IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No.: 4008/2003

In the matter between:

HENDRIK FREDERIK MEYER	Applicant
and	
MOQHAKA LOCAL MUNICIPALITY	Respondent

CORAM:	**RAMPAI, J**
HEARD ON:	**11 DECEMBER 2003**
DELIVERED ON:	**24 JUNE 2004**

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[1] The matter came by way of an urgent application on 27 November 2003. It served before me. I fixed deadlines for the filing of the answering affidavit and the replying affidavit. I then postponed the matter to Thursday, 11 December 2003 for argument and I also ordered the respondent to supply electricity to the applicant immediately pending the finalisation of this application. All these were in accordance with the agreement reached between the parties.

[2] On Thursday, 11 December 2003 I heard argument for and against the application. Having heard argument, I granted the application. I gave no reasons for the judgment but indicated that I would do so on request. Since then I have received a written request from the respondent to furnish reasons for my judgment.

[3] The relief sought in these proceedings as set out in the notice of motion was as follows:

3.1 Dat die aansoek aangehoor word as 'n dringende aansoek en dat kondonasie aan applikant verleen word vir die nie-nakoming van die reels met betrekking tot vorm en betekening.

3.2 Dat die respondent beveel en verplig word om die elektrisiteitstoevoer na die plot Kraalkop Nr 23, Erf 336, Kroonstad aan te sluit en te herstel hangende die instel en finalisering van 'n aksie deur die applikant teen respondent vir die her-aansluiting en herstel van die elektriese toevoer en meegaande regshulp aan plot Kraalkop Nr 23, Erf 336, Kroonstad, welke aksie binne 60 (sestig) dae na verlening van hierdie bevel ingestel word in hierdie hof.

The application is opposed by the respondent.

[4] The applicant is an adult male who resides on a plot known as Plot 23 Kraalkop, Erf 336 Kroonstad in the Free State Province. He is employed by a close corporation as its financial manager. More about the close corporation later.

[5] The respondent is a local authority established in terms of the provisions of the Local Government: Municipal Structures Act No. 117/1998. The respondent is the successor in title of three previously autonomous municipalities of Kroonstad, Steynsrus and Viljoenskroon. Its provincial offices are situated in Hill Street at Kroonstad, Free State Province.

[6] In his founding affidavit the applicant avers that the aforesaid property, Plot 23 Kraalkop, is the property of his employer Ora et Labora CC. The business operations of the CC consist of chicken farming among others. The enterprise continuously uses electricity in order to run the chicken breeding machines. The enterprise

carries its business operation on the same plot on which the applicant resides. The respondent has the sole right to supply electricity to all the consumers in the Kroonstad district. The respondent supplies electricity to the enterprise in terms of a written consumer agreement concluded between the two. The enterprise failed to make regular payments due to the respondent in connection with the electricity accounts rendered from time to time. By 13 October 2003 the arrears had accumulated to the sum of R168 000,00. As a result of this, the respondent disconnected the electricity supply to the plot. Despite the offer of the enterprise to liquidate the arrears by way of monthly instalments, the respondent repudiated the offer and refused to reconnect the electricity supply to the plot unless the arrears were paid in full at once.

[7] Prior to this dilemma, the management of the close corporation had decided to restructure the enterprise so as to promote the idea of black empowerment and also to ensure that all the employees could acquire a stake in the business. Those restructuring plans were under threat. The close corporation was facing irreparable financial harm. The applicant decided to rescue the close

corporation. The salvage scheme entailed he leasing the plot from his employer, the close corporation, and then concluding a consumer agreement with the respondent for the supply of electricity to the same plot, but for his own account. On 7 November 2003 the application signed the lease agreement with the close corporation. On 13 November 2003 he signed the consumer agreement with the respondent. He paid a deposit of R70 000,00. A new electricity account number was then allocated to him. Notwithstanding all this, the respondent still refused to supply electricity to the plot. The respondent adopted the stance that unless the full outstanding amount owed in respect of the plot was paid, the respondent would not supply electricity to the plot.

