

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

CASE NUMBER: 30238/2023

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
13/12/2024	

_____ DATE	_____ SIGNATURE
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In the matter between:

EIGHT NINE SEVEN DELVILLE (PTY) LIMITED

APPLICANT

and

**CITY OF EKURHULENI METROPOLITAN
MUNICIPALITY**

FIRST RESPONDENT

DR IMOGEN MASHAZI

**(cited in her capacity as the municipal manager of
The first respondent)**

SECOND RESPONDENT

DR IMOGEN MASHAZI

THIRD RESPONDENT

JUDGMENT

OOSTHUIZEN-SENEKAL CSP AJ:

Introduction

[1] The applicant, Eight Nine Seven Delville (PTY) Limited ("**Delville**") seeks declaratory relief to address the unlawful termination of electricity supply to their property at 3[...] B[...] Road, W[...] Ext 4 ("**the property**"). Additionally, the applicant seeks interdictory relief to prohibit the first respondent, the City of Ekurhuleni Metropolitan Municipality ("**the City**") from holding them liable for outstanding debts incurred by former tenants who have since vacated the property.

[2] The applicant further seeks an interdict to prevent the City from terminating the electricity supply based on disputed liabilities.

[3] The relief sought includes an order prohibiting the termination of municipal services to the property until disputes are resolved alongside a mechanism to facilitate proactive dispute resolution and ensure accurate and fair accounting.

[4] The applicant also seeks declaratory relief based on the principle of prescription, as an alternative form of relief.

[5] Additionally, the applicant requests that punitive costs be awarded against the City.

[6] The respondents oppose the relief sought.

[7] Amongst others, the City request condonation for the late filing of its answering affidavit. The applicant does not oppose this request for condonation. In light of the parties' agreement, I find no reason to withhold condonation. The delay was minimal, no prejudice was caused, and the explanation provided for the delay is reasonable. Accordingly, condonation is granted.

Factual Background

[8] The applicant is the owner of the property, also known as Gorg Park, which consists of eight commercial units ("**the units**"), all rented to tenants. The City is the sole provider of municipal services to the property.

[9] In April 2022, the City installed a bulk meter at the property, identified as meter number 2[...] ("**the bulk meter**") and following the installation, the City began issuing a single account for all electricity supplied to the property. The applicant became the sole customer responsible for payment to the City after the bulk meter was installed.

[10] Prior to the bulk meter installation, each tenant maintained an individual account with the City. The property previously had eight supply points, each with its own meter. These meters were removed approximately one week after the bulk meter was installed, and the separate accounts were terminated.

The 8 historic meters and 4 separate consumer agreements

The applicant's account

[11] The applicant had a consumer agreement with the City for the supply of electricity to four of the units at the property, under account number 2[...]. This account covered units 1, 2, 5, and 8.

[12] The applicant's account was up to date at the time of the disconnection of electricity supply to the entire property on 29 September 2021. No outstanding balance existed on the applicant's account as of that date.

The Aros, Beth & Bev and Rapid accounts

[13] Aros Engineering CC ("**Aros**") occupied Unit 6 and had a separate account with the City, under account number 2[...].

[14] The meter assigned by the City to Unit 6 was identified as meter number S[...] (“**the Aros meter**”). The City issued separate invoices to Aros under account number 2[...] (“**the Aros account**”).

[15] Units 3 and 7 were occupied by Beth & Bev Packaging Products CC (“**Beth & Bev**”). Beth & Bev entered into separate consumer agreements with the City for these units, which were terminated when Beth & Bev vacated the property on 4 May 2022.

[16] Each unit was equipped with its own meter to measure electricity consumption: meter number S[...] for Unit 3 and meter number S[...] for Unit 7 (“**the Beth & Bev meters**”). The City assigned account numbers 2[...] and 2[...] to Beth & Bev for the respective units (“**the Beth & Bev accounts**”).

[17] Rapid Dawn 1186 CC (“**Rapid**”) occupied Unit 4 and also had its own account with the City. Rapid vacated the property on 4 May 2022.

