

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

Case Numbers: 2024- 136466
2023- 077080 & 2020- 15428

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVIEWED AND REVISED: YES
6 January 2025	
DATE	SIGNATURE

Case Number: 24-136466

In the matter between:

ERF 7[...] ROBINDALE FIVE (PTY) LIMITED & OTHERS Applicants

vs

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY & ANOTHER
Respondents

and

Case Number: 23-077080

In the matter between:

ORDICODE (PTY) LTD

Applicant

vs

CITY OF JOHANNESBURG

Respondent

and

Case Number: 20-15428

HYDE PARK GARDENS (PTY) LTD t/a SHELL HYDE PARK GARDENS

Applicant

vs

CITY POWER OF JOHANNESBURG SOC LIMITED & OTHER

Respondents

Summary: Abuse of Power in Debt Collection: The City of Johannesburg (CoJ) has engaged in unprincipled debt collection practices, including disconnection of utilities without adequate procedural compliance - Legal Framework: The issues are governed by the Local Government: Municipal Systems Act and the CoJ's Credit Control and Debt Collection By-laws, emphasizing the need for disputes to relate to specific amounts and for municipal compliance with procedural fairness - Rights of Consumers: Consumers have the right to utility services pending resolution of disputes if they meet statutory requirements, including properly raising disputes and continuing reasonable payments - Failures in Administration: CoJ and its legal team have shown systemic dysfunction and non-compliance with court orders, leading to repetitive litigation and financial hardship for consumers - Judicial Oversight: Courts have repeatedly warned CoJ against such practices, emphasizing the need for accountability and adherence to legal and constitutional standards - Principles of Fairness: Municipalities must balance revenue collection with fairness, avoiding aggressive measures against disputed debts without resolving the disputes justly - Hearsay and Litigation Conduct: The CoJ's reliance on affidavits from officials without personal knowledge undermines proper litigation processes, as highlighted in

multiple cases - Accountability for Non-Compliance: The judgment calls for stronger enforcement mechanisms, including potential personal liability for officials and legal advisors in cases of repeated non-compliance.

JUDGMENT

This judgement is delivered by upload to the digital data base of the court and by transmission email to the parties on 6 January 2025.

BADENHORST AJ:

“Power tends to corrupt and absolute power corrupts absolutely”, observed Lord Acton in his well-known aphorism.

INTRODUCTION

[1] This judgment elucidates the abuse of power resulting from robust yet unprincipled debt collection practices by the City of Johannesburg (CoJ). As noted by Sutherland DJP in his supplementary judgment in *Millu*,¹ the administration of the CoJ exhibits "intrinsic dysfunctionality" in this category of dispute. The cases considered in this judgment reveal the continued corrosive impact of unchecked power on the CoJ's debt collection practices. Additionally, it underscores how a specific group of lawyers, frequently retained by the CoJ, persistently pursue unmeritorious arguments, undeterred by the facts of the individual cases. This culminates in unnecessary High Court litigation for those few who can afford to seek relief, while many less fortunate customers no doubt remain at the mercy of an

¹ *Millu v City of Johannesburg Metropolitan Municipality and Another* (supplemental judgment) (25039/2021) [2024] ZAGPJHC 420 (29 April 2024). The principal judgment (also referenced) is referenced as follows on SAFLII: *Millu v City of Johannesburg Metropolitan Municipality and Another* (25039/2021) [2024] ZAGPJHC 419 (18 March 2024). See also the 4 other decisions of this court similarly critical of the administration of the City of Johannesburg identified in footnote 6 below.

indifferent officialdom. Consequently, severe financial burdens and hardships are imposed on customers and ratepayers.

[2] The City of Johannesburg must urgently address and rectify this pernicious practice and its underlying causes to ensure a fair and just administrative process for all its customers and ratepayers. It is disturbing that despite the same disquiet having been expressed in no less than six recent judgments of this court, commencing with a “stern warning” in a judgment in January 2023², the City officials and their legal advisers (who are once again involved in the cases under consideration in this judgment) appear to treat this court's concerns with disdain. This judgment confronts the grave and far-reaching consequences of continued abuse of power with unflinching resolve.

[3] Four urgent applications were enrolled for hearing on the urgent motion court roll for the week of 2 to 6 December 2024. These applications arise from the disconnection of customers' utilities by the City of Johannesburg (“CoJ”) and City Power (“CP”), the latter being a wholly owned municipal entity of the CoJ. One of the four matters was settled, and the remaining three were argued. Given the substantial similarities in the facts and legal principles of the three argued matters, all three opposed applications are considered in this judgment.

[4] The three matters are identified as follows on the urgent motion court roll for 2 – 6 December 2024:

- 1) ERF 7[...] ROBINDALE FIVE (PTY) LIMITED // CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY Case Number: 24-136466 [No. 2 on the roll] (“the Erf 7[...] matter”);
- 2) ORDICODE (PTY) LTD // CITY OF JOHANNESBURG Case Number: 23-077080 [No. 7 on the roll] (“the Ordicode matter”);
- 3) HYDE PARK GARDENS (PTY) LTD // CITY POWER JOHANNESBURG SOC LIMITED & OTHER Case Number: 20/15428 [No. 9 on the roll] (“the Hyde Park matter”).

² *Ulcombe v City of Johannesburg* 18969/2022 (2023 02 01) per Strydom J, referenced in paragraph 103 of *Afhco Calgo M3 Consortium (Pty) Ltd v City of Johannesburg Metropolitan Municipality and Others* (2022/322) [2024] ZAGPJHC 1057 (18 October 2024) per Amm AJ.

THE SYSTEMS ACT AND THE CREDIT CONTROL BY-LAWS

[5] The legal framework underpinning these matters comprises the Local Government: Municipal Systems Act (“the Systems Act”) and the City of Johannesburg’s Credit Control and Debt Collection By-laws, published under Notice 1857 of 2005 in Provincial Gazette Extraordinary No. 213 of 23 May 2005 (“the Credit Control By-laws”).

[6] Section 102(1) of the Systems Act provides as follows:

“102 Accounts

(1) A municipality may –

(a) consolidate any separate accounts of persons liable for payments to the municipality;

(b); and

(c) implement any of the debt 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 a municipality and a person referred to in that subsection concerning any specific amount claimed by a municipality from that person.”

[7] Section 97(1)(g) read with section 96(b) of the Systems Act provides that debt control measures include “*termination of services or the restriction of the provision of services when payments are in arrears.*”

[8] In *Body Corporate Croftdene Mall v Ethekewini Municipality* 2012 (4) SA 169 (SCA), at paragraphs [21] to [23] on pages 178H to 179D, Section 102(2) of the Systems Act is interpreted as follows::

“[21] Neither the Systems Act nor the policy defines the term 'dispute'. Some of the definitions ascribed to it include 'controversy, disagreement, difference of opinion', etc. This court had occasion to interpret the word in Frank R Thorold (Pty) Ltd v Estate Late Beit and said that a mere claim by one party, that something is or ought to have been the position, does not amount to a

dispute: there must exist two or more parties who are in controversy with each other in the sense that they are advancing irreconcilable contentions.

[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.

[23] Whether a dispute has been properly raised must be a factual enquiry requiring determination on a case-by-case basis. It is clear from clause 22.3 of the policy referred to above that the dispute must be raised before the municipality has implemented the enforcement measures at its disposal."

[9] In 3[...] V[...] D[...] M[...] Street H[...] CC v City of Johannesburg Metropolitan Municipality and Another³ delivered on 24 March 2023, this Court explained that in *Croftdene Mall* the SCA imposes the following five requirements before a consumer of municipal services may rely on the protection against disconnection provided 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;

³ (2023-069078)[2023]ZAGPJHC 963 (25 August 2023)
<https://www.saflii.org/za/cases/ZAGPJHC/2023/963.html>

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] The Credit Control By-laws provide as follows:

- 1) Section 13(1): If a customer fails to pay the amount due for municipal services or rates on or before the specified due date, a final demand notice may be issued to the customer.
- 2) Section 13(2)(a): A final demand notice must specify the amount in arrears, the interest payable, and a statement that payment must be made within 14 days of the date of the final demand notice.
- 3) Section 15(2)(a): The CoJ is empowered to terminate or restrict the provision of water or electricity—or both, as applicable—if a customer fails to make full payment of the arrears stated in the final demand notice.