[8] In its answering affidavit the respondent avers, through its financial manager Mr M.J. Lenyehelo, that the applicant's employer, in other words the close corporation, owes the respondent the total sum of approximately R½-million in connection with electricity supplied. The respondent indeed repudiated the offer made by Mr Kooy on behalf of the close corporation because this representative could not convince the respondent's senior functionaries, namely Mr M.M. Moadeira the municipal manager, Mr I van Rooyen the

legal advisor and Mr M.J. Lenyehelo the financial manager, that the close corporation was able to make satisfactory and acceptable arrangements to defray the arrears.

[9] The respondent's employee Ms L. Esterhuizen, had no authority to conclude consumer agreements on behalf of the respondents with members of the public. She was employed as nothing more than an information clerk. She was unaware that the owner of the plot owed a substantial sum of money to the respondent. The respondent confirms that it refused to supply electricity to the plot notwithstanding the said consumer agreement. The respondent tendered to refund the deposit of R70 000,00 to the applicant. The respondent's representatives Mr McClaren en Mr Maswanganyi informed the applicant that the respondent considered the whole scheme as evidenced by the aforesaid lease agreement to be a circumvention ploy of the debts of the close corporation. The applicant, as the financial manager of the close corporation, was in actual fact attempting to protect the interests of the close corporation.

[10] In his replying affidavit the applicant denies that the close

corporation was in arrears to the tune of R500 000,00. He avers that that correct amount of the arrears owing by the close corporation to the respondent was altogether R168 194,62 of which R142 839,19 was owed in respect of Kraalkop 23, Erf 336 and R22 164,01 was owed in respect of Riverside Erf 73. He explained that on the plot Riverside, the close corporation farms in chicken hens whose eggs are taken to Kraalkop for hatching. The electricity supply to Kraalkop was disconnected without any prior written notice or warning. He denied that Ms Esterhuizen did not know all the true facts concerning the account of Kraalkop when she, on behalf of the respondent, signed the consumer agreement with him. He contends that the respondent is obliged to supply him with electricity on the strength of the valid consumer agreement. He avers that he is able to make satisfactory arrangements for the payment of electricity to be supplied by the respondent.

[11] The applicant denies that the lease agreement between him and the respondent was a scam intended to circumvent the debt of the close corporation. He replies that he declined to fork out an extra amount of R130 000,00 to bring the deposit to R200 000,00. He says that he saw the new demand for additional deposit as

tantamount to holding him liable for the debt of another. He saw that as no normal practice. He admits that the respondent tendered to refund the deposit of R70 000,00, but denies the date on which the tender was made.

[12] He admits he did not take the matter up with the regulator to voice his grievance. He replies that the prescribed procedure is a cumbersome route which would not have been a satisfactory alternative relief. It lacked the speed necessary to deal with urgent situations. He contends that as for the respondent, he was not remediless since he could disconnect the electricity supply to the applicant immediately if he failed to pay his account regularly in the future. On the other hand he would suffer irreparable harm if the respondent did not supply electricity to him immediately.

[13] Mr De Wet, counsel for the applicant, on the one hand submits that the application has merits and that the applicant has made out a case for the relief sought. He refers me to the following authorities in support of the various submissions he made: **SETLOGELO v SETLOGELO 1914 AD 221; L F BOSHOFF INVESTMENT**

<u>(PTY) LTD v CAPE TOWN MUNICIPALITY</u> 1969 (2) SA 256 (CPD) at 267A-F; <u>OLYMPIC PASSENGER SERVICE (PTY) LTD v RAMLAGAN</u> 1957 (2) SA 382 (N) at 383D-F; <u>ERIKSEN MOTORS (WELKOM) LTD v PROTEA MOTORS (WARRENTON)</u> 1973 (3) SA 685 (A); and **<u>SENEKAL INWONERSVERENIGING v PLAASLIKE OORGANGSRAAD</u> 1998 (3) SA 719 (O) at 727J.**

[14] Mr Hefer, counsel for the respondent, on the other hand submits that the application has no merits and that the applicant has failed to make out a case for the relief sought. He too refers me to certain authorities in support of the various submissions he made. Those authorities are: **<u>The Law and Practice of Interdicts</u>**, p.43; **<u>WELKOM BOTTLING CO v BELFAST MINERAL WATERS LIMITED</u> 1976 (3) SA 45 (O) at 56; <u>FREE STATE CONSOLIDATED GOLD AREAS v MERRIESPRUIT GOLD MINE CO AND ANOTHER</u> 1961 (2) SA 505 (W) at 524D.**