[18] Although Rapid and Beth & Bev Packaging Products CC were separate legal entities, both were family-run businesses, with Elizabeth Baillie being a member of Beth & Bev and her daughter-in-law, Renate Dreyer, being a member of Rapid.

[19] Unit 4 was equipped with its own electricity meter, and the City measured the consumption for this unit through meter number S[...] (“**the Rapid meter**”). Rapid entered into a consumer agreement directly with the City upon taking occupation of Unit 4, approximately 20 years ago. The City assigned account number 2[...] to Rapid in relation to Unit 4 (“**the Rapid account**”).

[20] In addition to Unit 4, Rapid also occupied Unit 8 from approximately May 2019. However, Rapid did not enter into a consumer agreement with the City for Unit 8, as this unit and its associated meters fall under the applicant’s account, as previously noted. Rapid vacated Unit 8 on 4 May 2022.

[21] It is important to note that there were no arrears on the consumption charges for Unit 8, as the account associated with the unit (the applicant’s account) was

always up to date. Therefore, the consumption charges for Unit 8 are not relevant to the current issues.

[22] For convenience, and in light of the fact that both Rapid and Beth & Bev defaulted not only on rental payments but also on their consumption charges under their individual accounts with the City, they will collectively be referred to as “the defaulting tenants.” This definition shall apply *mutatis mutandis* when referring to their accounts with the City, their consumer agreements with the City, the units they occupied (excluding Unit 8), the supply connections to each of their units, and the meters that measured the electricity consumption for their units (excluding the meter for Unit 8).

The Bulk Meter

[23] On 21 April 2022, the City installed a bulk meter at the property, replacing the eight historic meters. The applicant became the sole customer responsible for the supply to the entire property. The City was expected to invoice the applicant based on readings from the bulk meter.

[24] Initially, the applicant was unaware of the bulk meter’s installation. However, on 17 August 2022, the City clarified that the bulk meter had been installed on 21 April 2022, and it recorded consumption from that date. This was confirmed through email communications with the City.

The disconnection of electricity supply

The first disconnection

[25] On 29 September 2021, prior to the installation of the bulk meter, the City disconnected the electricity supply to the entire property, including the applicant’s units. The disconnection was allegedly due to an outstanding debt on Rapid’s account, which was unrelated to the applicant’s account. However, the City disconnected all supply points, including those for the applicant and Aros, which were up to date.

[26] Following the disconnection, the applicant became aware of arrears allegedly owed by Rapid to the City. The applicant requested that the City terminate the supply to the defaulting tenants' units to prevent further accumulation of arrears. The City complied by disconnecting the defaulting tenants' units.

[27] The managing agent of the applicant, Carter was informed by City officials carrying out the disconnection that it was due to Rapid owing a substantial amount on its account (not the Aros, Beth & Bev, or the applicant's accounts). Carter was shown a 24-hour final notice letter ("**the Rapid notice**"), which was dated 29 September 2021. This notice referred to an outstanding balance of R1,649,989.35 on the Rapid account in respect of unit 4. The City proceeded to disconnect all eight supply points, including those for the applicant's historic units and Aros' supply connection.

The second disconnection

[28] The defaulting tenants failed to pay the rental and ancillary charges owed to the applicant, leading to the cancellation of their lease agreements on 16 February 2022. However, the tenants refused to vacate the property. Following the first disconnection, the applicant became aware of arrears allegedly owed by Rapid to the City. Upon investigation it was discovered that Beth & Bev had also failed to pay for the supply to units 3 and 7.

[29] The applicant proposed that the City disconnect supply only to the defaulting tenants' units. The City then attended the property the same day and disconnected supply to the defaulting tenants' units, specifically at the connection points to the historic meters.

[30] However, the defaulting tenants illegally reconnected electricity to Unit 4, which led to the installation of the bulk meter on 21 April 2022. Despite this, Unit 4 continued to receive electricity until the defaulting tenants vacated the property.

The third disconnection

[31] On 13 May 2022, the City sent a team of officials to the property in response to complaints of the applicant about illegal reconnections. During this visit, the City issued final notices to the defaulting tenants for unpaid arrears. The City also issued a notice for electricity meter tampering.