[11] With these principles in mind, I now turn to consider the facts of each matter.

THE ERF 7[...] MATTER

[12] On 22 November 2024 the applicants launched an urgent application against the CoJ and Johannesburg Water ["JW"] (the CoJ's water reticulation company), respectively the first and second respondents, for the following substantive relief:

- "2. That the respondents are ordered to forthwith and immediately restore water supply to the Applicants' immovable property described as Erf 7[...] Robindale, situated at 4[...] A[...] Road, Robindale Ext 5 ("the property"); and/or alternatively
3. An interdict be granted against the Respondents prohibiting the Respondents from disconnecting the electricity and/or water supply to the property, pending the final determination of the rights of the parties."

[13] The usual notice is included therein, advising:

“.... that the affidavit of INGRID LAWRENCE will be used in support of this application.”

[14] Ms Lawrence explains in the founding affidavit that she is the administrator of the first applicant which is the registered owner of the property. The property is the home and primary residence of Ms Lawrence (67 years old), her husband Keith (74 years old) and her daughter Camilla (39 years old). The family business, BetaTrac operates exclusively from the property where it develops and supplies software for the security industry.

[15] The respondents provide water and electricity services to the property.

[16] According to the founding affidavit, the need for this urgent application arose on 22 November 2024, when a representative of JW visited the property and shut off—or attempted to shut off—the water supply due to alleged unpaid electricity accounts dating back to approximately 2010–2012, over a decade ago.

[17] The applicants promptly instructed their attorney to address a letter to the CoJ (for the attention of its legal adviser, Mr Tuwani Ngwana) and to the CoJ's attorneys, Messrs Ramatshila-Mugeri Attorneys. The letter dated 22 November 2024 reads as follows:

“We confirm that on 22 November 2024 (an) individual purporting to be from Johannesburg Water SOC Limited attended at our clients premises and proceeded to and/or alternatively attempted to disconnect our client's water supply on the basis of unpaid electricity accounts.

We again record, as your offices are completely aware: -

1. Our client disputes it is indebted to your client in the sum of R132 482.67 which amount is reflected on the latest statement for April 2023. Our client particularly disputes all arrears and the interest accrued thereon.
2. Our client is making payment of each and every current account (proof of which was provided at the meeting) and in the circumstances we submit that

your client is suffering no prejudice until such time as the disputed amount has been ventilated by a court of law.

We confirm that this attempt to terminate our client's electricity and/or water supply is unlawful and (an) abuse by your offices to enforce a debt which remains disputed. We hereby demand that you immediately re-connect our client's water and/or electricity supply, failing which our offices hold instruction to immediately launch an urgent application to the High Court which will be accompanied with a request for an order for costs on a punitive scale in light of the unreasonable conduct of your offices.

This letter shall be brought to the attention of the presiding judge in support of such application. Our client's rights remain strictly reserved.”

[18] No response to the letter was received from the CoJ or its attorneys, prompting the institution of this application.

[19] According to the founding affidavit, there has been a longstanding dispute with the respondents dating back to approximately 2010–2012, when the CoJ allegedly issued excessive electricity accounts to the first applicant. One such account, covering only March 2012, amounted to R59,686.23—significantly exceeding the applicant's average monthly electricity bill for previous months. This charge, together with other disputed amounts totalling R133,207.67, is collectively referred to as “the disputed lump sum.”.

[20] The first applicant continues to make payment of the CoJ's monthly charges on the due date. According to the deponent, “[a]ll current accounts are being settled timeously and without deduction.” She further asserts that, for over a decade (since December 2013) the first applicant has exclusively utilized prepaid metered electricity. Consequently, the current monthly charges billed by Johannesburg Water pertain solely to water consumption. Furthermore, there has never been any contention between the parties concerning water consumption.

[21] By way of background, the deponent to the founding affidavit states that on 30 July 2013, two agents of the CoJ inspected the property's electricity meters and declared them faulty (spinning too fast) and in need of replacement or recalibration.

Although the meters were eventually removed, neither the CoJ nor City Power provided any feedback regarding the steps taken to resolve the issue.

[22] Since July 2016, there has been prolonged “back and forth,” including threats of disconnection and extensive debate, yet the issue remains unresolved.

[23] On 10 March 2017, the first applicant brought an application in this Court against the CoJ and CP, seeking a statement and debatement of account as well as ancillary relief. A *Rule Nisi* was issued, which included a request for this Court to determine whether the disputed lump sum was owing. However, on the return day, the application was dismissed.

[24] By this time, the first applicant contended that the disputed debt had, in any event, become prescribed, as the CoJ had not instituted legal proceedings to interrupt the running of prescription.

[25] The dispute remained unresolved, and the CoJ’s threats of disconnection continued. The deponent to the founding affidavit avers that the first applicant made multiple attempts to find a reasonable solution, including a request for a round-table conference with the CoJ. From 2021 to 2023, the first applicant’s attorney sent several letters to the CoJ, yet no responses—or no adequate responses—were received.

[26] Eventually, the CoJ agreed to a round-table meeting, which took place on 23 April 2023. However, the meeting did not proceed smoothly, as is evident from the following paragraph of the founding affidavit:

“59. I am advised that Mr Campbell (first applicant’s attorney) was subjected to an extraordinary display of aggression at the hands of the Representative of the Respondent being Mr Tuwani Ngwana who outrightly refused to engage in any debate of the account. Mr Ngwana insisted that the Respondent would not negotiate in any capacity whatsoever and that he would immediately instruct disconnection of all power and or water to the property.”

[27] The events that transpired at the conference were memorialized in a letter dated 25 April 2023, authored by Mr Campbell and addressed to the CoJ's attorneys.

[28] The next significant development occurred on 22 November 2024, when an employee of the CoJ arrived at the property with a "*water supply interruption job card due to credit control*," apparently prepared to execute it.

[29] The founding affidavit concludes by restating the CoJ's contentions, which were presented at the unsuccessful conference. The first is that the dismissal of the application for a statement and debatement of account "*renders the arrears due and owing*," and the second is that the first applicant's payment of current accounts interrupted the running of prescription. In her replying affidavit, Ms Lawrence rejects both propositions.

[30] The application was served by email on the respondents' attorney who delivered a Notice of Intention to Oppose dated 25 November 2024.

[31] On 2 December 2024 Mr Tuwani Ngwana (a legal advisor employed by the CoJ) signed an affidavit described, in the tram lines, as "*Municipality Affidavit Proposing the Appropriate Relief*".

[32] Mr Ngwana states that he is duly authorised to depose to the affidavit on behalf of the CoJ. As to his knowledge of the facts deposed to, he makes the following introductory statements:

"2. Subject to the contents directly attributed to an individual within the employ of the City of Johannesburg Metropolitan Municipality the contents of this affidavit fall within my personal knowledge, save where the contrary appears from the context hereof and are to the best of my belief both true and correct.

3. Submissions or statements and/or allegations of a legal nature contained hereunder have so been made on advice received from the City of Johannesburg Metropolitan Municipality' representatives, whose advice I have accepted and belief (sic) same to be true and correct. Comprehensive legal submissions pertaining to such submissions, statements and/or allegations will be presented to the above Honourable Court.

4. I wish to clarify that the facts deposed to hereunder are known to me through the documents which I have access to under the Municipality's system and also in discussion with the colleagues employed by the department such as Jhb Water together with their sub - contractors.”

and, he says, that:

“6. As it can be observed above, my authority to depose to this affidavit emanates from my employment with the Municipality and on consideration of the records relating to the Applicant consumer account under which services are supplied and on discussions with the officials employed by the Municipality's departments.”

[33] Mr Ngwana contests the urgency of the application because, he says, ‘*there is [sic] no disconnections of services*’ and ‘*the Municipality has not served any notice seeking to disconnect same*’. As to the interdict against disconnection applied for, the CoJ proposes that “*in the event where the Applicants disputes [sic] any charges it must follow the provisions of section 16 of its Credit Control and Debt Collection Policy to this extent, a limited interdict may be granted*”.

[34] The CoJ’s answering affidavit is unorthodox. It appears that little attention was paid, in its preparation, to Rule 6 and the practice of this Court—amply explained in the authorities and case law— namely that affidavits must address facts rather than argument. In this regard, Mr Ngwana’s “affidavit” fails to engage squarely with the factual averments in the applicants’ founding affidavit and is instead largely, and inappropriately, cast in argument form.