[15] The applicant contemplates suing the respondent by way of an action proceedings. In these motion proceedings he seeks an interim relief pending the contemplated action. The applicant who seeks an interim relief has to establish four requisites in order to succeed. Those requisites are:

- Firstly, a *prima facie* right, though open to some doubt.
- Secondly, a well grounded apprehension of irreparable harm if the relief is not granted.
- Thirdly, that the balance of convenience favours the granting of the relief.
- Fourthly, that the applicant has no alternative relief. (*Vide* **SETLOGELO v SETLOGELO** *supra*).

[16] These proceedings are about the supply of electricity to the premises known as Plot 23 Kraalkop in the district of Kroonstad. The plot is owned by a business enterprise called Ora et Labora CC. The applicant is in the employ of the plot owner, in other words, the close corporation. He is its financial manager. He resides on the plot with his family. The close corporation carries on business of chicken hatching on the plot. The enterprise depends on electrical power for the operation and heating of the breeding machines. The eggs which are artificially incubated are produced

from another plot of the same close corporation known as Riverside. At any given moment approximately 500 000 chicken eggs valued approximately R960 000,00 are incubated in the breeding machines. The uninterrupted supply of electricity to the breeding machines is indispensable seeing that the chicken embrios, in other words, unhatched eggs have to be heated up at all times so as to ensure that they do not prematurely perish. The enterprise provides chickens to the chicken farming industry and provides employment to several workers. The enterprise has a diesel generator for temporary use in emergency situations which might be occasioned by unforeseen electrical power failure.

[17] The applicant's employer began experiencing financial problems about two years before these proceedings. Certain market forces had such an adverse impact on the turnover of the close corporation that its electricity account fell in arrears. As on 13 October 2003 the accumulated arrears stood just above R168 200,00. On that day the respondent, who is the sole provider of electricity in the district, demanded payment thereof, and warned the close corporation that it would discontinue the supply of electricity to its Kraalkop plot unless payment was made by noon on the same day. The close

corporation was unable to comply with the demand and the respondent summarily disconnected the electricity power supply. On average the close corporation consumed electricity power of about R26 000,00 per month. The close corporation was unable to make satisfactory arrangements afterwards to the respondent for the payment of the arrears. Its offer was unacceptable to the respondent.

[18] The impasse between the respondent and the applicant's employer threatened the livelihood of the applicant and his fellow employees. They were, before the electricity supply was disconnected, facing bleak prospects of losing their jobs as a result of the weakening financial stability of their employer. The disconnection made matters worse. The worsening situation prompted the applicant to think out a plan to protect his livelihood. He sold the idea to his employer. The employer bought the idea. The lease agreement of the employer's business enterprise by the employer's employee was singed on 7 November 2003. Five days later on 12 November 2003 the applicant signed the consumer agreement with the respondent for the supply of electricity to the same affected plot Kraalkop 23. The next day on 13 November 2003, a dispute arose

between the supplier and the consumer, in other words, the respondent and the applicant respectively. The respondent required the applicant to pay an additional amount of

R130 000,00 to top up his deposit of R70 000,00. The applicant refused to fork out a cent more. It is that dispute which I have to grapple with in these proceedings. Now that I have stated the background, I proceed to examine the facts.

[19] As regards the first requisite, it is incumbent upon the applicant to prove that he has a *prima facie* right worthy of legal protection. The right he seeks to protect by the interim relief he seeks does not have to be perfectly crystal. It needs not be a clear right. It may be open to some doubt, but it must have some properties which at a glance resemble the properties of a right. Mr Hefer's argument that:

> "Die beweerde clear right synde 'n voorvereiste vir die toestaan van 'n finale interdik van die applikant is om die minste te sê uiters verwarrend en te betwyfel"

is with respect, an incorrect point of departure. What the applicant seeks is an interim and not a final relief as Mr De Wet correctly observed.

