

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

Case No. 2024-073188

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: No
(3)	REVISED: No
20/08/2024 DATE SIGNATURE	

In the matter between:

CHUNG-FENG TSAI

First Applicant

FUMEI CHAO N.O.

Second Applicant

ALBERT JOHAN DIRK MEIRING N.O.

Third Applicant

and

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Respondent

This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to Court Online and by release to SAFLII. The date and time for hand- down is deemed to be 10h00 on August 2024.

JUDGMENT

BEYERS, AJ:

[1] This application was brought by the Applicants as a matter of urgency for a temporary interdict prohibiting the Respondent from terminating the water supply to a particular immovable property, pending the outcome of an application (*“the main application”*) which is presently before this Honourable Court under case number 2024/013457.

[2] The instant application is opposed by the Respondent on a number of bases, including:

- a. That the Applicants have failed to make out a case for urgency; and
- b. On the merits, that the Applicants have failed to make a case for the relief sought.

[3] I wish to indicate at the outset that the arrangement of the Court file in this matter on Caselines by the Applicants is deplorable. The papers have not been filed in the sequence exchanged, annexures to the Applicants' various affidavits are either entirely absent, or appear to relate to the main application and have been inserted in between the papers in the instant application.

[4] The Applicants' case for an interim interdict is to the effect that:

- i. The Respondent supplies the immovable property of the Umkonka Trust, of which the Second and Third Applicants are the trustees, with municipal water.
- ii. *“(D)ifficulties and problems with the water services supplied by the respondent to the applicants and the billing in respect thereof has*

been ongoing almost since early 2018". Attempts were allegedly made to settle, but the negotiations failed.¹

- iii. The Applicants instituted the main application against the Respondent on an undisclosed date. The Applicants allege that this application is annexed as annexure "A" to the founding affidavit of the first application², but this is not readily apparent from the papers uploaded to Caselines. The Notice of Motion in the main application has not been provided. However, a founding affidavit, without a case number or annexures, was provided which appears to relate to the main application.³ Paragraph 9 of that affidavit⁴ alleges that the main application is directed inter alia at obtaining an order against the Respondent for the provision of a proper statement of account in respect of the water services rendered and a debatement thereof.
- iv. Under section 102 of the Local Government: Municipal Systems Act 32 of 2000, implementation by the Respondent of collection and credit control measures are strictly forbidden where there is a dispute regarding any specific amount claimed.⁵
- v. *"(O)n or about 23 June 2024 the respondents enforcement department delivered a termination notice a copy of which is attached as annexure "C"*".⁶ No such document appears as an attachment to the affidavit.
- vi. Employees of the Respondent informed the First Applicant that the termination of the water supply is imminent and will happen in the next few days. The Applicants' attorney was apparently advised by one Mr Ngwana, in the Respondent's legal department that enforcement steps would not be held over pending the outcome of the main application.⁷

¹ Founding Affidavit, par 9, p 02-31.

² First Applicant's Founding Affidavit, par 10, p 02-31.

³ At pp 02-1 to 02-10 on Caselines.

⁴ At p 02-3 on Caselines.

⁵ Founding Affidavit, par 15, pp 02-33 to 02-34.

⁶ Founding Affidavit, par 12, p 02-32.

⁷ Founding Affidavit, par 13, p 02-32.

[5] The main relief sought by the Applicants is set out in paragraphs 1 to 3 of the Notice of Motion, wherein the Applicants *inter alia* pray for an order in the following terms:

- “1. *Condoning the Applicant’s non-compliance with the rules of the above Honourable Court in respect of service and hearing this application as one of urgency;*
2. *Interdicting the Respondent from terminating the water supply to [...] V[...] C[...], D[...] R[...], Gauteng. [...] V[...] C[...], D[...] R[...], Gauteng (the “property”), alternatively to restore the municipal water services by reconnecting the Applicants’ water services to the property, Gauteng (hereinafter referred to as “the premises”) pending the outcome of the application launched under case number 2024/013457;*
3. *Granting the applicants leave to supplement their papers before the application.”*

[6] Urgency:

- a. The Applicant relies upon an alleged termination notice from the Respondent dated 23 June 2024, which the First Applicant alleges is attached as annexure “C” to his founding affidavit, as springboard for urgency in this application.⁸
- b. None of the various annexures identified as having been attached to the founding affidavit were provided as part of the Applicants’ papers on Caselines. The purported annexure “C” was thus neither attached nor made available by the Applicants.
- c. During argument, Applicants’ counsel submitted that the document referred to by the First Applicant as annexure “C” is in fact the document which was uploaded as “Annexure 04” at p 02-78. However, that document is clearly not a termination notice dated 23 June 2024. Instead, it is a document entitled “*Water Supply Interruption Job Card due to Credit Control*”, and it is dated 14 May 2024, almost two months prior to the launching of the instant application.

⁸ First Applicant’s Founding Affidavit, par 12, p 02-32.

- d. Moreover, paragraph 23 of the founding affidavit in the main application alleges that threats from Respondent that the water supply would be terminated had been made as far back as 20 October 2023.
- e. No attempt is made by the Applicants in the instant application to explain these discrepancies.
- f. In the circumstances, at best for the Applicants, their urgency appears self-created and they have failed to provide a proper explanation to allow for an assessment of the urgency of the application and the extent to which a deviation from the forms, service and time periods of the Rules is unjustified.
- g. A respondent is prejudiced *per se* when it is called upon by an applicant in an application to respond to an application on short timelines. In the instant case the Notice of Motion was issued by the Applicants on 2 July 2024, was not served on the Respondent by the Sheriff, and required that the Respondent provide its notice of opposition on the same day (2 July 2024) and its opposing papers on 5 July 2024.
- h. This extremely onerous demand upon the Respondent has to be justified by the Applicants in their founding papers. No attempt has been made by the Applicants to justify these very short time-lines.
- i. The application accordingly stands to be dismissed on this basis alone.