[32] The applicant engaged with the City on several occasions to resolve the disputes, including through numerous demands for payment and requests for clarification of the outstanding amounts on the applicant's and the defaulting tenants' accounts.

[33] To mention but a few, the applicant engaged with the City on the following occasions to resolve the disputes, 29 September 2021, 31 December 2021, and during the periods of 1 January to 31 May 2022, 1 June to 30 June 2022, 1 July to 31 August 2022, and 1 September until the application was filed. Throughout these consultations, the applicant issued a total of 28 (twenty eight) demands concerning both the arrears on the applicant's account and the outstanding amounts related to the defaulting tenants' accounts.

Common Cause Facts

[34] The following facts are common cause:

[34.1] The applicant is the owner of a property comprising 8 units, and the City is the sole supplier of municipal services to the property.

[34.2] Prior to the installation of a bulk electricity meter by the City, supply to the property was measured through eight separate meters, one for each unit ("**historic meters**"). Following the installation of the bulk meter on 21 April 2022, the supply to all 8 units has been measured through this single bulk meter.

[34.3] The applicant holds an account with the City (Account No. 2[...]) ("**applicant's account**"), on which the City historically levied electricity charges only for units 1, 2, 5, and 8 ("applicant's historic units"), prior to the installation of the bulk meter.

[3.4] Aros Engineering CC ("**Aros**") occupied unit 6 ("**Aros unit**") at all material times and maintained its own municipal account (Account No. 2[...])

(“**Aros account**”). Consumption was measured through meter S[...] (“**Aros meter**”).

[34.5] Units 3 and 7 (“**Beth and Bev units**”), which were occupied by Beth and Bev Packaging CC (“**Beth and Bev**”) until 4 May 2022, were not billed under the applicant’s account prior to the installation of the bulk meter. Beth and Bev also traded under the name Plastic and Packaging. The City billed the Beth and Bev units under separate accounts (Account Nos. 2[...] and 2[...]) (“**Beth and Bev accounts**”). Consumption for these units was measured through meters S[...] and S[...] (“**Beth and Bev meters**”).

[34.6] Beth and Bev entered into consumer agreements directly with the City for supply to their units approximately twenty years ago.

[34.7] Unit 4 (“**Rapid unit**”) was occupied by Rapid Dawn 1186 CC (“**Rapid**”) until 4 May 2022, which maintained its own meter (S035147706) (“**Rapid meter**”). The City billed Rapid under its own account (Account No. 2[...]) (“**Rapid account**”). Rapid also concluded a consumer agreement directly with the City roughly twenty years ago.

[34.8] On or about 21 April 2022, the City installed the bulk meter at the property, after which the 8 historic meters (including the Rapid and Beth and Bev meters) were removed. The electricity supply to all 8 units was thereafter measured by the bulk meter, with the applicant becoming the sole consumer responsible for the supply to all units from 21 April 2022 onwards.

[34.9] On 29 September 2021 (before the installation of the bulk meter), the City disconnected electricity supply to the property due to arrears owed by Rapid. The applicant became aware that Rapid, along with Beth and Bev (“**defaulting tenants**”), had illegally reconnected the Rapid unit. Mr. Grobbelaar, acting on behalf of the applicant, reported the illegal reconnection to the City.

[34.10] On 13 May 2022, the City attended the property, served a 24-hour final notice of termination based on the defaulting tenants’ arrears, and subsequently disconnected electricity supply to the entire property (“**the contentious disconnection**”).

[34.11] Rapid entered into an Acknowledgement of Debt (“**AOD**”) with the City on 6 October 2021, admitting liability for R1,496,412.00.

[34.12] On 4 May 2023, following the service of this application, a representative of the City attended the property and advised that the electricity supply to the entire property would be disconnected unless R2,367,003.00, owed by Rapid, was paid. This disconnection was scheduled for 5 May 2023.

[34.13] At no point in time has the applicant's account been in arrears.

