



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

Case No: 23534/2013

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHERS
	JUDGES: YES/NO
(3)	REVISED
20.11.2013	
DATE	SIGNATURE

In the matter between:

Centurion Home Owners Association NPC

Applicant

and

City of Tshwane Metropolitan Municipality

Respondent

DATE HEARD: 30 October 2013

DATE JUDGMENT HANDED DOWN: 20.11.2013

JUDGMENT

JANSE VAN NIEUWENHUIZEN AJ

- [1] The applicant is the Home Owners Association of a residential development known as Centurion Residential Estate and Country Club situated in Centurion, Gauteng.
- [2] On 7 Mei 2013, the applicant obtained a rule *nisi* against the respondent, in the following terms:

"1.1 That the Respondent be interdicted and directed to reconnect the electricity supply to the Applicant's premises at the Centurion Residential Estate and Country Club, 41 Centurion Drive, Highveld, Centurion, and more particularly the supply of electrical power at Estate Walk, Irene, Centurion.

1.2 That, pending the finalisation of the resolution of the dispute between the parties relating to the charge for water use for the period 29 April 2009 until 2 July 2009, the Respondent shall not terminate or reduce the municipal services rendered to the Applicant due to the fact that the disputed amount has not been paid."

[3] This is the return date of the rule *nisi*.

[4] The dispute between the parties emanates from the water consumption on a portion of the estate under the applicant's control, which portion is located on Estate Walk, Irene, Centurion ("the portion").

[5] The applicant alleges that the water consumption on the portion, up and until the end of June 2009, fluctuated monthly, but was never more than 100 kilolitres per month.

[6] I pause to mention, that the portion in question is quite small and the point where the water supply is metered to the end of the water line is a mere 100 metres.

[7] The water consumption on the portion is limited to a guard house with a small bathroom and a tiny garden using approximately 14 micro water sprayers.

- [8] The monthly charge in respect of water consumption on the portion amounted to approximately R 400,00.
- [9] Quite understandably and in view of the aforesaid history, the applicant was suitable perturbed upon receipt of the water consumption account for the period 29 April 2009 to 2 July 2009.
- [10] According to the respondent's records the water consumption for the period was 10 164 kilolitres at a charge of R 122 804, 03.
- [11] The applicant, thereupon and on 19 January 2011 declared an official dispute regarding the charge concerned. The dispute is contained in a letter addressed to the respondent. The contents of the letter is relevant to the present dispute between the parties and will be referred to in more detail *infra*.
- [12] The applicant contends that the dispute between the parties has to date not been resolved and consequently, pending the resolution of the dispute, the respondent is not legally entitled to interrupt any of the municipal services rendered to the applicant.
- [13] The respondent does not agree. According to the respondent, the dispute was resolved as long ago as March 2011 and as a result, it submits that the applicant is liable to pay the amount of R 122 804, 03 in respect of the water consumption on the portion for the period in question.
- [14] In order to resolve the impasse between the parties, it is necessary to have regard to the legislation applicable to the dispute.

LEGISLATIVE FRAMEWORK:

[15] The dispute between the parties are governed by:

- i) the Municipal Systems Act, 32 of 2000 ("the Act");
- ii) the Water Supply By-Law of the respondent published in Local Authority Notice 2267 in the *Provincial Gazette Extraordinary* (No 470 on 5 November 2003) ("the By-Law"), and
- iii) the respondent's Credit Control and Debt Collection Policy ("the Policy").

[16] Section 13 of the Act makes provision for the publication of by-laws and the By-Law was duly published in terms thereof.

[17] Chapter 9 of the Act regulates Credit Control and Debt Collection and section 96 prescribes the debt collection responsibility of a municipality. The section reads as follows:

"96. Debt collection responsibility of municipalities. - A municipality-

- (a) *must collect all money that is due and payable to it, subject to this Act and any other applicable legislation; and*
- (b) *for this purpose, must adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariffs policies and complies with the provisions of this Act."*

[18] The Policy was adopted by the respondent on 30 August 2012, in terms of the provisions of section 96 of the Act.

[19] The relevant portion of paragraph 13 of the Policy reads as follows:

"The Policy shall be interpreted as supplementing other applicable by-laws of the Municipality..... In the case of conflict, the Policy, read together with the Municipality's Credit Control and Debt Collection By-law, shall prevail."

[20] I was informed by counsel appearing on behalf of the parties, that the provisions of the respondent's Credit Control and Debt Collection By-law, are not relevant to dispute between the parties.

[21] Lastly; section 102 of the Act, dealing with accounts, reads as follows:

- (1) "A municipality may –
 - (a) consolidate any separate accounts of persons liable for payments to the municipality;
 - (b) credit a payment by such a person against any account of that person; and
 - (c) implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person.
- (2) 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.

SUBMISSIONS

[22] Mr Welgemoed, counsel for the applicant, relied on the provisions contained in paragraph 6 of the Policy, in support of his submission that the dispute lodged by the applicant, is still pending.

[23] The paragraph deals, *inter alia*, with the procedure to be followed by:

- i) a debtor who disputes certain amounts and/or items on a municipality account; and
- ii) the municipality in considering the dispute.

