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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case No: 026465-2024

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED
DATE	SIGNATURE

In the matter between:

MBJ CENTRE (PTY) LTD

Applicant

and

ESKOM HOLDINGS SOC LIMITED

Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CourtOnline. The date of the judgment/reasons is deemed to be 15 July 2024.

JUDGMENT

MALINDI J

Introduction

[1] The applicant is the owner of the property known as 7[...] R[...] Road, D[...] D[...], M[...] since 18 January 2024. The property consists of 12 commercial enterprises situated in a shopping centre, which the applicant utilizes to generate rental income.

[2] The applicant is liable for the payment of electricity supplied to the property by the respondent as from 18 January 2024. The business enterprises therefore, receive electricity through the applicant by virtue of their lease agreements with the applicant.

[3] The property was purchased from the late estate of Jan Anthonie Scholtz and his wife, Aletta Elizabeth Scholtz in 2023.

[4] The dispute arises out of the respondent's disconnection of the supply of electricity to the property on Thursday, 29 March 2024, due to an alleged arrear debt which arose during the previous ownership of the property of some R600 455.50.

[5] The applicant disputes the alleged arrear debt on the basis that the deponent always paid all respondents invoices timeously when he was a tenant of the previous owner and was shocked to see the alleged arrear amount in the respondents invoice for December 2023.

[6] The respondent's credit management manager states in the answering affidavit that the applicant has no standing to bring the application as it is not the respondent's customer because the electricity supply agreement with the respondent is not in the applicant's name, and secondly that the applicant does not come with clean hands as it illegally reconnected the electricity after the initial disconnection on 2 February 2024. It is alleged further that the application lacks urgency as:

- 6.1. Knowledge of the respondent's intention to take action as a result of the arrear debt was notified on 22 December 2023;
- 6.2. The first disconnection took place on 2 February 2024; and
- 6.3. The removal of the respondent's equipment took place on 29 February 2024, in order to prevent another illegal reconnection.

[7] The respondent alleges further that the December invoice states that failure to pay the arrear that may result in a disconnection within 14 days of receipt of the notice if that debt is not settled.

Common cause background facts

Submissions

[8] Mr. West, for the applicant, placed great reliance on *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and Others*¹. In this case Eskom was found to have acted unlawfully and without affording the residents of the two municipalities a right to be heard. In addition, the residents had been paying the prepaid electricity to the municipalities, which had failed to pass on the payments to Eskom. The court held that the innocent residents could not be punished on account of their municipalities failures. It was held in the same breath that the findings were not a denial of Eskom's right to act in terms of section 21(5) of the Electricity Regulation Authority (ERA) to reduce or terminate the supply of electricity.

[9] The Constitutional Court further found that the residents' rights were pleaded and established in terms of the Bill of Rights.

[10] In this case, the applicant has a number of obstacles in these and other requirements.

Termination

[11] The termination of electricity was conducted lawfully in terms of section 21(5) of the ERA. Due notice of Eskom's intention to collect was issued on 22 December 2023 in terms of annexure ES2. The December 2023 invoice statement states that failure to pay the overdue amount within 14 days of the notice/invoice may result in the supply of electricity being disconnected without further notice.

¹ [2022] ZACC 44; 2023 (5) BCLR 527 (CC); 2023 (4) SA 325 (CC) (23 December 2022).

[12] The applicant failed to show the requisites for an interim interdict. As stated above, it pleaded a right to dignity in terms of section 10 and the right to conduct business in terms of section 22 of the Constitution. However, there was no elaboration on the manner and extent of violation of these rights. To the extent that the business enterprises who hold leases under the applicant were included in this averment, they have not been joined and no substantiation of how each would be adversely affected was made. Not even that of the applicant. Therefore, no Constitutional right was established and subsequently no basis of alleging irreparable harm to any right.

[13] The applicant claims to have a standing in this litigation on the basis of being an “end user” of the electricity under the previous owner. This cannot be so as there is no contractual relationship between it and the previous owner in respect of the use of electricity that the previous owner pays to Eskom. The applicant merely pleads that it was a tenant of the previous owner, but does not allege the basis on which it was liable to pay for electricity. In any event, the applicant is now the owner of the property and is liable for the use of electricity thereon. The *Vaal River Development* case is clear that third parties have a right and standing in law to litigate against Eskom where there is an Eskom customer through whom they receive electricity. The applicant is not the customer envisaged and has no basis to claim that it receives electricity through a deceased estate.

[14] The clean hands rule applies in this case. The respondent’s submission in this regard was not meaningfully dealt with by the applicant, both in the heads of argument and in oral argument. The applicant could only say that it believed that the lack of electricity after 2 February 2024 was due to an outage and that the return of electricity was presumed to be due to the repair to the cause of the outage. This version is farfetched and the respondent’s account of how these two events took place has not been countered. The respondent’s version is more probable.

[15] In terms of the *Plascon-Evans Rule*² it is the version of the respondent together with the admitted facts by the applicant that would sway the court to accept the

² *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] (3) SA 623 (A).

respondent's version unless it is farfetched. Approaching the court with hands that are not clean may result in the denial of the relief sought. The applicant stands to receive no relief on this ground alone too.

[16] The applicant, if it has standing before NERSA, will receive adequate alternative relief in due course.³ It cannot enjoy the benefits of its unlawful conduct pending the NERSA adjudication of the dispute through an interdict of Eskom's lawful conduct.

[17] The applicant sought to strike an analogy with the case of *Mogoai and Others v City of Tshwane Metropolitan Municipality*⁴ wherein the applicants had unlawfully erected "*houses/homes on a sidewalk of a street but received relief for alternative emergency housing to be provided by the city and even though the application stood to be struck off for lack of urgency.*" The applicant seeks a similar condonation of the illegal reconnection of electricity to its property were the court to find that the return of electricity to the property was as a result of an illegal connection. Ngalwana AJ in *Mogoai* tolerated the illegality and lawlessness on the basis that it would continue and he opted for a quicker resolution of the dispute in part B of the application. The circumstances are not similar to this case. The illegality has been nipped in the bud here and there can be no illegal reconnection seeing that the electrical box has been removed. Only the NERSA process can restore electricity if the outcome is in favour of the applicant, alternatively, if the parties come to some agreement even before that process commences or concludes. I therefore do not find the analogy between the two cases.

Costs

[18] This matter was heard on an urgent basis. Further affidavits have been admitted even though they fell outside of the timeframes within which papers in urgent applications should be filed. This applied to both parties. There is no need for these considerations to disturb the normal order as to costs, that is, that costs for the

³ East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

⁴ (120856/2023) [2023] ZAGPPHC 1352 (4 December 2023).

result. Both parties asked for costs, and therefore there is no reason not to make a costs order.

Conclusion

[19] The order issued on 22 March 2024 is confirmed as follows:

1. The application is dismissed.
2. The applicant is to pay the costs of the application.

MALINDI J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

APPEARANCES

COUNSEL FOR THE APPLICANT:	Adv HP West
INSTRUCTED BY:	AR Mahomed Inc Attorneys
FOR THE RESPONDENT:	Adv C Shabangu
INSTRUCTED BY:	Malebye Motaung Mtembu Inc
DATE OF HEARING:	22 March 2024
DATE OF ORDER:	22 March 2024
DATE OF REASONS:	15 July 2024