tshwane Metropolitan Municipality* (unreported judgment of ISMAIL, AJ in the North Gauteng High Court under case no 14985/09) delivered on 1 December 2009.

[19] I make a finding that the identity of the applicant in this matter is uncertain and thus it has no *locus standi* to institute these proceedings on behalf of the tenants/residents of Eloff Building. Furthermore there is no contractual relationship between the second respondent and the residents which obliges the second respondent to supply electricity to them. The points *in limine* raised by the second respondent are accordingly upheld.

Conclusion

[20] Having upheld the points *in limine* raised by both the first and second respondents, I deem it unnecessary to enter into the merits of the case. That would be a mere academic exercise.

The application is accordingly dismissed with costs.



JUDGE OF THE NORTH GAUTENG HIGH COURT

67520-2010

HEARD ON: 3 NOVEMBER 2010
FOR THE APPLICANT: V C TSHISHONGA (ATTORNEY)
INSTRUCTED BY: MUNDALAMO TSHISHONGA ATTORNEYS
FOR THE FIRST RESPONDENT: Ms S MENTZ
INSTRUCTED BY: KIRKCALDY PEREIRA INC
 c/o DYSON INCORPORATED
FOR THE SECOND RESPONDENT: A WILKINS
INSTRUCTED BY: VAN DEN BERG & MEINTJIES INC