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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)**

**CASE NO. EL 805/2023
NOT REPORTABLE**

In the matter between:

VELISWA NDONGENI

Applicant

and

BUFFALO CITY METROPOLITAN MUNICIPALITY

First Respondent

THE MUNICIPAL MANAGER BUFFALO CITY
METROPOLITAN MUNICIPALITY

Second Respondent

JUDGMENT

COLLETT AJ

INTRODUCTION:

[1] This application came before me on 18 July 2023, having stood down until 19 July 2023 due to the congested motion court roll.

[2] It was launched and pursued as a matter of urgency having initially been enrolled on the normal motion court day on 9 May 2023 in terms of *Practice Direction* 12 (d).

[3] On 9 May 2023 a *rule nisi* was issued granting the applicant the undermentioned relief:

“1. The Rules relating to the forms and service provided for in the normal Rules of this Honourable Court, including 72 hours’ notice referred to in section 35 of the general Law Amendment Act of 1995 (Act 62 of 1995) are dispensed with.

2. The applicant is granted leave to move this application on an urgent basis in terms of Rule 6 (12) of the Uniform rules of this court.

3. The service of this application by the attorneys of record on the second respondent’s office is condoned.

4. A rule nisi is issued calling upon respondents to show cause, if any, on Tuesday: the 23rd day of May 2023 at 09h30 am as to why the following orders granted today should made final:

4.1 The respondents are ordered and directed to reconnect the electricity supply to the premises situated at No. 1[...] N.U.[...], with electricity meter No 070[...] and account number 101[...] forthwith.

4.2 The respondents are interdicted and restrained from terminating and disconnecting the electricity supply to the premises situated at number 1[...], NU [...], Mdantsane with electricity meter No 070 [...] and account number 101[...], without the requisite 14-day notice.

4.3 The respondent are interdicted and restrained from charging a reconnection fee.

4.4 Costs to be costs in the cause.

4.5 Paragraph 4.1, 4.2, 4.3 shall operate as *mandamus* and/or *interim order pending the finalization of this matter*.”¹

[4] Despite the aforementioned Court Order, the respondents failed to reconnect the applicant’s electrical supply.

[5] Subsequently, on 22 May 2023 (a day before the return day of the *rule nisi*), the respondents’ attorney sent an email to the applicant’s attorney indicating that a functionary of the respondents had suggested that the electrical supply was not blocked and could possibly be faulty.

[6] Despite the unequivocal content of paragraph 4.1 of the aforementioned Court Order, it was suggested by the first respondent that the applicant should log a maintenance call.

[7] On the 23 May 2023, being the return day of the *rule nisi*, the respondents’ legal representative assured the applicant’s legal representative that the electrical supply was in the process of being restored. The *rule nisi* was extended until 20 June 2023.

[8] Needless to say, the electrical supply was still not reconnected in terms of the *rule nisi* originally issued on 9 May 2023.

[9] Consequently, the applicant launched a Contempt of Court application on 5 June 2023. It was only on this day that the electricity supply was reconnected in terms of the aforementioned Court Order.

[10] On 20 June 2023, after the electricity supply had been reconnected, the *rule nisi* was further extended until 18 of July 2023 affording the respondents an opportunity until 23 June 2023 to file an answering affidavit.

¹ Record, Court Order dated 9 May 2023, page 64-65

[11] Despite the provisions of the aforementioned Court Order dated 20 June 2023 relating to the filing of the answering affidavit, same was only filed on 11 July 2023.

THE FACTUAL MATRIX

[12] The applicant's case was premised upon the disconnection of her electrical supply on the 20 March 2023.

[13] Pursuant to the aforementioned, the applicant attended at the offices of the first respondent both on 21 March 2023 and 27 March 2023, suffice to state that she was ultimately informed that her electrical supply would be restored upon payment of R16 500.00.

[14] The applicant approached her attorneys on 13 April 2023 who in turn forwarded correspondence to the respondents seeking the reconnection of the electrical supply and alleging non-compliance with the notice period as prescribed in the *By-laws*. No response hereto was forthcoming hereto.