[35] For example, Section [C] thereof states what the CoJ considers it to be its obligation to collect revenue and to implement “the laws” including the termination of services “in the event of non payment”; Section [D] states the proposition that “the Courts (are) lacking powers to intervene until such time as the Municipality has dealt with the dispute”. Consistent with the recurrent flaw in the City of Johannesburg’s affidavits, elaborate case references and extensive quotations therein are inappropriately included under this rubric. Section [E] sets forth the terms of a proposed order of court. Included in a rather confusing series of contentions, is this one which deserves to be highlighted:

“Currently as things stands [sic], the Applicant has not disclosed any dispute and the granting of the interdict as sought by the Applicants does not provide any clarity.”

This statement is not supported by the facts – on a fair reading of the founding affidavit, the applicant raises a genuine dispute compliant with the Croftdene Mall and 3[...] V[...] d[...] M[...] Street decisions.

[36] In Section [F] of the answer, the following is stated:

“Upon receipt of the Applicants urgent application and the appointment of its representatives, the Municipality appointed Counsel and during consultation it was discovered that the Applicants property was not disconnected and that it is not on the list of the properties to be disconnected.”

On this basis, argues the CoJ, the applicants had no reason to approach the urgent court. In paragraph 9, Mr. Ngwana accuses the applicant of *'abusing this Honourable Court'* by rejecting the City of Johannesburg's *'proposed terms of the order.'*

[37] Again, the reasoning of the deponent is flawed in circumstances where the applicant's detailed account of the facts in chronological sequence is uncontested or inadequately answered, especially their numerous unanswered letters which were never replied to and the harrowing threats the applicant suffered from the time of the failed conference. The outlandish accusation of abuse hurled at the applicant is wholly inappropriate. In fact, for the CoJ to disclose details of what had obviously been settlement negotiations is itself improper.

[38] I find that the matter is urgent and that the applicant is entitled to the relief claimed in the prayers of its notice of motion quoted above – there are two issues that require clarification when it comes to the relief to be granted on the merits namely, first the fact that CoJ says it has restored water supply and, second, until when the interdict is to operate and on what conditions.

[39] The first issue is resolved by formulating the mandamus appropriately to allow for the CoJ's position namely that the water supply has been restored.

[40] As to the second, it is important to make clear that the protection afforded to the applicant is only in respect of the disputed debt and it will continue only until a resolution is achieved either by formal legal process or by agreement in short order.

[41] As far as costs are concerned, I am satisfied that a punitive order is justified on the facts of this matter.

[42] The order I make appears at the end of the judgment.

THE ORDICODE MATTER

[43] The applicant seeks an urgent interdict against the CoJ and CP to prevent them from terminating the electricity supply to its property at 85 Wolmarans Street Johannesburg (“the property”), pending the resolution of the disputes in a previous but unresolved “main” application launched by the applicant in this court on 3 August 2023 [“the main application”]. In addition, application is made, in the event of termination (in breach of the court order), that Applicant be allowed to appoint its own professional contractors to reconnect services at respondents’ costs; and that respondents’ collection attorneys be directed to stop harassing the applicant for payment of the disputed debt until the disputes in the main application have been resolved. The relief against harassment was not pursued in the draft order proposed by the applicant at the conclusion of argument.

[44] An eight-storey building on the property accommodates a business on the ground floor and 106 apartments on the first to eighth floors which are occupied by about 200 students.

[45] In the founding affidavit in the urgent application, launched on 26 November 2024 for hearing in the urgent motion court on 3 December 2024, Ms Mokhobo (a director of the applicant) relies on Section 102 of the Systems Act for the proposition that the respondents are not entitled to disconnect supply of services in circumstances where a dispute has been lodged against an account; she contends that any disconnection while such dispute remains unresolved will be unlawful. In support of this line of reasoning, the applicant cites Section 95 of the Systems Act

which lays down the duties of a municipality in relation to the charging of fees for municipal services. The applicant claims that once a dispute over charges is registered, the CoJ is obliged in terms of its own Credit Control and Debt Collection bylaws to investigate the complaint within 14 days and inform the customer in writing of its decision “*as soon as possible after conclusion of the investigation*” and to instruct payment of any amount found to be owing within 21 days unless an appeal is lodged within that period in accordance with the bylaws. It appears that none of this has occurred.

[46] The details of the dispute alleged by the applicant is described with reference to the founding affidavit filed in support of the main application – in essence, it is alleged in that affidavit that incorrect charges were levied in respect of electricity consumption at the property during 2019 – 2021. Two meters are installed there namely a domestic meter (for the student accommodation section which is supposed to be charged on a (lower) ‘residential tariff’ and a commercial meter for the retail portion charged at the (higher) ‘commercial tariff’.

[47] In respect of the commercial meter, the CoJ is alleged in the main application to have conceded an overcharge of R 3 816 226.80 in its own investigation report. That amount was indeed credited, but the CoJ failed (says the applicant) to reverse the associated interest and penalties.

[48] The domestic meter was also faulty, says the applicant, and reprogrammed in December 2020. Despite referral to the CoJ and CP for recalculation and rectification, there has been no report or recalculation. In addition, the applicant alleges that it was charged R 469 415.27 for electricity alone for the periods September 2020 to June 2023. All these problems cause applicant to receive what are described as “astronomical accounts for electricity consumption which is non-sensical and convolute [sic].” At various stages, the overcharged amount (allegedly) varied around the R 8m mark, reaching almost R 9m in the month of October 2022.

[49] The applicant recognises its obligation in terms of Section 11 (3) of the CoJ’s Credit Control and Debt Collection bylaws despite the dispute, to continue to pay “*an amount at least equal to the average amount that was due and payable in respect of*

rates or the municipal service concerned, as specified in the accounts for the preceding three months which are not in dispute”.

[50] In its founding affidavit the applicant relates the various occurrences since 10 November 2023 of demands from the CoJ’s debt collecting attorneys. That letter, which serves as example, reads as follows:

“We act on behalf of City of Johannesburg Metropolitan Municipality (hereinafter referred to as our client) to whom you are indebted in the sum of R5.857,594.69 in respect of Municipal Assessment Rates and/or services as per our client's handover instructions dated 19/07 /2023.

The amount owing is for a period for which further details may be made available to you on request from our client.

We have been instructed by our client to demand from you. as we hereby do, payment of the sum of R5.857.594.69 which is due and payable directly to our client bank account: The details are as follows

[Then follows the CoJ’s banking details.]

Alternatively use the easy pay number provided for in your monthly billing statement or kindly make payment of the said R5.857.594.69 at any of our client's Rates Offices quoting the reference number.

We are further instructed to institute legal proceedings against you for an appropriate relief without further notice to yourself, should you fail, refuse and/or neglect to make payment of the aforesaid amount within ten {10} business days hereof, the legal costs of which will be for your account.

On having paid such amount, kindly email proof of payment (to our offices) to the email address provided below.”

[51] In reply, applicant’s former attorney wrote the following letter on 14 November 2023:

“1. We address this letter to yourselves on behalf of ORDICODE (PTY) LTD ("our client).

2. We have been advised that our client received a letter from your offices dated 10 November 2023 on 13 November 2023 for payment of R 5 642.481.15 in respect of its municipal account within 10 days.

3. *We place on record that there are pending disputes on the account as well as pending litigation in the High Court for finalization of the disputes on the account.*
4. *In light thereof, our client is not liable for incorrect charges on the account and therefore not liable for R 5 642 481.15 as per your demand.*
5. *Any legal action instituted against our client for the above-mentioned amount will be vigorously defended.*
6. *In addition to the above, should there be any disconnection in the matter, we will bring an urgent application for reconnection with punitive costs sought.*
7. *This is without prejudice to our client rights.”*

[52] After receipt of this letter, the main application was opposed by the respondents and answering and replying affidavits filed.

[53] On 11 April 2024, officials of the respondents arrived at the property and disconnected the electricity supply (says the applicant) “*despite the pending litigation on the account and without a pre-termination notice*”. A letter from the former attorney threatening an urgent application to court unless the electricity was immediately restored had the desired effect.

[54] On 27 September 2024 the respondents’ officials again visited the property and threatened disconnection, but without in fact terminating the supply of electricity.

