

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

Case No. 2024-079861

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: No
(3)	REVISED: No
04/09/2024	_____
DATE	SIGNATURE

In the matter between:

NOMPUMELELO GIVEN KHANYEZA

Applicant

and

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

First Respondent

JOHANNESBURG WATER (SOC) (PTY) LTD

Second 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 September 2024.

JUDGMENT

BEYERS, AJ:

[1] This is an opposed application that was brought on an urgent basis where the Applicant inter alia seeks the following relief against the Respondents:

- "1. That the above Honourable Court dispenses with the forms and time periods for service as required by the rules of this Honourable Court and hear this application as a matter of urgency.*
- 2. Declaring the removal of the water metre at the Applicant's place of residence and the disconnection of water supply to the Applicant at 7[...] S[...] C[...] STREET, K[...] E[...] , JOHANNESBURG 1684 (the Property) by the First or the Second Respondent to be wrongful spoliation of Applicant's access to water and / or unlawful and in violation of the Applicant's basic constitutional rights to have access to water;*
- 3. Directing the Respondents to install a new water metre and restore Applicant's water supply within 24 (twenty-four) hours from the date on which this order is granted;*
- 4. Directing the First Respondent and or the Second Respondent to desist from removing the water metre at Applicant's place of residence and interrupting Applicant's access to water in the future without just cause.*
- 5. Compelling the Respondents to launch an investigation regarding the disputed amounts, cause and effect of the faulty meter on the amount owed, alleged illegal connection of the water meter and when such investigation is finalised, for the parties to enter into a payment arrangement on undisputed amounts.*
- 6. Directing the Respondents to pay the costs of this application on an attorney and client scale."*

[2] As appears from the foregoing, the Applicant seeks final relief against the Respondents in motion proceedings.

[3] The Respondents opposes the relief sought on a number of bases, including:

- a. That the application is not urgent and that there has not been compliance with the requirements of the Rules relating to service, or with the practice directives pertaining to urgent applications;¹
- b. That the *mandament van spolie* does not cover the restoration of the supply of water to the Applicant's premises, and that the application is accordingly fundamentally flawed on that basis;² and
- c. That the Applicant has not demonstrated any entitlement to allow reliance on s102 of the Local Government: Municipal Systems Act, 32 of 2000 (*"the Act"*).³

[4] The Applicant's case can be summarised as follows:

- a. She has been the owner of the immovable property forming the subject-matter of the Respondents' water supply since July 2017.⁴
- b. The Respondents allege that she owes the amount of R193,055,89⁵.
- c. Although she acknowledges that there were times at which payment was not made monthly or at all for the services provided by the Respondents, the amount the Respondents are alleging is owing is in dispute.⁶
- d. As at 10 July 2024, according to the Applicant, *"the amount owed to the municipality might be about R87 000."*⁷
- e. There have been a number of interactions between the Applicant and employees of the First Respondent in respect of the water supply to the property and the amount owed to the First Respondent in respect of Applicant's municipal account.
- f. This included, inter alia, a pre-termination notice received by the Applicant dated 8 August 2023⁸, various complaints raised by the Applicant with the

¹ Answering Affidavit, par 8 – 21, Caselines 26-3 to 26-5.

² Answering Affidavit, par 22-24, Caselines 26-5 to 26-6.

³ Answering Affidavit, par 28 – 39, Caselines 26-8.

⁴ Caselines 02-10, Applicant's Founding Affidavit, paras 4.1 and 4.2.

⁵ Caselines 02-11, Applicant's Founding Affidavit, par 4.3.

⁶ Caselines 02-11, Applicant's Founding Affidavit, par 4.3.

⁷ Applicant's Founding Affidavit, par 4.18, Caselines 02-14, read with annexure "**KNG17**" at Caselines 02-69.

⁸ Applicant's Founding Affidavit, par 4.8, Caselines 02-12, and annexure "**KNG6**" at Caselines 02-56.

First Respondent and visits by the Applicant to the First Respondent's offices.

- g. On 2 July 2024 the Applicant discovered that the water meter to her property had been removed and the water supply was disconnected.⁹
- h. She attended at the Respondents' offices on 8 and 10 July 2024 to attempt to achieve a resolution, but to no avail. On 10 July 2024 she sent an email to the First Respondent ("**KNG17**") confirming her visit and complaint.¹⁰
- i. She indicates that it would be unwise for her to enter into a payment arrangement for amounts that are in dispute and that the Respondents should be compelled to investigate the amount owed and the reason that caused its meter to malfunction and to show how that malfunctioning caused discrepancies in their billing.¹¹
- j. The Applicant alleges that the disconnection was procedurally unfair as it was done without the requisite 14-day pre-termination notice and, accordingly, the Respondents' actions were not within the ambit of the law.¹²
- k. The Applicant alleges that s102(1) of the Local Government Municipal Systems Act 32 of 2000 does not allow the Respondents to implement any of the debt collection and credit control measures where there is a dispute between the municipality and the consumer concerning any specific amount claimed by the municipality from that person.¹³
- l. As a consequence the Applicant contends that the Respondents' act of disconnecting the water and thereafter removing the water meter was unlawful.¹⁴
- m. As far as urgency is concerned, the Applicant alleges that she has a constitutional right to access to sufficient water and that, as a consequence of the Respondents' actions, her son, daughter and herself

⁹ Applicant's Founding Affidavit, par 4.17, Caselines 02-14.