[20] A number of legal provisions have a bearing on the issue of the applicant's disputed right. The following are worth bearing in mind:

- Section 10(1) Electricity Act No. 41 of 1987 imposes a duty on every licensee such as a municipality to supply electricity within its district to every resident who applies for it, provided such applicant is able to make satisfactory arrangements to pay for it.
- Section 10(2) Electricity Act No. 41 of 1987 provides that in the case where a licensed municipality delays or refuses to supply a resident applicant with electricity such applicant may appeal to the regulator.
- Section 22 Electricity Act No. 41 of 1987 provides that a licensee shall not, except for reasons beyond his control, reduce or discontinue the supply of electricity to a consumer unless:
  - (a) the consumer is insolvent; or
  - (b) the consumer has failed to pay and to comply with a written notice or demand calling upon him to do so within fourteen days.
- Section 11, Electricity Supply Regulations proclaimed in Government Gazette on 22 June 1990 in terms of section 150(1) Local Government Ordinance No. 8/1962 defines the

word “occupier” as any person actually residing on the property or premises without taking into account the right of occupation of such person.

- The same section defines the word “consumer” as any person using electricity supplied by the municipal council or if there is no such person, the owner of the premises.
- The same section defines the words “consumer agreement” as a document to be completed and signed by the consumer on a form as determined by the council from time to time in accordance with the council’s financial or other regulations.
- The same section defines the word “owner” in relation to immovable property as, among others, the occupier, where the owner does not occupy the property.
- The same section defines the word “premises” as any building or any other structure together with the land on which it is situated.
- Section 3 of Electricity Supply Regulations provides that no electricity shall be supplied to an electrical installation unless and until the owner or consumer of the premises has completed the consumer agreement on a form prescribed by the council.
- Section 5 of the Electricity Supply Regulations provides that the council may upon termination of any consumer agreement enter into a new consumer agreement with any prospective consumer in order to make provision for the continuation of the supply.
- Section 6 of the Electricity Supply Regulation provides that every applicant for a supply of electricity shall deposit with the council a sum of money as the council may determine.

[21] Section 10(1), Electricity Act No. 41 of 1987 provides that every licensee, in other words the respondent in this instance, shall supply electricity up to a certain limit to every applicant who is in a position to make satisfactory arrangements for the payment of the electricity consumed. The wording of this section is cast in

peremptory terms. The licensee shall supply electricity to every applicant. The crux of the enquiry is whether or not the applicant is financially able to make satisfactory arrangements for the payment of the supply he requires. If the applicant in the opinion of the electricity supplier is not able to make satisfactory arrangements, the supplier is entitled to disapprove the application for the consumer agreement as proposed by the applicant concerned. That happens to be the only criteria for turning down the application for the supply of electricity. Once a resident applicant has furnished a municipal council with the necessary documents such as his identity document; has paid the required deposit; has completed and signed the prescribed form, the consumer agreement binding upon the licensed municipality comes into existence.

[22] It follows from the above that the electricity supplier cannot on any other ground refuse to supply electricity to anyone who requires it. In the instant case the ability of the applicant to pay for the electricity was never questioned. The query was belatedly raised after the consumer agreement had been concluded. It is not the respondent’s case that the applicant has failed to make satisfactory

arrangements for the payment of the anticipated huge electrical power consumption. The basis of the respondent's refusal to supply electricity to the applicant here seems to be this:

You live on the plot Kraalkop 23. You are an employee of the owner of this plot. Your employer is indebted to me in a huge sum of money. You know the owner of this plot is unable to pay his debt, after all you are the financial manager of his business enterprise. You signed an agreement with your employer which purports to be a lease agreement. You see, the whole transaction is not a genuine lease agreement, but a cunning scheme. Your scheme is designed to aid your employer to evade payment of its debt to me. You have to pay an extra amount to bring the total deposit to R200 000,00 so that your employer can again be supplied with electricity.

[23] It is crystally clear that the respondent's refusal to supply the applicant with electrical power was founded on an incorrect premise. The respondent is steadfast in his refusal. Its functionaries refuse to see the applicant as a consumer in his own right. Instead they see him as nothing but a disguised front of the close corporation, the respondent's debtor. Such a stance is legally

indefensible. It is wrong to equate the applicant to the close corporation. He applied in his personal capacity for the supply of electricity and not in the representative capacity as the financial manager or agent of the close corporation. The fact that he is working for the close corporation, the fact that he is living on the same premises in respect of which the debt relates, and the fact that he has in terms of the lease agreement taken over the same business previously conducted by the close corporation, are irrelevant. It is equally irrelevant as to where the applicant got the deposit of R70 000,00 from. The applicant paid the money, not on the electricity account of the close corporation as Mr Hefer suggested, but on his own new electricity account. He and not the close corporation is responsible for the payment of the electricity to be supplied in connection with this new account.