[55] Repeated payment demands were made by the City of Johannesburg’s collection attorneys, but these were repeatedly rebuffed by the applicant or its former attorney. Each time, the City of Johannesburg’s attention was drawn to the pending dispute.

[56] On or about 22 November 2024, the respondents’ officials again arrived at the property to disconnect the electricity supply without issuing a pre-termination notice. The applicant was handed a “Customer Electricity Disconnection Card Level 2,” which is annexed to the founding affidavit.

[57] The City of Johannesburg's officials were again informed of the pending main application, but they remained unmoved, stating that only a signed acknowledgment of debt in the respondents' favour or a court order would prevent disconnection.

[58] Another urgent demand was sent to the CoJ, which was unanswered but seems to have had the desired effect because power was reconnected later in the day on 22 November 2024.

[59] The applicant goes on to provide details of the severe disruption suffered each time when the supply of electricity is terminated, including the hardship facing the 200 or so students who depend on electricity for their studies especially at the time of the year end exams.

[60] The CoJ/CP respondents delivered an opposing affidavit only on 4 December 2024, after the matter was called (unopposed) on 3 December 2024 when it stood down for adjustments to be made to the proposed order. In the notice of motion, the respondents were given until 28 November to deliver an answering affidavit.

[61] In the belated affidavit by Mr Ngwana, a legal adviser, the City of Johannesburg applies for condonation of its late filing.

[62] The contents and style of this affidavit mirror those of the opposing affidavits filed by Mr Ngwana in the other two matters considered in this judgment. The carefully worded reservations noted above regarding the Erf 7[...] matter are repeated almost verbatim in this affidavit.

[63] This affidavit, as is the case in the others, is similarly cast in the form of heads of argument paying scant attention to the pertinent facts alleged by the applicant.

[64] One exception is paragraphs 13 and 14 of Mr Ngwana's answering affidavit where he states the following:

"13. The Applicant does not pay for the electricity and it is currently indebted to the Municipality for an amount of R5 857 594.69 as reflected in the November 2023 Tax Statement."

14. The Applicant currently owes the Municipality an amount of R7 069 370.74.”

[65] These allegations are denied in applicant's replying affidavit.

[66] The problem for the CoJ as far as this dispute is concerned is that Mr Ngwana, a legal adviser, as pointed out by this court in paragraph [45] of *Millu's* case, has no personal knowledge of the CoJ's accounting. He cannot, as the court found in *Millu's* case, “*ever be more than a conduit*” adding that “*the practice of a legal advisor being a deponent to facts of which he has no personal knowledge must stop.*”

[67] In litigation, it is incumbent upon each party to engage substantively with the factual averments made by their opponent. This involves addressing and responding to the specific allegations and evidence presented, thus enabling the court to render an informed and fair determination based on a comprehensive examination of the contested issues. This principle is articulated in a frequently cited passage from *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA):

“[13] A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily

recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter.”

[68] The CoJ failed to present any admissible evidence of the underlying facts to counter the applicant’s version.

[69] It follows that the applicant has established its entitlement to the relief claimed. I am also persuaded about the urgency of the matter.

[70] As previously stated, part of the relief sought includes an order allowing the applicant, in the event of termination (in breach of a court order), to appoint its own professional contractors to reconnect services at the respondents’ cost. Counsel for the CoJ contends that such relief is impermissible considering the following sentence in paragraph [32] of *City of Tshwane Metropolitan Municipality v Vresthena (Pty) Ltd and Others* 2024 JDR 1616 (SCA), where the court remarked that: “(i)t (the appealed order) even sanctioned the illegal reconnection of electricity by civilians other than the City.”⁴

[71] The sentence relied on by the CoJ must be read in the context of the whole paragraph of that decision, namely:

“From this it may be concluded that Vresthena and the other owners of the sections had no right, even prima facie, to continue to receive electricity without payment for those services. The City was enjoined to implement the

⁴ The paragraph of the appealed order referenced by the SCA reads: “In the event that the first respondent fails to comply with paragraph 2 of this order timeously, the applicant is authorised to instruct an electrician and/or service provider to reconnect the electricity and/or water supply in such event, the applicant reserves its right to claim such reasonable costs from the first respondent.”

*credit and debt collection measures against the Body Corporate and terminate the supply of electricity to the Retail Park. The order of the high court failed to take this into account. It assumed, despite the history of ongoing nonpayment over many years, that Vresthena and the other owners had a right to receive electricity and ordered the restoration of its supply without imposing the reciprocal obligation on the owners for payment of the substantial arrear amount. **It even sanctioned the illegal reconnection of electricity by civilians other than the City.** The high court failed to consider whether Vresthena had other alternatives, when it clearly did. As already alluded to, Vresthena and the other owners have recourse against the Body Corporate. It is not enough for them to say that the Body Corporate is dysfunctional and, therefore, it cannot take steps to rectify the situation regarding payment to the City for the electricity consumed by the commercial owners of sections in the Retail Park.” [emphasis added]*

[72] In my view, the comment in the SCA decision must be read in context. It does not conclude that when a local authority, in breach of a valid court order, disconnects services, the court is powerless to effectively address the breach, if necessary, by authorising reconnection by a civilian contractor. Rather, the SCA’s remark is confined to the specific circumstances of that case, namely where the court order improperly ‘*ordered the restoration of ... supply without imposing the reciprocal obligation on the owners for payment of the substantial arrear amount.*’ Extending this *obiter dictum* beyond those facts would lead to the absurd result that valid court orders could not be enforced simply because the wrongdoer retains the power to veto orders made against it.

[73] Having considered the facts, I am satisfied that a punitive order for costs is justified.

[74] The order I make appears at the end of the judgment.

THE HYDE PARK MATTER

[75] This application was instituted against City Power (“CP”) and the City of Johannesburg (“CoJ”) on 25 November 2024. The following substantive relief is sought:

- “2. The respondents are declared to be in contempt of the order of the court of Yacoob J granted on 08 July 2020 (“the order”).*
- 3. Consequent upon the contempt a fine of R 500 000.00 is imposed on the first and second respondents.*
- 4. The first and second respondents (“the respondents”) are ordered to forthwith restore electricity supply to the applicant’s business premises situated at 9[...] W[...] M[...] – M[...] DRIVE, H[...] P[...], JOHANNESBURG (“the property”).*
- 5. Pending the final outcome of the action proceedings out of this court under Case No: 2023/118006, the respondent’s and any of its employees, agents and/or contractors are interdicted and restrained from further disconnecting the electricity supply to the property.*
- 6. The order in paragraph 3 above shall operate as an interim interdict with immediate effect.*
- 7. In the event that the respondent’s disconnect the applicants’ electricity supply after the granting of this order the applicant is authorised to instruct an electrician and or service provider to reconnect the electricity supply, for which reasonable costs the respondents shall be liable.”*

[76] The applicant conducts business as Shell, Hyde Park, at 9[...] W[...] M[...] Drive (formerly W[...] N[...] D[...]) in Hyde Park, Johannesburg (the “property”).

[77] The founding affidavit recounts billing disputes between the applicant and the respondents dating back to 2016. It is unnecessary to rehearse every detail of the dispute; it suffices to quote paragraphs 19–22 of the founding affidavit:

- “19. On 11 June 2019, the COJ issued an invoice starting with a zero balance on the account, and then proceeded to bill an amount of R 6 117 237 .21. This invoice is attached to the 2020 application as annexure “HF3”.*
- 20. The June 2019 invoice purports to include charges that dated back to August 2017, being two years prior. It included the following charges that are patently incorrect:*

20.1 A charge of approximately R3m for a single month, that being the month of September 2017;

20.2 Various monthly electricity charges in the region of R 90 000.00 or more per month.

21. I suspect that the R3m September 2017 charge comprises of charges that date back further in time, but which the COJ billed under a single month to avoid the effects of extinctive prescription on its claim. The usage it claims for September 2017 is impossible for the applicant to have consumed in a single month.

22. Even though the applicant is a business operating on a 7 day a week 24 hour a day basis, it is impossible for it to increase its consumption to the level of R3m a month, even running at full capacity on all its electrical demand.”

[78] In August 2019, the applicant procured the services of an independent external energy consultant, who installed meters on the applicant’s premises to monitor actual usage. It was determined that the applicant’s actual monthly usage amounts to approximately R40 000.00, which, according to the applicant, confirms that a genuine dispute exists between the parties regarding the alleged overbilling.