[35] The following facts are also common cause regarding the disconnections at the property:

[35.1] On 29 September 2021, prior to the installation of the bulk meter, the City disconnected electricity supply to the property. The dispute regarding this disconnection is that the applicant contends that the entire property was disconnected, while the City asserts that only the supply to the Rapid unit was terminated. According to the termination notice dated 29 September 2021, the notice reflected arrears solely on the Rapid account for the Rapid unit, in the amount of R1,649,989.35.

[35.2] Following the termination of the lease agreements with the defaulting tenants, the applicant's representatives approached the City requesting the termination of electricity supply to the defaulting tenants' units. This request led to the disconnection of electricity supply to the defaulting tenants' units on or about 18 March 2022. The disconnection only affected the units occupied by the defaulting tenants.

[35.3] On 13 May 2022, the City attended the property with various officials and handed over a twenty-four-hour final notice of termination addressed to the defaulting tenants, dated 11 May 2022. This notice referred to alleged electricity meter tampering and the arrears owed by the defaulting tenants. On that same day, the City disconnected electricity supply to the entire property, referred to as the "contentious disconnection".

[35.4] Regarding the fines/reconnection fees, the City demanded a payment of R22,239.50 from the applicant to secure reconnection following the first disconnection in September 2021, which was paid on 4 October 2021. Upon the contentious disconnection, the City imposed a fine of R66,719.41, labelled as a "third incident."

[35.5] Rapid concluded an Acknowledgement of Debt (“**AOD**”) with the City on 6 October 2021, admitting liability for R1,496,412.00. The AOD was signed by a member of Rapid only and confirmed that Rapid was the responsible party on the Rapid account, acknowledging its lawful debt to the City.

[35.6] The applicant sent a total of 28 (twenty-eight) demands to the City, requesting resolution of the disputes and seeking to address the impasse. However, the majority of the allegations regarding the demands sent, received, and read by the City’s officials are met with bare denials, accompanied by arguments defending the City’s interpretation of its policies.

Issues for Determination

[36] The issue for determination in this matter is:

[36.1] Whether the City can impute liability for the defaulting tenants’ debt to the applicant, considering the tenants had separate consumer agreements with the City.

[36.2] Whether there are any material factual disputes.

[36.3] Whether the applicant’s demands constitute “disputes” under Section 102(2) of the Municipal Systems Act¹ (“**MSA**”).

[36.4] Whether the applicant exhausted alternative remedies before and after the institution of proceedings.

[36.5] Whether the City is entitled to terminate, or threaten to terminate, municipal services despite the disputes.

[36.6] Whether the relief sought infringes upon the doctrine of separation of powers.

¹ Municipal Systems Act 32 of 2000.

[36.7] Whether the defaulting tenants' electricity and related charges have prescribed, to the extent that liability can be imputed to the applicant.

[36.8] Whether the applicant's disputes regarding electricity charges are meritorious.

[36.9] Whether a case has been made out for the interim interdict.

[36.10] Whether punitive costs are warranted.

Submissions by the Applicant

[37] The applicant asserts that the City cannot attribute the arrears of the defaulting tenants to them, as the tenants had independent consumer agreements with the City, and their arrears were a result of their individual consumption. This argument is grounded in the principle of the separation of liability, a core tenet of contractual obligations under the MSA. According to the applicant, each tenant had a distinct contract with the City, meaning their debts and consumption should remain their responsibility, unless there is clear evidence of joint liability or an arrangement that shifts this responsibility.

[38] In essence, the applicant contends that the City cannot hold them liable for the historical debt of defaulting tenants, particularly for debts accrued before the installation of the bulk meter, as these debts were incurred under separate consumer agreements with the City.

Submissions by the Respondents

[39] The City on the other hand, argues that the arrears of the defaulting tenants should be attributed to the applicant as the property owner. The respondents maintain that, despite tenants having independent contracts with the City, the liability for payment ultimately rests with the property owner.

[40] Counsel for both the applicant and the respondents presented comprehensive heads of argument, for which I am grateful. During the hearing, both Counsel engaged with me constructively. For the purposes of this judgment, I will not reiterate their submissions.

Applicable Legal Principles

[41] The applicant seeks declaratory relief, a legal remedy in which a Court makes a determination about a disputed issue without necessarily ordering a specific course of action. It is a discretionary remedy, granted when there is a genuine dispute that can resolve an uncertainty in the law or prevent future legal complications.