[15] Ultimately, the applicant launched the present application which followed the route outlined *supra*.

[16] The applicant submitted that the respondents have a duty to provide electricity as a basic municipal right.² This was not in dispute.

[17] It deserves mention that the respondents sought to file an answering affidavit, after the electrical supply had been restored, in opposition to the confirmation of the *rule nisi*.

² *Joseph & Others v City of Johannesburg & Others* 2010 (4) SA 55 (CC) para 34.

[18] Essentially, the opposition is premised on the assertion that the electrical supply was not disconnected but was due to an electrical fault. In support thereof, the respondents provided correspondence dated 6 June 2023 (postdating the contempt application) annexed to the answering affidavit.³

SUBMISSIONS

[19] The respondents' legal representative sought to persuade the Court that the applicant should have established the reasons why the electrical supply had been disconnected as, since 1 March 2023, the respondents no longer disconnected the electrical supply of consumers but applied the 80/20 deduction policy.

[20] The argument was further developed to suggest that the applicant should have logged a fault report relating to the electrical supply.

[21] It is apparent from the applicant's founding affidavit that not only did she attend at the offices of the first respondent, address correspondence to the first respondent but launched the present application, culminating in four court appearances and a contempt application. The respondents were both aware of and legally represented at all court appearances.

[22] It is unconscionable for the respondents to suggest that the applicant should have investigated and established the existence of an electrical fault particularly in my view of the fact that she had been informed otherwise whilst attending at the offices of the respondents. It appears that this, by extension, would be the basis upon which the respondents now seek to retrospectively refute the need for the *rule nisi* issued by this Court.

³ Respondents' answering affidavit, page 83

[23] The assertion that because the 80/20 policy had been implemented from 1 March 2023, the electrical supply could not have been disconnected for arrears and that the applicant should have known this is similarly disingenuous.

[24] The fact of the matter is that the applicant took the steps as aforementioned when her electrical supply was disconnected and, on their own version, the respondents should have reasonably been aware that the disconnection was not in respect of arrears and acted accordingly by investigating the reason for such disconnection.

[25] The reality is that from 1 March 2023 until 5 June 2023, the applicant was deprived of electrical supply to her premises at the instance of the respondents, who have a duty to supply such service, due to no fault on her part. The nonchalant and tardy conduct of the respondents and/or its officials leaves much to be desired.

[26] Counsel for the applicant submitted that the need for confirmation of the *rule nisi* has since been rendered academic and the issue remaining is that of costs. In essence, this became the position when the electrical supply was restored on 5 June 2023. It defies all logic as to why the *rule nisi* was further extended on 20 June 2023 for the respondents to file an answering affidavit after the fact.

[27] The history and chronology of the matter dictate that the opposition raised to the confirmation of the *rule nisi* was vexatious, frivolous and unwarranted, particularly at a stage when there had been compliance (albeit at the threat of contempt).

[28] The conduct of the respondents in unnecessarily protracting this litigation is deplorable. The respondents were ordered by this Court on 9 May 2023 to ‘*reconnect the electricity supply*’ and they failed to do so whatever the underlying *causa* was found to be.

[29] The entire debacle surrounding this application could and should have been avoided if the respondents and/or those acting on their behalf had acted with due

diligence when the applicant reported the electrical disconnection, being mindful of the alleged implementation of the 80/20 policy from 1 March 2023.

[30] The respondents' conduct in unnecessarily prolonging the life of this application is a flagrant abuse of the court process and an avoidable waste of public funds.

[31] In the circumstances the following order is issued:

1. The *rule nisi* is discharged.
2. The respondents are ordered to pay the costs of the application jointly and severally.

S A COLLETT
ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the Applicant: Mr Foord
Instructed by: Tyali Attorney, East London.
Ref. Mr L Tyali

Counsel for the Respondents: Mr Novukela
Instructed by: B Bangani Attorneys, East London
Ref. Mr Bangani

Date heard: 19 July 2023
Date judgment delivered: 25 July 2023