[79] On 19 June 2020, the CoJ issued a pre-termination notice (warning of an impending termination of the electricity supply).

[80] This prompted an urgent application by the applicant, resulting in an order granted by Yacoob J on 8 July 2020 (“the Yacoob Order”), which states:

“1. The applicant's non-compliance in regard to service and time limits are condoned, and this application is heard as one of urgent [sic] in terms of Rule 6 (12) of the rules of the Uniform Rules of this Court.

2. That the respondents or their agents are pertaining to City of Johannesburg Municipal Account No: 2[...]-, interdicted from cutting off the applicant's electricity supply to the property known as Shell Hyde Park Gardens situated at 9[...] W[...] N[...] Drive, H[...] P[...], Johannesburg ("THE PROPERTY") on the condition set out in paragraph 3 and pending the final determination of the remainder of this application.

3. *Pending the final determination of the remainder of this application the applicant will pay to the second respondent, in respect of the supply of electricity to the Property on its account, an amount of R35 000.00 per month, payable within 7 days of receipt of an invoice from the second respondent.*

4. *The respondents will render to the applicant an accurate accounting, together with substantiating documents (including meter readings) in respect of all amounts claimed by them on the account, setting forth the nature of the outstanding charges, the periods to which they relate and all payments made by the applicant within 60 days of the date of this order.*

5. *The parties will thereafter meet (whether remotely or otherwise) to debate the aforesaid account within 30 days of it having been provided.*

6. *In the absence of the parties agreeing upon the amount(s) payable by the applicant to the respondents in respect of the account pursuant to the above debate or failing the debate occurring, either party may give written notice by e-mail to the other party of such event, in which case:-*

6.1 The applicant will be afforded a period of 15 days within which to supplement its founding affidavit;

6.2 The respondent's answering affidavits (if any) will be delivered within 15 days from the applicant's supplementary founding affidavit per the preceding paragraph falls due.

7. *The remainder of the application is postponed sine die.*

8. *The costs are reserved"*

[81] The applicant states that the CoJ has, to date, failed to comply with the Yacoob Order in two respects:

- 1) It has failed to render an accurate accounting within 60 days, as stipulated in paragraph 4 of that order; and
- 2) It has terminated the electricity supply to the applicant's property on multiple occasions, allegedly in contempt of the Yacoob Order, namely:
 - 13 January 2021 (attempted disconnection);
 - 19 January 2021 (disconnection);
 - 18 August 2023 (disconnection);
 - 18 December 2023 (attempted disconnection);
 - 24 April 2024 (disconnection); and
 - 20 November 2024 (disconnection), which precipitated the present application, after two letters of demand (dated 20 and 22 November 2024) went unanswered by the CoJ.

[82] The applicant explains that it therefore seeks similar relief to that previously directed by the Yacoob order (i.e., an accounting).

[83] The applicant says that it complied with the Yacoob Order by making the monthly payments for electricity consumption as directed by the court.

[84] The applicant also took to instituting action proceedings against the CoJ based on the same dispute that gave rise to the Yacoob Order.

[85] The applicant asserts that the City of Johannesburg and City Power are in contempt of the Yacoob Order, which they consented to and therefore are clearly aware of. The applicant further states that: *“(n)otwithstanding, as demonstrated above, the respondents have repeatedly breached the provisions of the 2020 court order by terminating supply to the property on various occasions.”*

[86] Although the answering affidavit is labelled “respondents’ answering affidavit” it is presented by Mr Ngwana (CoJ’s legal advisor) only on behalf of the CoJ. There is accordingly no affidavit for CP.

[87] In his affidavit, Mr Ngwana repeats the introductory statements previously noted, acknowledging his lack of personal knowledge of the facts concerning the accounts. He states that “*the facts deposed to hereunder are known to me through the documents which I have access to under the Municipality's system and also in discussion with the colleagues employed by the department such as City Power together with their sub – contractors.*” [underlined]

[88] The disclaimers, especially the underlined words, are inadequate to support the introduction of hearsay evidence by Mr Ngwana. This is the ratio of the Deputy Judge President's decision in the matter of *Millu*, to which I shall later return in this judgment. Mr. Ngwana fails to disclose the actual source of the purported facts (if such facts were indeed obtained).

[89] Mr Ngwana also denies that the CoJ is in contempt of the Yacoob Order.

[90] In support hereof, he says that “*respondents rebilled the account and issued statement of account to the applicant, which the applicant rejected and demanded ...supporting documents.*” During September 2020 respondents’ former attorneys provided a report (a copy of which is enclosed) and they also passed a credit for R 1 161 447.07. The respondents continued to render invoices “based on actual readings” as proved by invoices dated 7 May 2021 and September 2024. Mr Ngwana concludes as follows (to explain why services were disconnected): “*(d)espite compliance with the Court order dated 08 July 2020, the applicant failed to pay the amounts which were lawfully due and payable to the respondents, which led to services being disconnected.*”

[91] Mr Ngwana addresses a prior application by the applicant for a finding of contempt of the Yacob Order. That application was dismissed by Malungana AJ on 25 May 2023. A copy of the resulting decision, which the City of Johannesburg relies on, is attached to its answering affidavit. According to Mr Ngwana, the pending application for leave to appeal was not pursued. In reply, the applicant denies abandoning the appeal and contends that both the earlier contempt proceedings and the judgment are irrelevant to the present matter.

[92] Having read the judgment of Malungana AJ⁵, I note that it makes no reference to the termination of the electricity supply in breach of the Yacoob Order. The only breach considered by Malungana AJ was the City of Johannesburg's alleged failure to render accurate accounts, as directed by Yacoob J. Accordingly, I agree with the applicant that the Malungana decision is irrelevant to the issues before this Court and offers no pertinent guidance in determining whether contempt of court has been established.

[93] The CoJ's answer to the application ultimately boils down to the following points made in section [E] thereof under the heading: "THE STATUS OF THE APPLICANTS' CONSUMER AGREEMENT – 2[...]" where Mr Ngwana says the following:

"37. The applicant before this Honourable Court is a consumer of the services supplied by the Municipality under account number: 2[...] where the Municipality supply and charges the Applicants for the electricity.

38. In line with the terms of the consumer agreement concluded between the applicant and the Municipality the Municipality services a monthly tax invoice and that the applicant is obliged to pay the amounts provided in the tax invoice.

39. In line with the latest tax invoice, the applicant is currently indebted to the Municipality for an amount of R2 050 656.48;

39.1. I attach hereto as annexure "CoJ 1 the November 2024 tax invoice.

40. I reiterate that the account was billed actual readings for the periods up until September 2024, and was only billed estimates for the periods October and November 2024.

41. Despite compliance with the Court and the Municipality continuing to supply services to the applicant in which the applicant has been consuming such services:

⁵ There appear to be discrepancies between the "summary" of the Yacoob Order stated in the decision by Malungana AJ and the Order actually signed by Yacoob J, which is uploaded on CaseLines. In the signed Order, the monthly payment ordered by Yacoob J is R35,000, rather than the R25,000 noted in the Malungana Judgment. Furthermore, what is identified as paragraph [2.5] (the referee procedure) in the summary does not appear in the Yacoob Order on CaseLines (see CL 074-4).

41 .1. The applicant has been making short-payment to the account in that.⁶

42. The applicant is only not entitled to consume services from the Municipality without making payments.

43. In support of the above, I attach hereto as annexure "CoJ 10" the applicant's payment history which shows that the applicant makes sporadic payments towards the account without just cause.

42. The applicant is only [sic] not entitled to consume services from the Municipality without making payments.

43. In support of the above, I attach hereto as annexure "CoJ10" the applicant's payment history which shows that the applicant makes sporadic payments towards the account without just cause.

44. This Honourable Court has pronounced in numerous judgments that there should be an obligation on the Consumers to pay for the services and the Constitutional Court stated that it (sic) the Municipality's duty to disconnect the supply of services in order to force Consumers to pay.

45. If regard is had to the facts set out above, and the fact that the applicant on its own version has been approaching this Honourable Court in seeking to obtain orders (which others were dismissed) despite being provided with all documents in support of the amounts claimed by the respondents, it follows therefore that the applicant is approaching this Court in bad faith.

46. Now the applicant approaches the Court on urgent basis to declare contempt of Court, whilst the Court has already pronounced in the judgment under case number 5802/2021 that the respondents have taken reasonable steps to comply with Court order.