[42] In terms of Section 102(2) of the MSA allows municipalities to issue demands for payment of arrears for services provided. However, such demands must be clear, precise, and lawful, and the MSA sets out a framework for resolving disputes, including those related to arrears and liability.

[43] A municipal service contract is the agreement between a municipality (as the service provider) and a consumer (the service recipient), such as for services like electricity, water, or refuse removal. These contracts typically outline the terms of service, consumer obligations, and the consequences of non-payment. The liability for paying for services usually falls on the person or entity receiving the service, not the property owner, unless the property owner has assumed responsibility through other agreements.

[44] When consumers enter into a service supply contract with the municipality, they are agreeing to be billed for the municipal services consumed and are obligated to pay for these services as per the terms outlined in the contract. Importantly, the contractual relationship is generally established between the municipality and the person or entity consuming the service, regardless of ownership of the property. However, issues can arise when the payment obligations and liabilities are not clearly delineated, especially when tenants are involved.

[45] The issue of whether a property owner can be held liable for arrears incurred by tenants depends on several factors, including the nature of the contract between the municipality and the consumer, and the provisions of the MSA.

[46] In cases where the property owner leases the property to tenants who have separate consumer agreements with the municipality, the tenants are usually considered the consumers of the service. As such, they are responsible for paying for the services they consume, and their arrears should generally not be imputed to the property owner.

[47] Under the MSA, municipalities are required to establish clear agreements with consumers, which typically include the tenant's responsibility to pay for the services consumed. The consumer agreements are entered into directly between the municipality and the individual consumer (tenant), meaning the tenant becomes liable for any unpaid charges, not the property owner.

[48] The owner of the property, however, could be held liable under specific circumstances, such as:

[48.1] If the property owner assumed liability for payment of the municipal services in the lease agreement with the tenant.

[48.2] If the services were provided to the property owner, even though tenants were consuming the services. For example, if the owner is the designated consumer for the property, then the owner could be liable for any arrears.

[48.3] Failure of the tenant to pay and the municipality seeking payment from the property owner, especially in cases where the tenant is no longer residing in the property, or if the owner is in control of the supply.

[48.4] Municipal policies or local government bylaws that allow the municipality to hold the property owner responsible for arrears, particularly if the arrears are accumulated due to the landlord's failure to ensure tenants paid for services.

[49] However, where the tenant has entered into a separate consumer agreement with the municipality, MSA dictates that the liability for arrears should rest with the

tenant unless there is an explicit agreement or statutory provision to the contrary. In other words, unless the municipality has established that the property owner is the responsible party under the consumer agreement, the property owner cannot be held liable for arrears accrued by tenants.

[50] The MSA governs the relationship between municipalities and consumers, setting out the framework for the supply of municipal services. Key provisions in the MSA relevant to liability for arrears are the following:

[50.1] **Section 102:** This section addresses the obligation of the consumer to pay for municipal services and outlines the procedures for dealing with arrears. If a consumer disputes the charges, the municipality is required to engage with the consumer to resolve the dispute and may not disconnect services until the dispute is resolved.

[50.2] **Section 118:** This section provides that arrears for municipal services (such as electricity) can be claimed from the property owner in cases where the owner has a direct agreement with the municipality for the provision of services. However, this typically applies to circumstances where the owner is either the registered consumer of municipal services or the contract between the municipality and the tenant specifies that the owner is ultimately responsible.

[50.3] **Section 98:** In terms of disconnection, the MSA allows the municipality to disconnect services for non-payment of arrears, but only after due process is followed, which includes a notice and an opportunity for the consumer to resolve the issue. Importantly, a dispute over arrears does not justify immediate disconnection, and the municipality must provide the consumer with a chance to resolve the dispute.

[50.4] **Section 102(2):** This provision outlines the obligation of consumers to dispute incorrect accounts or charges in writing. If a dispute is raised, the municipality is prohibited from taking enforcement action (such as disconnecting services) until the dispute is resolved.