[7] On the merits of the application, the Applicants rely on section 102 of the Act, which provides as follows:

“102 Accounts

(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.

(3) A municipality must provide an owner of a property in its jurisdiction with copies of accounts sent to the occupier of the property for municipal services supplied to such a property if the owner requests such accounts in writing from the municipality concerned” (Underlining added)

[8] What constitutes a dispute within the context of s102 was judicially considered in **Body Corporate Croftdene Mall v Ethekewini Municipality 2011 JDR 1339 (SCA)**,⁹ by the Supreme Court of Appeal where the Honourable Justice Maya stated:

“[22] It is, in my view, of importance that s 102(2) of the Systems Act requires that the dispute must relate to a ‘specific amount’ claimed by the municipality. Quite obviously, its objective must be to prevent a ratepayer from delaying payment of an account by raising a dispute in general terms. The ratepayer is required to furnish facts that would adequately enable the municipality to ascertain or identify the disputed item or items and the basis for the ratepayer’s objection thereto. If an item is properly identified and a dispute properly raised, debt collection and credit control measures could not be implemented in regard to that item because of the provisions of the subsection. But the measures could be implemented in regard to the balance in arrears; and they could be implemented in respect of the entire amount if an item is not properly identified and a dispute in relation thereto is not properly raised.” (underlining added)

[9] Recently, the Honourable Acting Justice Dodson in **39 Van Der Merwe Street Hillbrow CC v City of Johannesburg Metropolitan Municipality and two others**¹⁰ commented as follows:

“[27] Croftdene Mall thus imposes the following requirements before a consumer of municipal services may rely on the protection from disconnection afforded by section 102(2) of the Systems Act:

⁹ Now reported at 2012 (4) SA 169 (SCA).

¹⁰ In this division of the High Court, under case number 23/7784.

27.1. there must be a dispute, in the sense of a consumer, on the one hand, and the municipality, on the other, advancing irreconcilable contentions;

27.2 the dispute must be properly raised, which would require, at least, that it be properly communicated to the appropriate authorities at the municipality and that this be done in accordance with any mechanism and appeal procedure provided in terms of section 95(f) of the Systems Act for the querying of accounts;

27.3 the dispute must relate to a specific amount or amounts or a specific item or items on an account or accounts, with the corollary that it is insufficient to raise a dispute in general terms;

27.4 the consumer must put up enough facts to enable the municipality to identify the disputed item or items and the basis for the ratepayer's objection to them;

27.5 it must be apparent from the founding affidavit that the foregoing requirements have been satisfied."

[10] It is clear when applying the foregoing requirements to the Applicants' case in this application, that the Applicants have not remotely met these requirements:

- a. The incomplete nature of the documents provided by the Applicants on Caselines renders the Applicants' case as to the exact nature of the disputed items on its municipal account with the Respondent largely inchoate.
- b. The founding affidavit in the instant application does not even attempt to provide any particulars in this regard. It simply refers to the main application.
- c. As far as the main application is concerned, only a founding affidavit without annexures is provided at pp 02-1 to 02-10 on Caselines. Elsewhere, at pp 02-35 to 02-87, five documents are provided marked as "Annexure-01" to Annexure-05". These documents cannot be readily reconciled to the Applicants' affidavits in either the instant or the main application.
- d. The Applicants' allegations as to the charges raised by the Respondent in respect of water services supplied are advanced in broad terms such that it is not clear which billed items are in dispute and which are not.

- e. The Applicants' account with the Respondent reflects a balance, according to the Respondent, of R1,352,265-66.¹¹ This is a large amount by any standard, particularly for a residential house.
- f. It is common cause that the Applicants have continued to consume services rendered by the Respondent and that only three payments were made since 2022: a payment of R5,000-00 for July 2023, a payment of R500-00 for March 2023 and a payment of R1,000-00 on 27 June 2024.¹²
- g. There is no indication provided by the Applicants that any dispute had been raised in accordance with any mechanism and appeal procedure provided in terms of s 95(f) of the Systems Act.

[11] In order to succeed in respect of the relief sought in the instant application, the Applicants have to demonstrate that a dispute has been raised that is compliant with s 102(2) of the Act. They have not done so. The disorganised and disjointed papers in the application together with an absence of specificity in respect of which amounts disputed are such that one is left with the impression that there is a significant amount that is due by the Applicants to the Respondent despite the Applicants' complaints.

[12] In the premises the Applicants have failed to establish any right to the relief sought.

[13] In my view the papers in this application are fatally defective, both as far as the issue of urgency and the merits are concerned. The presentation of the papers in this application by the Applicants on Caseline has been deplorable. These circumstances justify a punitive cost order.

[14] In the circumstances the application is dismissed, with costs on a scale as between attorney and client.

J BEYERS
ACTING JUDGE OF THE HIGH COURT

¹¹ Answering Affidavit, par 19.2, p 04-6.

¹² Answering Affidavit, par 19.3, p 04-6, read with Replying Affidavit, par 20, p 02-21.

GAUTENG DIVISION, JOHANNESBURG

Date of Hearing: 25 July 2024

Date of Judgment: 20 August 2024

APPEARANCES:

For the Applicants: Adv K Maponya
Instructed by: Ntombi Dina Attorneys

For the Respondent: Adv E Sithole
Instructed by: Ncube Attorneys