47. This Court is called upon to enforce the rule of law and deny the applicant the relief sought in the interest of justice.

48. Comprehensive legal submission shall be advanced at the hearing of this application."

[94] Considering that the argument contained in these paragraphs is pivotal to the CoJ's defence (and was indeed elaborated upon at length before me by counsel for the CoJ during oral argument as envisaged in paragraph 48 of Mr Ngwana's

⁶ The sentence is correctly copied from the answering affidavit as it is, stopping short of explaining why it is contended that the applicant has been making "short-payments".

answering affidavit) it deserves to be unpacked and carefully weighed – the following is what can be distilled from the allegations by Mr Ngwana :

- 1) The first proposition is that there exists an agreement between the CoJ and the customer in terms of which electricity is supplied;
- 2) The applicant is not entitled to consume services without paying for them;
- 3) The courts have held that it is the “Municipality's duty to disconnect the supply of services in order to force Consumers to pay”;
- 4) The applicant has made what is called “sporadic payments”. To demonstrate the point, Mr Ngwana refers to its printout of payments made by the applicant “CoJ 10”;
- 5) The next stage of the argument relies on Malungana AJ's finding that the respondents took reasonable steps to comply with the Court order. This finding is presumably cited to counter the applicant's allegation that the Yacoob Order was repeatedly breached by the CoJ through the termination of services.

[95] Consideration of CoJ's Arguments:

- 1) It is undisputed that a contractual relationship exists between the parties, requiring the applicant to pay for its electricity consumption. However, Mr Ngwana's observation on this point is irrelevant.
- 2) The general principle that municipalities may enforce payment for utilities, including termination of services for non-payment, is acknowledged. However, this principle does not address the applicant's case, which is founded on specific, unaddressed facts and the breach of the Yacoob Order through service disconnection. The applicant does not seek exemption from payment but contends it was incorrectly charged, and the Yacoob Order's dispute resolution process was breached. The respondents must be held accountable.
- 3) The CoJ's arguments ignore the history of the dispute detailed in the founding affidavit, which is inadequately addressed in the answering affidavit. Notably, the answering affidavit fails to acknowledge that the dispute was resolved following the Yacoob Order.
- 4) Two critical aspects of the Yacoob Order, left unaddressed by the CoJ, are:

i) The Yacoob Order outlines steps to follow if the statement and debatement process fails, requiring a notice of deadlock and a return to court for final resolution. The CoJ does not address this process.

ii) Paragraph 2 of the Yacoob Order interdicts cutting off the applicant's electricity pending final determination, provided the applicant pays R35,000 per month. The respondents fail to counter the applicant's claim that electricity supply was cut in breach of this order.

5) Regarding the alleged "sporadic payments," the CoJ relies on a printout covering payments from July 2020 (when the Yacoob Order was issued) to November 2024 (the latest disconnection). Over this 52-month period, payments total R1,785,000, averaging R51,000 per month. Most payments match the Yacoob Order's requirement of R35,000 monthly, with three exceptions—higher payments in July 2023 and November 2024. These cannot be described as "sporadic." Instead, the applicant appears to have paid more than required under the Yacoob Order.

[96] In *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) at paragraph [42] the relevant principles of civil contempt of court are summarised as follows:

"[42] To sum up:

(a) The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements. The respondent in such proceedings is not an 'accused person', but is entitled to analogous protections as are appropriate to motion proceedings.

(b) In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and mala fides) beyond reasonable doubt.

(c) But, once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: Should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.

(d) *A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities.”*

[97] Upon application of the Fakie test to the evidence before this court, I find that contempt of the Yacoob Order has been established on a balance of probabilities. The CoJ has failed to provide any evidence to create a reasonable doubt regarding whether its non-compliance with the Yacoob Order was wilful and mala fide. The argumentative responses in Mr Ngwana’s affidavit are unpersuasive and irrelevant.

[98] Having made a finding of contempt, it is necessary to determine an appropriate sanction and identify the individuals to be held accountable. The repeated and prolonged instances of non-compliance may be regarded as aggravating factors.

[99] The urgent motion court is not the appropriate forum to determine sanctions or accountability in this matter. These issues do not require urgent resolution. Consequently, I have opted to render an order that enforces the existing Yacoob Order while taking into consideration the current circumstances.

[100] The applicant has proposed a draft order seeking an interim interdict pending the outcome of its action against the CoJ. It further requests a new order for payment of R35,000.00 per month to the CoJ for its current electricity supply, purportedly reflecting monthly usage.

[101] I find the applicant’s proposal to be problematic for the following reasons:

- 1) It disregards the Yacoob Order, which remains binding.
- 2) It risks perpetuating an inequitable arrangement whereby the applicant’s fixed payment for utility charges may be unrealistically low or fall below actual consumption levels, potentially resulting in unfairness to the CoJ and other consumers, especially if delays extend over several years.

The most appropriate course is to issue a tailored order to address the circumstances.

[102] The terms of the order are set out at the conclusion of this judgment.

THE FLAWS IN THE COJ's ANSWERING AFFIDAVITS AND ARGUMENTS COMMON TO ALL THREE MATTERS

Hearsay

[103] I refer to the pertinent passages in the Deputy Judge President's decision in *Millu*, which also addressed a customer account dispute and Mr. Ngwana's style of affidavits. These passages are relevant to the issues currently before me:

“[45] The practice of requiring a legal advisor to depose to the affidavits is both a clue to the cause of the debacle and a manifestation of the City’s reckless attitude. It should be self-evident that the City’s legal advisor has no personal knowledge of the accounting. He cannot ever be more than a conduit. His affidavit craftily states that he makes it based on the information provided to him, deftly evading the typical formula that the deponent has access to and control over the documents qua evidence. From whom the facts were truly obtained is never said, and in this wholly unsatisfactory manner, the anonymous officials who compose the accounts are shielded from accountability. If Mr Ngwana is ever be cross-examined on his affidavits it seems likely that embarrassment would soon follow. It must be stated bluntly that the affidavits in litigation should be from persons who administer the accounts. The practice of a legal advisor being a deponent to facts of which he has no personal knowledge must stop.”

[50] I require, in respect of Mr Ngwana, to be told on affidavit why he should not personally pay a portion of the costs awarded to the applicant. Such representations must be uploaded by no later than 10 days after this judgment is delivered, whereupon I shall amplify and amend the order as to liability for costs, if appropriate to do so.

[51] The City must pay the applicant ‘s costs on the attorney and client scale. The attorney of record for the City is interdicted from recovering a fee from the City.

[52] This judgment must be brought to the attention of the Mayor, the City Manager, the head of revenue collection and the chief legal advisor.”

[104] In a supplementary judgment dated 29 April 2024 in *Millu*, the Deputy Judge President concluded his consideration of appropriate sanctions in respect of Mr Ngwana (in particular, whether he should personally bear a portion of the costs imposed by the court upon the City of Johannesburg), considering the explanatory affidavit filed as directed. The court found that Mr Ngwana acted *bona fide* on that occasion and should accordingly not be penalised. The comments which the Deputy Judge President went on to make in the supplementary judgment are pertinent to the findings I have reached in the three matters addressed herein. I refer, in this regard, to the following paragraphs in the Deputy Judge President's supplementary judgment in *Millu*:

[6] I(t) bears mention that the intrinsic dysfunctionality in the administration of the City, as regards this category of dispute, upon which I have commented adversely in the principal judgment, is vividly corroborated by these revelations (in Mr Ngwana's explanatory affidavit).

[7] The experience of the householder as described in this matter is no aberration. In the principal judgment I alluded to the observation of Strydom J on a similar debacle in which it seems the same legal team from the City were implicated. As fate would have it, Chetty J handed down, on 5 April 2024, an extensive and comprehensive judgment dealing with the same genus of dysfunctionality in the billing by the City. (Ackerman v City of Johannesburg and others [2024] ZAGJHC 334 (GJ)) The pattern of administrative failure that ends up in litigation at the expense of the ratepayers is a disgrace.

[8] The crisis of accountability - or rather, the lack thereof - in public institutions must be arrested. The suggestion that the executive officers of the City be cited in their personal capacities seems an appropriate practice to be adopted by litigation attorneys and I encourage that to be done. Accountability from those who are culpable must be exacted."