Evaluation

[51] This case hinges on the application of the MSA, specifically regarding whether a property owner can be held responsible for arrears incurred by tenants with separate consumer agreements. The principle of separation of liability suggests that, unless the owner explicitly assumed responsibility or a statutory provision dictates otherwise, the liability for arrears should remain with the tenant. The case also illustrates how municipalities may interact with both property owners and tenants in managing liabilities for municipal services.

[52] Following the installation of the bulk meter, one would expect that the City's invoicing for consumption would be accurate. Unfortunately, this has not been the case. The applicant continued to receive invoices reflecting the removed historic meters well after the bulk meter was installed, as evidenced by the City's invoices for May 2022 and July 2022. The situation was further complicated when the applicant received invoices in August 2022 that reflected both the historic meters and the bulk meter, despite the bulk meter having already been installed. Subsequent invoices for September and October 2022 only reflected the bulk meter, yet they contained confusing reversals and credits.

[53] Furthermore, the City continued to issue invoices for consumption on the Aros account even after the bulk meter's installation. Aros was invoiced in May 2022 for the removed Aros meter. In June and July 2022, Aros was invoiced for both the removed Aros meter and the bulk meter. However, in September and October 2022, invoices for Aros reflected only the removed Aros meter, with no mention of the bulk meter. The Aros meter should not have appeared on any invoices after the installation of the bulk meter, as the applicant is the sole party liable for the charges measured by the bulk meter.

[54] Since the Aros meter was removed shortly after the bulk meter's installation, Aros should not have received any further invoices from the City. After the installation of the bulk meter, the City has no basis to invoice the applicant for

charges related to the historic meters, which no longer exist. The City's actions represent an unlawful attempt to recover charges.

[55] The respondents' assertion that the applicant is liable for the arrears of the defaulting tenants' accounts seems to contradict the established principle that liability for utility charges lies with the consumer under their individual agreements with the City. The City's attempts to impute the defaulting tenants' debts to the applicant lack clear legal or contractual grounds.

[56] In this matter, the applicant has raised 28 (twenty eight) demands with the City regarding the arrears. These demands likely represent a series of written requests asking the City to address the issues of liability and incorrect billing, which the applicant believes are in dispute. The fact that there have been numerous communications and meetings between the applicant and the City's officials indicates that the applicant took appropriate steps to resolve the issues before resorting to legal action. I cannot find that the applicant did not follow the correct procedures relating to a dispute being declared in this matter. In fact, the contrary is evident, the applicant attempted on numerous occasions to resolve the disputes relating to the billing of electricity supply by the City.

[57] The 28 (twenty eight) demands suggest that the applicant made repeated attempts to engage the City on the dispute, including in-person meetings and correspondence, in accordance with the provisions of the MSA. The MSA encourages consumers to attempt to resolve disputes with municipalities before seeking legal action. The applicant's persistence in raising these demands demonstrates that they followed the procedural requirements for resolving disputes and made genuine efforts to resolve the matter amicably.

[58] Given that the applicant issued multiple demands and engaged with the City in good faith, it is clear that the applicant exhausted available remedies before seeking judicial intervention. This is significant in evaluating whether the City acted unlawfully by continuing to pursue the arrears despite the ongoing disputes.

[59] The City must comply with the provisions of the MSA, including acknowledging the disputes raised by the applicant, engaging in meaningful discussions, and ensuring that its billing practices adhere to the legal framework. The City's failure to address these demands properly or to follow due process in its billing and disconnection actions may be deemed unlawful.

[60] The applicant has consistently raised valid concerns regarding the City's actions, including erroneous billing and the imputation of the defaulting tenants' debts. The City's failure to address these concerns adequately, combined with its reliance on incorrect billing practices, further strengthens the argument that a legitimate dispute exists.

[61] Moreover, the City's threats to disconnect electricity, even after the disputes had been raised, is a significant issue. While municipalities are permitted to disconnect services for arrears, they must do so in accordance with the provisions of the MSA, including acknowledging any disputes raised by the consumer. Given that the applicant has valid disputes concerning the charges, the City's threats to disconnect without resolving these disputes are unlawful.