[24] *In casu* the applicant provided the required documentation in terms of section 3 of the regulations. He paid he required deposit in terms of section 6 of the regulations. He completed the prescribed form in terms of section 3 of the regulations. He signed such form as the regulation required. It will be readily appreciated that by causing the applicant to sign the consumer agreement, the

respondent thereby acknowledged that the applicant was in a financial position to comply with the conditions of the periodic supply. These various acts brought into existence a valid consumer agreement as defined in section 1 of the regulations. Upon signing the prescribed form the applicant became a consumer entitled to demand the supply of electricity from the respondent. The consumer agreement binds the respondent. It being the case, the respondent is obliged to supply the applicant with electricity. The respondent had to supply the electric energy needed without attaching any further strings. It follows, therefore, that a new condition for the immediate payment of an extra deposit was imposed on the applicant in violation of section 6(2) of the regulations. It is impermissible to deprive a consumer of the electricity supply because he resides on the premises owned by a defaulting consumer whose supply has been discontinued. Similarly, it is impermissible to deprive the consumer of the supply because he is an employee of such defaulting consumer. These are the two underlying reasons for the respondent's reservation concerning the lease agreement. It appears that if the applicant was a complete outsider with no such current ties with the close corporation, the respondent would probably not have had any such objections or doubts about the lease agreement.

Having scrutinized the facts of this case and the various pieces of the law as more fully set out in paragraph [20] *supra*, I have come to the conclusion that the applicant has a *prima facie* right created by section 10(1), Act No.41 of 1987, and fortified by its regulations. The peremptory tone of section 10(1), the fact that an occupier does not have to prove any occupational right or title in respect of the property where the supply is required, *vide* section 1 of the Electricity Supply Regulations, the significance of the applicant's signature on the prescribed form, *vide* section 3 of the Electricity Supply Regulations, the definition of a consumer and the definition of a consumer agreement in section 1 of the Electricity Supply Regulations, all reinforce the consumer's right. In my view the applicant has established the first requirement of an interim interdict.

[25] The applicant must also prove that the respondent has actually committed an injury to his right. The applicant works for the close corporation. His livelihood is dependent on the business operations of the close corporation. His economic right is therefore

inextricably intertwined with the business operations of his employer. The disconnection of the electricity supply to the applicant's employer signalled a serious threat to his livelihood. However, such disconnection in itself constituted no violation of his right. At that stage the applicant did not have any right enforceable against the respondent. Therefore, it is not for applicant to complain that the disconnection of the supply to the close corporation was illegal. What really infringed his right was the respondent's later refusal to supply the applicant with electricity despite the consumer agreement he signed. What happened on 13 November 2003 when the applicant was called upon to furnish extra deposit, indicates beyond any doubt that the respondent was prompted to adopt such a punitive attitude by a desire to hold an innocent consumer responsible for the arrears of the guilty consumer.

[26] The respondent's refusal is unjustified and wrongful. There is virtually nothing illegal about the lease agreement concluded by the applicant and the close corporation. The respondent's refusal to recognise and respect the applicant's lawful business venture infringes the applicant's economic right. Moreover, the applicant's

family resides on the same plot. This was not a new averment made for the first time in the replying affidavit. The applicant made it clear in his founding affidavit that he resided on the same plot. The respondent's refusal to supply electricity to the plot in question on account of the plot owner's default violates the applicant's social right as well. The law forbids the respondent from punishing every occupier of those premises by reason of the arrears owing by the property owner, the close corporation which by its very nature does not physically occupy the said land or any structure thereon. I am of the view that the applicant would suffer irreparable harm unless the respondent supplies him with electricity. If the close corporation benefits, and it surely will, that can only be a consequence of the lease agreement which is a distinct and separate transaction. It does not concern the respondent, it does not saddle the respondent with any burden. It is a completely different jurisdic act which does not jeopardize the right of the respondent as against the close corporation, but primarily protects the economic and social interest of the applicant and, in a secondary way, ultimately also safeguards the business interests of the respondent to a lesser extent. In my view the applicant was well within his rights to do everything he could within the parameters of the law to protect his own interest by safeguarding the interest of his employer as well.