¹⁰ Applicant's Founding Affidavit, par 4.18, Caselines 02-14.

¹¹ Applicant's Founding Affidavit, par 4.2.4, Caselines 02-16.

¹² Applicant's Founding Affidavit, par 9, Caselines 02-18.

¹³ Applicant's Founding Affidavit, par 10, Caselines 02-18.

¹⁴ Applicant's Founding Affidavit, par 12, Caselines 02-18.

are subjected to serious health concerns and do not have water to drink, cook, clean the house or bath.¹⁵

[5] The Respondent's case in opposition may be summarised as follows:

- a. The Applicant has not established urgency, has failed to comply with the service requirements of the Rules and with this Court's practice directives for urgent applications.¹⁶
- b. The Applicant is a chronic defaulter¹⁷ and the last time she had made a payment towards her account was on 21 October 2022.¹⁸
- c. As at 11 July 2024 the Applicant was indebted to the City in the sum of R200,328-33¹⁹.
- d. The Applicant has not alleged or proved her compliance with s102 of Act 32 of 2000 or 12(6) and s16 of the City's Credit Control By-Laws as it concerns disputes and queries of municipal accounts, consumer dissatisfaction therewith or the appeal process that subsists in respect of such queries and disputes.²⁰
- e. Several pre-termination notices had been given to the Applicant, including:
 - i. On 8 August 2023;²¹ and
 - ii. On 8 November 2023.²²
- f. The Applicant did not comply with these notices, and her attempts to raise a dispute are made in vague generalisations and do not meet the requirements for a valid dispute.²³

¹⁵ Applicant's Founding Affidavit, par 6-8, Caselines 02-17.

¹⁶ Respondents' Answering Affidavit, paras 8-21, Caselines 26-95 – 26-97.

¹⁷ Respondents' Answering Affidavit, par 35, Caselines 26-100.

¹⁸ Respondents' Answering Affidavit, par 36, Caselines 26-100.

¹⁹ Respondent's Answering Affidavit, par 45, Caselines 26-101 and annexure "**AA3**" at 26-117.

²⁰ Respondent's Answering Affidavit, paras 38-43, Caselines 26-100 to 26-101.

²¹ Respondent's Answering Affidavit, par 8, Caselines 26-95, admitted by Applicant in her Replying Affidavit, par 7.1, Caselines 02-76.

²² First and Second Respondents' Additional Answering Affidavit, par 4, Caselines 26-178, not disputed by Applicant.

²³ Respondents' Answering Affidavit, paras 9 and 47, Caselines 26-95 and 26-101.

- g. The Respondents accordingly contend that the disconnection of the Applicant's water supply and removal of the water meter, which is the Respondents' property, occurred lawfully in accordance with the relevant credit control legislation.²⁴ These paragraphs are not addressed by the Applicant in her Replying Affidavit.

[6] The Applicant relies on s102 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)*

[7] What constitutes a dispute within the context of s102 was judicially considered in **Body Corporate Croftdene Mall v Ethekewini Municipality 2011 JDR 1339 (SCA)**,²⁵ 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

²⁴ Respondents' Answering Affidavit, paras 48-51, Caselines 26-102.

²⁵ Now reported at **2012 (4) SA 169 (SCA)**.

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)

[8] Recently, the Honourable Acting Justice Dodson in **39 Van Der Merwe Street Hillbrow CC v City of Johannesburg Metropolitan Municipality and two others**²⁶ 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:

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." (Underlining added)

²⁶ In this division of the High Court, under case number 23/7784.

[9] On the papers the following facts are clear:

- a. The Applicant, on her own version, owes the Respondents an undisputed amount of approximately R87,000-00.²⁷
- b. The Applicant did not follow the dispute process dictated by the Act and the City's Credit Control By-Laws.
- c. The dispute raised by the Applicant does not relate to a specific amount or amounts or a specific item or items; instead, the dispute has been raised in general terms, and it has been coupled with an admission that a significant amount is owed that is undisputed.
- d. The Respondents have given the Applicant a number of pre-termination notices, including, at least, notices on 8 August and 8 November 2023, respectively. These are all dated in excess of a period of 14 days prior to the alleged discontinuation date of 2 July 2024.

[10] Given the undisputed amount due to the Respondents, as well as the Applicant's failure to have properly raised a dispute in respect of her account with the Respondents in specific terms and in accordance with the mechanisms and appeal procedure in the Act, the Applicant is not entitled to the protection offered by s102(2) of the Act. The Respondents were accordingly within their rights to enforce the legislatively sanctioned credit control measures, which included the right to discontinue the water supply to the Applicant's property and to remove the water meter.

[11] In the premises the Applicant is not entitled to the relief sought, and I make the following order:

- a. The Applicant's application is dismissed with costs on party and party scale A.

J BEYERS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

²⁷ See footnote 7 (supra).

Date of Hearing: 23 July 2024

Date of Judgment: 4 September 2024

APPEARANCES:

For the Applicant: Adv R Mthmebu

Instructed by: Barry Moyana Inc

For the Respondents: Adv Lebo Mokwena

Instructed by: Patel Inc