[62] I therefore find that the City cannot terminate services or threaten termination while the disputes remain unresolved.

[63] The applicant's disputes regarding electricity charges appear meritorious, particularly given the evidence of erroneous billing, improper imputation of liability, and the lack of a clear resolution from the City. The applicant has consistently raised valid concerns, and the City's failure to resolve these issues in a timely and effective manner suggests that the disputes are indeed legitimate.

[64] The installation of a bulk meter by a municipality is a practical measure that allows for collective metering of electricity usage across multiple units on a property. This method simplifies billing and is useful in managing multiple tenants or units. It also helps address issues like illegal reconnections, where tenants may bypass their individual meters or the City's disconnection orders.

[65] However, the introduction of a bulk meter raises legal complications when tenants have individual consumer contracts with the municipality. The core issue in these cases is whether the property owner (the applicant) can be held liable for arrears incurred by tenants who have separate consumer agreements, especially when the property owner is not personally responsible for the unpaid municipal charges.

[66] In this case, the municipality installed a bulk meter to measure the collective electricity consumption of eight units on the applicant's property, including units leased to tenants with individual consumer contracts. As a result, the electricity consumption of all the units, whether occupied by the property owner or tenants, is now metered as a single, aggregated reading.

[67] The bulk meter complicates matters as it aggregates the consumption of all eight units into one metered supply. While this simplifies billing and monitoring, it does not alter the fact that tenants' arrears are tied to their individual consumer contracts with the City. The City's use of the bulk meter to bill the property owner for the total consumption of all eight units does not shift the responsibility for these arrears to the property owner.

[68] If the City wishes to recover arrears from tenants, it must pursue each tenant individually, as they are the consumers responsible for paying for the electricity they consumed. The property owner cannot be held liable for the tenants' debts unless the owner explicitly agreed to assume responsibility, which is generally not the case when tenants have separate contracts with the City.

[69] It is undisputed that the applicant's account with the City is not in arrears, indicating that the applicant has met its obligations under the municipal agreement. Consequently, the applicant should not be held liable for the arrears of tenants who have separate contracts with the City.

[70] Furthermore, the applicant reported illegal reconnections by tenants (Rapid, Beth, and Bev) to the City, following disconnections by the City. This action shows that the property owner was not complicit in the illegal reconnections. The applicant's

reporting of these reconnections is significant because it shows proactive steps taken to address illegal activities on the property, which could have directly contributed to further disputes. These actions do not, however, make the property owner liable for the tenants' arrears or any fines related to the reconnections. The tenants are responsible for these unauthorized actions, and any fines or penalties should be directed toward them, not the applicant. The applicant's efforts to report the illegal reconnections further distance it from responsibility for the arrears or fines linked to those actions.

[71] The City's imposition of a fine on the applicant for the illegal reconnections is problematic and concerning. The applicant denies any involvement in these reconnections. The fact that the tenants engaged in illegal reconnections does not automatically transfer liability to the property owner. Tenants responsible for illegal reconnections should bear the consequences of their actions, not the landlord. Furthermore, the applicant's report to the City about these illegal actions demonstrates compliance with legal obligations and efforts to prevent further illegal activity.

[72] The fine of R66,719.41 imposed by the City seems excessive, especially given that the applicant had no involvement in the illegal reconnections. The fine, categorized as a "third incident" fine, raises concerns about the City's approach to enforcement. The imposition of this fine on the applicant, who denies involvement in the reconnections, is problematic, as it appears to have been wrongfully imposed. The City should have pursued the tenants for their illegal actions, not the applicant.

[73] This brings me to the issue of rebatements by the City regarding the applicant's account. Typically, rebatements are initiated by the consumer's formal request for review, followed by a municipality's investigation to determine whether such a claim is warranted. Municipalities are bound by legal frameworks such as the MSA, the Municipal Finance Management Act (MFMA)², and its own by-laws when dealing with rebatements.

² Municipal Finance Management Act 56 of 2003.

[74] A typical rebatement process unfolds as follows:

[74.1] Consumers may identify the need for a rebatement in the following situations:

[74.1.1] **Billing Errors:** Overcharges due to meter faults, administrative mistakes, or system errors.

