IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

CASE NUMBER: 24259 / 13

(1) REPORTABLE: ~~YES~~/ NO
(2) **OF INTEREST TO OTHER JUDGES: ~~YES~~/NO**
(3) **REVISED.**

24 / 07 / 2015
DATE

SIGNATURE

24/7/2015

In the matter between:

DAWID BENJAMIN LAAS — FIRST APPLICANT

WESBRIX (PTY) LTD — SECOND RESPONDENT

And

CITY OF THSHWANE METROPOLITAN MUNICIPALITY — RESPONDENT

JUDGMENT

MAVUNDLA, J.

[1] The applicant had obtained the following order:

"1. The respondent is interdicted from disconnecting the electricity service on the property known as Plaas K [.......], JR District, Pretoria for the arrears electricity account in the amount of R3, 354, 940. 88, until the action under case number 4082 / 2013 for the arrears has been finalised.

2 That the Respondent is entitled to implement its credit control and debt collection measures on any amount outstanding after the institution of the summons under case number 4082 / 2013.

3. A *rule nisi* with return date being 29 August 2014, calling on the Respondent to show cause if any why the order in paragraph 1should not be made final.

4. Costs reserved for determination by the Court on the return date."

[2] On the 13 November 2014 this Court discharged the aforesaid *rule nisi* issued against the respondent and ordered that the applicant pays the costs of the application. The reasons for this order are set herein below.

[3] It has since come to the Court's attention that the order of costs was made against a single applicant, whereas there were two applicants. The order as to costs is therefore vague and remains uncertain. The order as to costs as it stands, needs to be amended so as to make it practically implementable. Therefore, the order in respect of costs is *mero motu*[1] varied to read as follows: "The applicants are jointly and severally, the one paying the other to be absolved ordered to pay the cost of the application."

[4] The rule *nisi* had been extended on several occasions before the matter came before this Court, for the consideration of whether the rule *nisi* should be made final or discharged. For a party to succeed in having a final order granted, he must satisfy the

[1] *Vide Firestone South Africa {Pty) Ltd v Genticuro A.G.* 1977(4) SA 298 (AD) at 306H; *Mostert NO v Old Mutual Life Assurance* CO *(SA) Ltd* 2002 (1) SA 82 (SCA) at 860.

Court that he / she/ it has a clear right[2], an actual injury was committed; and has no alternative remedy. In the matter of *Oasis Group Holdings (Pty) Ltd and another v Bray* 2006 (4) ALL SA 183 (C) at 191 para[16] Dlodlo J held that "if the relief sought is interim in form but final in substance, the applicant must prove the requirements for the grant of a final interdict and questions such as balance of convenience do not arise. For a final interdict the applicant must establish a clear right or definite right. It needs to be borne in mind that a final interdict can be granted in application proceedings only if the facts as stated by the respondent together with the admitted facts in the applicant's affidavits justify such an order, as stated in the *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A)."

[5] In the matter of *Wormald NO and Others v Kambule*[3] Maya AJA as she then was, held that:

"[5] There having been no request for a referral of such dispute for hearing of oral evidence and these being motion proceedings, the final relief which is sought by the appellants should be granted if the facts alleged by the appellant that are not denied by the respondent, together with the facts asserted by the respondent, justify such an order. *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C."

[6] In the matter of *Rademan v Moqhaka Municipality and Others*[4] it was held that a municipality is entitled without a court order to disconnect the electricity supply of residents who refuse or fail to pay their rates and taxes, and it may do so even where the electricity accounts of such residents are not in area to ensure regular payment of fees for the municipal services rendered.

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[2] *Zokufa v Comuscan* 2011 (1) SA at 279 (ECM) para 37.

[3] 2006 (3) SA 562 (SCA) at 566H-I.

[4] 2012 (2) SA 387 (SCA) at 390 par[lO) etc.

[7] *In casu* it is common cause that the electricity was supplied by the respondent to the property of the applicants, initially through account number [.......] registered in the name of the first applicant. The arrears under this account accumulated to an amount of R2, 948 110, 12.

[8] According to the respondent during the 20 January 2012 certain illegal activities occurred relating to the service account of the applicants. The names of the applicants were illegally removed from the service account number [.......] and substituted by the names of an entity called Chicken Traders. Simultaneously with the changing of the names on account […….], a new service account was fraudulently opened in respect of the applicants' premises under account no [………..] in the name of the second applicant. In this regard, the new account was opened by using the Computer System of one *Asnath Mokalapa,* an employee of the respondent, who was on leave at the time. All this occurred immediately after the respondent had issued a notice of intention to disconnect the electricity supply to the relevant premises under account number [……….].

[9] *In casu* it is not disputed by the applicants that the account in respect of relevant property is in arrears, in a staggering amount of R385, 845. 00. It is common cause that the applicants are running business on the premises, and are therefore benefiting commercially out of the electricity supply. It is not denied that the respondent have a duty to provide electricity. Equally so too, it

is not disputed that the applicants, as the consumers, have a reciprocal duty to pay for the electricity supplied to the premises by the respondent.

[10] In the matter of *Real People v City of Johannesburg* [5] the Full Bench confirmed the decision of Masipa J, who held that s49 (1) of the Local Government Ordinance renders the owner of property liable for all charges in respect of consumption for water and electricity and that in as much as there is a duty on the respondent to provide electricity and water services there is a reciprocal duty on owners of properties to ensure that the relevant local legislation is complied with. The owner should not merely sit back and regard it as being not his responsibility, merely because he did not enter into a consumer agreement with the respondent. The owner bears the risk in the property and remains responsible for payment of outstanding consumption. When the property is sold, the owner will be held liable for all outstanding consumption charges and clearance certificate will not be provided by the local authority until such charges have been paid.

[11] In my view, the applicants, as stated in their heads of argument seek a final order. They have not persuaded this Court that they have a real right, entitling them to the confirmation of the *rule nisi.* On the other hand the respondent has a right and duty to ensure that arrears are paid. *In casu,* there is even a suggestion of devious efforts to avoid payment of the arrears, either by the first

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5 2011(5) SA 8 (GSJ).

applicant or second applicant or both. In such circumstances, the Courts in the exercise of their discretion should refrain in abetting with such conduct.

[12] In my view, the confirmation of the *rule nisi* would have the effect of a final order, thus depriving the respondent of its substantive right to collect the outstanding arrears referred to herein above; vide *Contract Forwarding (Pty) Ltd v Chesterfin.*[6]

[13] When the *rule nisi* was issued; the costs were reserved for determination by this Court. It is trite that the cost follow the event. The respondent having been successful in opposing the confirmation of the *rule nisi,* it stands to reason that the costs must be borne by the applicants.

[14] It is for the aforesaid reasons that, in the exercise of its discretion, this Court swayed against confirming, but rather inclined towards the discharge of the *rule nisi* with costs.

[15] In the result the order as amended shall reads as follows:

"1. That the *rule nisi* is discharged.

2. That the applicants are jointly and severally, the one paying the other

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[6] (Pty) Ltd 2003 (2) SA 253.

to be absolved ordered to pay the cost of the application."

N.M MAVUNDLA

JUDGE OF THE HIGH COURT

HEARD ON THE	:	13/11/2004
DATE OF JUDGMENT	:	24/07/2015
APPLICANT'S ADV	:	ADV I. N. KRUGER
INSTRUCTED BY	:	MARAIS ATTORNEYS
RESPONDET'S ADV	:	ADV M GWALA
INSTRUCTED BY	:	ANDILE SETH ATTORNEYS