[105] It is alarming that, despite the two judgments in *Millu* and at least three other decisions of this court⁷ (where the City of Johannesburg was similarly criticised), and

⁷ *Ulcombe v City of Johannesburg 18969/2022 (2023 02 01)* per Strydom J; *AFHCO Calgro M3 Consortium (Pty) Ltd v City of Johannesburg Metropolitan Municipality and others 2023 JDR 3337 (GJ)* per Benson AJ; *Ackerman v City of Johannesburg (2022/9392) [2024] ZAGPJHC 334 (5 April 2024)* per Chetty J <https://www.saflii.org/za/cases/ZAGPJHC/2024/334.html>; *Afhco Calgo M3 Consortium (Pty) Ltd v City of Johannesburg Metropolitan Municipality and*

notwithstanding the principal decision in that matter— which contained explicit warnings against repeating the same unacceptable conduct—was directed to be brought to the attention of the Mayor, the City Manager, the Head of Revenue Collection, and the Chief Legal Advisor, the grave concerns expressed by the Deputy Judge President in the March and April 2024 decisions in *Millu* appear to have been disregarded. This attitude demonstrates a troubling indifference to accountability and oversight, coupled with a marked disregard for the authority of the Court.

Failure to deal squarely with the facts

[106] The same practice is apparent, namely the presentation of legal argument rather than a substantive response to the facts, as required by the established practice of our courts. In this regard, I refer to *Reynolds NO v Mecklenberg (Pty) Ltd* 1996 (1) SA 75 (W) at 79B–H:

“....it is usually necessary in motion proceedings for the respondent's attorney also to obtain from his client and his client's witnesses the documents and statements which provide the raw material for the drawing of affidavits. If the applicant's attorney has drawn the applicant's affidavits carefully, the respondent's affidavits can usually be kept very short. Most of the facts alleged by the applicant, if he is an honest man, should be common cause and can simply be admitted by the respondent. There may be one or two disputes of fact. If there are, they should not be disguised in a mass of indignant argument and expostulation, such as the frequently encountered phrase 'it is highly significant that the applicant has failed to take this honourable Court into his confidence about . . .', and other such useless verbiage. Whilst that particular phrase has not been used in these papers, there are considerable passages of argument in which facts are obliquely hinted at and not properly stated. To take one example from each side, at p 64-8 Beinash presents an argument in support of his theory that the applicant is driven by an improper ulterior motive. Facts are introduced merely to support the argument. They are not set out in the context of the sequence of

events in which they occurred. In his replying affidavit the applicant has used a similar technique, for example at p 147 para 6.6, where the following appears:

'While Beinash accuses me of a lack of bona fides and of acting with an ulterior motive, he has not informed this Honourable Court of the recent changes in the shareholding and directorate of the respondent, or the reasons behind such changes. Rather than explain the motive behind such changes he simply tells this Honourable Court that he is a director of the respondent as if he has been one for a lengthy period of time.'

And so on.

Any allegation of fact by the applicant can and should (if appropriate) be challenged with a denial and with a counter-allegation containing the respondent's version of the disputed proposition of fact."

Regrettably, the City of Johannesburg's answering affidavits in all three matters fail to comply with these basic requirements. By way of illustration, I refer to the following:

- 1) Section [A] of the answering affidavit in the Hyde Park matter consists of a lengthy excursus (including an unidentified quotation from a court judgment) presented under the heading, "OBLIGATIONS OF THE COURTS IN OBSERVING THE SEPARATION OF POWERS AGAINST OTHER ARMS OF GOVERNMENT AND THE PROCEDURE TO DECLARE A DISPUTE UNDER SECTION 102 OF THE SYSTEMS ACT," which purports to support a series of argumentative contentions. It is not apparent how this portion assists in determining the relevant facts.
- 2) In the Erf 7[...] matter, Mr Ngwana's affidavit is almost exclusively argumentative.
- 3) In the matter of Ordicode, the answering affidavit of Mr Ngwana, addressing "lack of urgency," states: "The Applicant approached this Honourable Court on 19 November 2024 and they were reconnected on 20 November 2024" (refer to paragraph 16). It further asserts: "The Applicant has brought this matter (seeking to declare contempt) as one of urgency." In response, the applicant highlights that the disconnection took place on 22

November 2024, with reconnection on the same day, and clarifies that they do not seek a declaration of contempt. I concur with the applicant that Mr Ngwana (and the lawyer who prepared the affidavit for him) appear to have replicated allegations from other documents, which are irrelevant to the facts of the Ordicode case. The careless drafting of documents by the respondents and their legal advisers is reflective of the negligent attitude they exhibited throughout the entirety of the proceedings.

Shortcomings in the presentation of argument

[107] *The Public Protector of South Africa v The Chairperson of the Section 194(1) Committee and Others (627/2023) [2024] ZASCA 131 (1 October 2024) paragraph [48]:*

“Brevity is the hallmark of good advocacy. Clarity of thought, logical coherence and conciseness of presentation are the product of painful preparation. Said Winston Churchill: ‘If you want me to speak for two minutes, it will take me three weeks of preparation. If you want me to speak for thirty minutes, it will take me a week to prepare. If you want me to speak for an hour, I am ready now.’ Exasperated sighs, soapbox oratory, empty rhetoric, political posturing, theatrical gestures and long-winded dismissive non-sequiturs have no place in a courtroom, particularly in response to searching questions from the bench. The taking of ‘miserable, pettifogging point[s]’, as Innes CJ described them over a century ago, are bound to fail. The learned Chief Justice added: ‘But points of that kind do commend themselves to a certain class of practitioner, and do undoubtedly possess an attraction for a certain stamp of mind. . .’⁸ ”

[108] After considering the extensive arguments presented in these three matters, I am compelled to acknowledge that the criticisms highlighted by the SCA in the Public Protector case apply to the respondents' submissions. Their arguments were repetitive, verbose, rife with non-sequiturs, and lacked logical coherence. Additionally, during oral submissions (and in the papers as I have pointed out), the

⁸ Incorporated Law Society v Bevan 1908 TS 724 at 730.

respondents inappropriately accused their opponents of ambushing, dishonesty, and abuse of court processes. Their submissions were unstructured and disorganized, and they erroneously cited orders from other courts, devoid of reasons, as authority. This approach mirrors the 'soapbox oratory' critiqued by the SCA. This is unacceptable and must cease immediately.

THE SANCTION

[109] I would be remiss in my duty if I did not take further action in respect of the repeated failings demonstrated by the legal representatives and legal adviser of the City of Johannesburg and its associate entities identified in this judgment and those cited herein (including the four decisions of this court referenced in footnote 6).

[110] I echo the profound concerns articulated by the Deputy Judge President in the *Millu* judgments (and the others) regarding the intrinsic dysfunctionality within the City of Johannesburg's administration, especially in disputes of this nature. As emphasized at the outset, it is imperative for the City of Johannesburg (CoJ) to take decisive remedial action. The customers and ratepayers of CoJ deserve nothing less.

[111] Before any sanction is imposed for the apparent failure by the City of Johannesburg's legal representatives and Mr Ngwana to heed the many warnings of this court and for persisting in a pattern of submitting inadequately prepared papers and unmeritorious arguments at the expense of the City's ratepayers, it is necessary to afford them an opportunity to make representations to the court. Accordingly, I issue the following invitations:

- 1) The attorneys and counsel who represent the respondents are invited to file representations within 30 days of publication of this order, demonstrating why they should not be prohibited from charging or recovering any fees from the City of Johannesburg, City Power, or Johannesburg Water for work performed in respect of the matters decided in this judgment, considering their apparent failures identified herein;
- 2) Mr. Ngwana, the City's legal advisor, is invited to file representations within 30 days of publication of this order, demonstrating why he should not

be personally ordered to pay 20% of the costs incurred by the City of Johannesburg and City Power in the three matters.

If such representations are not filed in a timely manner, or if they are deemed unpersuasive, supplementary orders to that effect will be issued.

Wherefore the following orders are made:

A. In ERF 7[...] ROBINDALE FIVE (PTY) LIMITED // CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY Case Number: 24-136466 [No. 2 on the roll]:

1) The Respondents are afforded the opportunity within 30 (thirty) days to issue summons against the applicant for the disputed arrears of R139,586.65 in a court or other tribunal with jurisdiction, in line with the November 2024 tax invoice, per the applicant's account under number 2401819478, failing which the applicant is entitled to approach this court on motion (with service on the respondent) for a declaration to the effect that the disputed arrears amount has prescribed.