It seems to me more probable than not that the applicant was required to pay a deposit of R70 000,00 on the basis of the past power consumption of the plot-owner's enterprise. The amount is almost equal to R78 000,00 which is representative of an average consumption over three months. I am inclined to believe that whoever came with the amount of the deposit the applicant had to pay must probably have gleaned the information from the electricity account of the enterprise in order to come up with such a similar bottom-line figure. Therefore I find it improbable that the respondent's employee concerned Ms L. Esterhuizen did not know about the arrears of the close corporation at the time she attended to the applicant and helped him to sign the consumer agreement. The applicant must have pointed out that he did not require a new electricity power line to the plot, since there was already an existing electricity power line to the same plot, but in the name of the close corporation, whose supply had been discontinued.

[27] Nothing of significance turns on this point. It is really not an issue.

The object, purport and spirit of the relevant legislation and its regulation are perfectly clear. All the applicable provisions thereof are framed in a language that is glaringly generous to an individual who needs to be supplied with electricity by an electricity service provider. An electricity supplier such as a municipality is purposefully well positioned to function as an end station where the members of the public legitimately expect to access all essential services provided by their democratic government. As I see it a local government is a delivery vehicle of some sort through which government services and noble policies such as "batho pele - people first" have to be rendered. The underlying purpose is to make a difference in the lives of the governed so that we can all enjoy a better life. The spirit of generosity consciously and purposefully enveloped in those legal provisions should not be frustrated by unjustified administrative decisions and actions. A local government which parades a junior employee in its front office to help members of the public should not lightly be let off the hook when it later seeks to rely on lack of authority on the part of such a junior employee. Such a fanciful argument can only undermine the good intentions of the lawmaker and frustrate the consumers of this important amenity called electricity. The spirit of the law clearly calls upon the local municipalities to adopt liberal instead of obstructive attitudes in implementing the legal provisions relating to electricity.

[28] As I have already said elsewhere earlier in this judgment, the respondent does not contend that the applicant was not in a position to make satisfactory arrangements for the payment of the electrical power he needed. It is also not disputed by the respondent that the consumer agreement was concluded between the applicant and the respondent. The respondent's only defence to the applicant's case apparently is that the respondent was entitled to discontinue the electricity supply to the close corporation and that the respondent is entitled to keep the supply line to the close corporation disconnected until the outstanding municipal account has been settled. But we now know that such outstanding account does not relate to Kraalkop Plot only, but also to another property of the close corporation, Riverside Plot. In addition to all this, it behoves to remark that each of these two outstanding accounts has included on it certain components of municipal service charges which are non-electric in nature, *vide* **SENEKAL INWONERS-**

<u>VERENIGING v PLAASLIKE OORGANGS-RAAD</u>, *supra* by Van Coller, J.

The stand off between the respondent and the close corporation cannot be allowed to harm the rights of every individual prospective consumer who dwells on the plot. In my view the applicant has established a second requirement of the interim relief he seeks. The respondent's action has already caused harmful injury to his right. Such harm may become irreparable. His apprehension of such impending harm is reasonable.

[29] It is also incumbent upon the applicant to show that the balance of convenience favours the granting of the interim relief sought. In the case of **<u>OLYMPIC PASSENGER SERVICE (PTY) LTD v RAMLAGAN</u> 1957 (2) SA 382 (D&CLD)** the words of Holmes, J, as he then was, were paraphrased as follows at **382D-E**:

> "In those intermediate cases of applications for interim interdicts the applicants' prospects of ultimate success may range all the way from strong to weak, the Court, upon proof of a well grounded apprehension of irreparable harm and

> there being no adequate ordinary remedy, may grant an interdict – it has a discretion to be exercised judicially upon a consideration of all the facts. Usually this will resolve itself into a nice consideration of the prospects of success and the balance of convenience – the stronger the prospects of success, the less need for such balance to favour the applicant; the weaker the prospects of success, the greater the need for the balance of convenience to favour him."