[24] Mr Welgemoed argued that the procedure prescribed in the Policy has not been finalised. Paragraph 6(f)(iii) of the Policy states that the dispute is deemed to be finalised when the Chief Financial Officer of the respondent has reached a decision in respect thereof.

[25] It is common cause between the parties that the respondent's Chief Financial Officer has not yet made a decision as envisaged in the Policy.

[26] Mr Mnyandu, counsel for the respondent, submitted that the complaint lodged by the applicant falls within the ambit of the respondent's By-Law.

[27] Section 24 of the By-Law provides for the procedures to be followed in the event of a defect in the device measuring water consumption.

[28] The relevant portion of the section reads as follows:

"24 (1) If a customer has reason to believe that a measuring device supplied to him or her by the Municipality is defective, he or she may, against payment of the applicable charge, apply in writing for the measuring device to be tested.

(2) If the outcome of any test referred to in subsection (1) shows that a measuring device is-

(a) within the range of accuracy prescribed by the Trade Metrology Act, 1973, the customer is liable for the cost of the test and any other amounts outstanding;"

[29] Mr Mnyandu submitted that the applicant's letter dated 19 January 2011, amounts to a written request in terms of the provisions of section 24 of the By-Law.

[30] Should this submission be correct, it is clear from the papers that the respondent did obtain a verification certificate in respect of the meter on 5 November 2009. The meter was found to comply with the requirements of the Trade Metrology Act, 77 of 1973.

[31] In order to determine which provision applies to the dispute lodged by the applicant, it is necessary to have regard to the contents of the letter of dispute.

LETTER OF DISPUTE:

[32] The letter reads as follows:

"DISPUTE: WATER ACCOUNT:

- "1. In July 2009 the Centurion Homeowners Association received an account for water consumption that was 10 000 kl in excess of our normal consumption. Our "normal" consumption at this metering point is in the order of 100 kl per month. Over a period of three years from January 2008 to January 2011, the total metered consumption at this point has been less than 4 000 kl. This excludes the extra 10 000 kl usage attributed to us for the months of May and June 2009.

We herewith wish to declare an official dispute regarding the 10 000 kl water consumption as discussed in the attached documents.

2. After several discussions between the attorneys of both parties, Hugo & Ngwenya, it is the wish of the Centurion Homeowners Association to resolve this matter through discussions, rather than the litigation route.
3. The Centurion Homeowners Association was informed that the Metro Council is of the opinion that the high consumption was due to a water leak which also led to the collapsing of a wall in the vicinity. Apart from the fact that our attached document indicates that it was physically impossible to discharge the 10 000 kl through a fully open connection (let alone a leak), this collapse in fact took place in 2004 which was several years before the current dispute. Documentation regarding the collapse of the wall in 2004 is available from the Centurion Home Owners' office if needed. Please find the following document attached for your perusal:
- a) A water pressure test that proves that the water consumption was impossible.

4. *Taking above into consideration we believe that you will come to the conclusion that such a leak (water consumption) would not have possible and could not have taken place. We respectfully request a meeting with you in order to explain the situation as we see it."*

[33] The "water pressure test" attached to the letter was provided by Rudy Koekemoer, a civil and structural engineer.

[34] The report concluded with the following finding:

".....leads the writer to believe that the abnormally-high meter reading by Tshwane was obtained from a defective meter."

[35] Mr Welgemoed contends that the letter was not a request in terms of section 24(1) of the By-law, but a dispute submitted in writing as contemplated in paragraph 6 of the Policy.

[36] He emphasised the fact that the applicant did not apply in writing for the device to be tested, nor did the applicant pay the prescribed fee.

[37] It appears that the test conducted on 5 November 2009, was done at the respondent's own volition.

[38] The letter under discussion, is the only written document in terms of which a dispute was raised.

[39] I am of the view that a client has a choice to utilise either section 24 of the By-law or to declare a dispute as envisaged in paragraph 6 of the Policy.

[40] To hold otherwise, would lead to absurd results. The respondent would be authorised to utilise the procedure stipulated in the By-law, with or without the client's knowledge or consent. As a result a client will, without a choice, be deprived of her/his/its rights afforded by the Act and the Policy. Such a scenario is clearly untenable.

CONCLUSION:

[41] In view of the aforesaid, the applicant is entitled to the protection afforded by section 102(2) of the Act and I am satisfied that the applicant has established a *prima facie* right to the relief claimed.

[42] The respondent's declared intention to interrupt the electricity supply to the estate administered by the applicant, satisfies the requirement of a well-grounded apprehension of irreparable harm if the relief is not granted and the pending dispute is decided in favour of the applicant.

[43] The respondent will not be prejudiced by the relief granted herein. The respondent merely needs to follow the procedure laid down in its own policy. Should the dispute be decided in favour of the respondent, it is at liberty to enforce its credit control measures. I find that the balance of convenience favours the granting of this interim interdict.

[44] The applicant does not have another satisfactory remedy.

[45] Costs will follow the event.

ORDER:

I make the following order:

1. The rule is confirmed with costs.


JANSE VAN NIEUWENHUIZEN
ACTING JUDGE OF THE HIGH COURT

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