2) The Respondents are interdicted from disconnecting the electricity and/or water supply to the property based on the disputed arrears, pending the final determination of the rights of the parties and outcome of litigation described in paragraph 2 above.

3) The Respondents are ordered to pay the costs of the application jointly and severally, in solidum, the one paying the other to be absolved, on the attorney and client scale.

B. In ORDICODE (PTY) LTD // CITY OF JOHANNESBURG Case Number:23-077080 [No. 7 on the roll] ("the Ordicode matter"):

1) The respondents are interdicted and restrained from terminating or causing or instructing the disconnection and/or termination of the electricity supply to applicant's property at 85 Wolmarans Street Johannesburg, without a court order to the contrary based on the disputed charges and which disputes are captured in the main application, under case number 23-077080 and pending the resolution of the disputes of the main application already before the Honourable Court for consideration.

2) In the event that the respondents again disconnect the applicants' electricity supply ("the supply of electricity") to the applicant's property at 85 Wolmarans Street Johannesburg, in breach of this Order, and thereafter fail to

reconnect the supply of electricity within two hours of receiving a request (by email or telephone call) to do so, the applicant is hereby authorized to engage an electrician and/or service provider to reconnect the supply of electricity. The reasonable costs incurred in effecting this reconnection shall be borne by the party or parties responsible for the breach.

3) The Respondent is ordered to pay the costs of the application on the attorney and client scale.

C. In HYDE PARK GARDENS (PTY) LTD // CITY POWER JOHANNESBURG SOC LIMITED & OTHER Case Number: 20/15428 [No. 9 on the roll] (“the Hyde Park matter”):

1) The second respondent (City of Johannesburg) is found to be in contempt of paragraph 2 of the Order made by the honourable Justice Yacoob on 8 July 2020 under case number 2020/15428 [“the Yacoob Order”];

2) The questions of:

i. the appropriate sanction for the contempt of the Yacoob Order;

ii. which individuals, if any, should be sanctioned; and

iii. the final determination of case number 2020/15428 (including the resolution of all the disputes arising in respect of City of Johannesburg Municipal Account No: 2[...] which are referenced in the Yacoob Order),

are referred for the hearing of oral evidence before me (or another Judge as the DJP may direct) on a date and at a time to be determined by the Deputy Judge President.

3) Witness statements

i. The evidence shall be that of any witnesses whom the parties or either of them may elect to call, subject, however, to what is provided in para. 3.2 hereof.

ii. Neither party shall be entitled to call any witness unless:

a) it has served on the other party at least 15 days before the date appointed for the hearing (in the case of a witness to be called by the respondents) and at least 10 days before such date (in the case of a witness to be called by the applicant), a statement

wherein the evidence to be given in chief by such person is set out; or

b) the Court, at the hearing, permits such person to be called even though no such statement has been so served in respect of his evidence.

4) Either party may subpoena any person to give evidence at the hearing, whether such person has consented to furnish a statement or not.

5) The fact that a party has served a statement in terms of para. 3.2 hereof, or has subpoenaed a witness, shall not oblige such party to call the witness concerned.

6) Within 30 days of the making of this order, each of the parties shall make discovery, on oath, of all documents relating to the issues referred to in para. 2 thereof, which are or have at any time been in the possession or under the control of such party.

7) Such discovery shall be made in accordance with Rule of Court 35 and the provisions of that Rule with regard to the inspection and production of documents discovered shall be operative.

8) In the event that the respondents again disconnect the applicants' electricity supply to Shell Hyde Park, located at 9[...] W[...] M[...] Drive, Hyde Park, Johannesburg ("the supply of electricity"), in breach of the Yacoob Order, and thereafter fail to reconnect the supply of electricity within two hours of receiving a request (by email or telephone call) to do so, the applicant is hereby authorized to engage an electrician and/or service provider to reconnect the supply of electricity. The reasonable costs incurred in effecting this reconnection shall be borne by the party or parties responsible for the breach;

9) The incidence of the costs incurred up to now shall be determined after the hearing of oral evidence.

D. Respondents' attorneys and counsel of record are invited to make representations to this Court within 30 days of the publication of this order, demonstrating why they should not be prohibited from charging or recovering any fees from the City of Johannesburg, City Power, or Johannesburg Water for work performed in respect of the matters decided in this judgment in the light of their failures identified herein. If such representations are not filed in a timely manner, or if they are deemed unpersuasive, supplementary orders to that effect will be issued.

E. Mr Ngwana, the CoJ's legal advisor, is invited to make representations to this Court within 30 days of the publication of this order, providing reasons why he should not be personally ordered to pay 20% of the costs incurred by the CoJ and CP in these three matters, arising from his failure to heed the Deputy Judge President's warning in paragraph [45] of the decision in *Millu* (case number 25039/2021). If such representations are not filed in a timely manner, or if they are deemed unpersuasive, supplementary orders to that effect will be issued.

F. This judgment, as well as the following decisions—similarly critical of the administration of the City of Johannesburg,

Ulcombe v City of Johannesburg 18969/2022 (2023 02 01) per Strydom J;
AFHCO Calgro M3 Consortium (Pty) Ltd v City of Johannesburg Metropolitan Municipality and others 2023 JDR 3337 (GJ) per Benson AJ (23 August 2023);

Millu v City of Johannesburg Metropolitan Municipality and Another (25039/2021) [2024] ZAGPJHC 419 (18 March 2024) per Sutherland DJP;

Ackerman v City of Johannesburg (2022/9392) [2024] ZAGPJHC 334 (5 April 2024) per Chetty J link;

Millu v City of Johannesburg Metropolitan Municipality and Another (supplemental judgment) (25039/2021) [2024] ZAGPJHC 420 (29 April 2024) per Sutherland DJP;

Afhco Calgo M3 Consortium (Pty) Ltd v City of Johannesburg Metropolitan Municipality and Others (2022/322) [2024] ZAGPJHC 1057 (18 October 2024) per Amm AJ,

must be brought to the attention of the following officials of the City of Johannesburg:

- a. The Executive Mayor;
- b. The City Manager;
- c. The Head of Revenue Collection;
- d. The Chief Legal Advisor;
- e. The Chief Executive Officer of City Power;
- f. The Chief Executive Officer of Johannesburg Water.

They are invited, within 30 days, to respond to:

The finding of contempt of court in the Hyde Park matter (refer to paragraph [97]); and

The flaws in the answering affidavits and arguments common to all three matters (described in paragraphs [1], [2] and [103] – [111] of this judgment).

They are further invited to respond to the criticism expressed in the six previous decisions of this court listed above.

Any response, or lack thereof, will be duly considered when determining an appropriate sanction for contempt, addressing the outstanding order for costs in the Hyde Park matter, and assessing the necessity for further remedial action at higher levels of the governmental hierarchy.

G. The parties and relevant officials of the City of Johannesburg are directed to email any representations delivered in terms of paragraphs D - F above to the Registrar of the court, Mr. L Mabasa, at LMabasa@judiciary.org.za for the consideration of the court, copied to the applicants' attorneys in the three matters identified in A to C of this order and the Secretary of the DJP's Office, at secretarydjp@judiciary.org.za.

BADENHORST AJ

JUDGE OF THE HIGH COURT

Heard: 2 – 5 December 2024

Judgment: 6 January 2025

APPLICATION	APPEARANCES
ERF 7[...] ROBINDALE FIVE (PTY) LIMITED // CITY OF JOHANNESBURG	For the applicant: Adv B Casey For the respondent:

APPLICATION	APPEARANCES
METROPOLITAN MUNICIPALITY Case Number: 24-136466	Adv E Sithole Instructed by: Ramatshila – Muger Inc
ORDICODE (PTY) LTD // CITY OF JOHANNESBURG Case Number:23-077080	For the applicant: Adv M Rodrigues For the respondent: Adv E Sithole Instructed by: Madhlopa & Thenga Inc
HYDE PARK GARDENS (PTY) LTD // CITY POWER JOHANNESBURG SOC LIMITED & OTHER Case Number: 20/1542	For the applicant: Adv Yacoob Alli with Adv Zaheera Hoosen For the respondent: Adv E Sithole Instructed by: Madhlopa & Thenga Inc