The judicial process of weighing the prejudice to the applicant, if the interdict is withheld against the prejudice to the respondent, if the interdict is granted – is sometimes called the balance of convenience. See **ERIKSEN MOTORS WELKOM LTD v PROTEA MOTORS (WARRENTON) AND ANOTHER 1973 (3) SA 685 (A) at 691E** per Holmes, JA.

Meanwhile, the applicant as a lessee to the close corporation had to make ends meet by making use of diesel generators to supply power to the plot. Doing so appears expensive and uneconomic in comparison to using the conventional electrical power. The generators were not designed to operate non-stop like a transformer. The incubated chicken eggs do not hatch unless they continuously receive adequate heat. Without adequate and constant electric heating supply, there is always the danger of the embrios perishing prematurely. When the embrios perish, there will certainly be some irrecoverable loss.

In case the eggs do not hatch as expected, the enterprise leased by the applicant will not be able to provide chickens to the chicken farmers in terms of the supply contracts. Such breach may lead to several huge claims against the enterprise to the detriment of its workforce as well.

[30] Needless to say that the applicant's livelihood will also be imperilled if the chicken operations of the close corporation can no longer be carried on. His direct interest or stake in the business of the close corporation will obviously also be in jeopardy. A number of workers who are in the employ of the same enterprise whose interest are also under threat will loose their jobs should their employer be placed in liquidation and should the applicant's lease be undermined by the respondent's refusal to supply him with electricity.

[31] On the other hand, there will be no prejudice or risk for the respondent if the respondent supplies electricity to the applicant in the meantime. The following factors illustrate the point. In the first instance the applicant has paid a substantial deposit to the

respondent which is enough to cover the electricity consumption of the enterprise for approximately three months. In the second place, the respondent retains the mighty statutory power to discontinue the supply to the applicant immediately should he fail to pay his electricity bill regularly. *Vide* section 11 Electricity Supply Regulations. In the third place, the respondent's ordinary civil remedy to sue the defaulting close corporation remains intact and available for the recovery of the debt owing by the close corporation without depriving the applicant of an essential amenity to which he is entitled.

[32] On the strength of all these considerations, I have reached the conclusion that the balance of convenience preponderantly favours the applicant. Therefore the applicant has established the third requisite.

[33] In the final analysis, it is also incumbent upon the applicant in the proceedings of this nature to prove that there is no other satisfactory remedy available to him. The respondent is the sole electricity service provider in the area where the applicant lives. The monopoly makes the applicant entirely dependent on the

respondent for the electricity supply. There is virtually no competitor to whom the applicant can turn for the supply of electricity. The applicant's use of the generators was a short term solution to the problem. As I understand, the generators had always been there prior to the disconnection of the supply to the close corporation. However, they were used temporarily as backup equipment in emergency situations. After the disconnection the generators were used as a interim measure to generate the much needed power. They were never intended to be a permanent fixture of the business operations. I have already indicated some of their prohibitive disadvantages. The electric power supply by the respondent still remains the preferred source of electric energy for many reasons. The appeal procedure for the intervention of the regulator appears to be a cumbersome route to follow regard been had to the perishable nature of the business operation we are here dealing with. The regulator's intervention would not have provided a speedy effective and satisfactory remedy in my view. The absence of any meaningful ordinary relief justifies the launching of these urgent proceedings.

[34] In my view the applicant has established the forth requisite of an

interim relief sought.

[35] In the case of **FREE STATE GOLD AREAS v MERRIESPRUIT (OFS) OLG MINING CO. LTD AND ANOTHER 1961 (2) SA 505 (W) at 524D,** Williamson J said:

> "No onus rests on the respondents to establish any fact or facts in order to negative the applicant's right to an interdict. It is however clear that the Court has a discretion to grant or refuse an interdict."

Overall, I am satisfied that the applicant has on a balance of probabilities made out a case for the granting of an interim relief as set out in the notice of motion. I can see no reason why I should not exercise my discretion in favour of the applicant regard been had to the peculiar circumstances of this case.

[36] Accordingly the application is hereby granted with costs.

M.H. RAMPAI, J

<u>On behalf of Applicant:</u>	Adv. P.J.T. de Wet instructed by Symington & De Kok
<u>On behalf of Respondent:</u>	Adv. J.J.F. Hefer instructed by Rosendorff & Reitz Barry

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