[74.1.2] **Excessive Charges:** Significant deviations from usual consumption patterns, often indicating issues like leaks or meter tampering.

[74.1.3] **Service Disruptions:** Prolonged interruptions in water, electricity, or other municipal services.

[74.1.4] **Eligibility for Relief Programs:** Consumers may qualify for indigent support or other relief policies.

[75] The consumer is required to complete a rebatement application form, which may involve submitting supporting documents such as:

[75.1] Proof of payment for disputed periods.

[75.2] Billing records that show inconsistencies

[75.3] Evidence of service disruptions, such as photographs or correspondence.

[75.4] Meter inspection reports, if available.

[76] Upon submission of the rebatement request:

[76.1] The municipality logs the application and assigns a reference number.

[76.2] An acknowledgment of receipt is provided, outlining timelines for resolution.

[77] Thereafter, the municipality conducts an internal investigation to verify the claim:

[77.1] **Account Audit:** Reviews the consumer's billing history for discrepancies.

[77.2] **Meter Testing:** Inspects or tests the relevant water or electricity meter for faults.

[77.3] **Site Inspection:** Visits the property to confirm physical conditions (e.g., leaks, illegal connections, or tampered meters).

[77.4] **Consultation with Internal Departments:** Engages departments responsible for metering, billing, and technical services to analyse the issue.

[78] After the investigation, the municipality determines whether the claim is valid and whether the consumer qualifies for a rebatement:

[79] If the claim is validated:

[79.1] **Authorization:** The responsible municipal officer or department approves the rebatement. High-value rebatements may require approval from senior officials or the municipal council.

[79.2] **Notification:** The consumer is informed of the approval and the amount to be credited to their account.

[80] The municipality then processes the rebatement:

[80.1] **Rebate Amount Credited:** The approved amount is applied to the consumer's account as a credit.

[80.2] **Updated Account Statement:** The consumer receives an updated statement reflecting the adjusted balance.

[81] The key considerations in the process are:

[81.1] Municipalities are expected to resolve rebatement claims within reasonable timeframes, often stipulated in their by-laws.

[81.2] Municipalities must communicate clearly with consumers throughout the process.

[81.3] Municipalities must act impartially and comply with legislative and policy frameworks to avoid undue prejudice.

[82] In the case before me, the applicant did not request a rebatement, nor seek any adjustments. The City initiated the rebatement process on its own, which raises significant procedural concerns. Municipal by-laws typically mandate that consumers apply for rebatements, supported by relevant documentation. By unilaterally initiating this process, the City deviated from the required procedure, making the process legally defective. It is evident that the City did not follow its own processes as prescribed.

[83] Furthermore, the City failed to provide firstly a clear explanation of how the debasement amount was calculated, secondly the nature of the evidence of an investigation or audit to justify the adjustment and lastly, no notice was provided to the applicant of the debasement process or an opportunity for the applicant to engage or object to the decision. This lack of transparency contravenes the principles of accountability and fairness enshrined in the MSA and Promotion of Administrative Justice Act³ (“**PAJA**”).

[84] Procedural fairness demands that parties affected by a decision are informed of its nature and reasons. The City’s failure to notify the applicant or provide justification for the rebatement constitutes a breach of its obligations under PAJA. The applicant was denied a chance to understand, contest, or engage with the decision, and the City’s unilateral action wrongly implicated the applicant for issues beyond their control.

[85] Municipalities must uphold procedural fairness and transparency in administrative actions. Failure to do so undermines public trust and exposes municipalities to judicial scrutiny and potential adverse cost orders.

[86] In conclusion, the Court finds that the applicant is entitled to declaratory relief. The City is not permitted to impute the defaulting tenants’ arrears to the applicant without proper consideration of legal aspects relating to contractual obligations by all concerned, proper investigations and in-depth consultation with all concerned. The

³ Section 33

disputes regarding the arrears and electricity charges are valid, and the City's actions—threatening disconnections and imposing charges unjustly—are unlawful.

[87] Section 152(1) of the Constitution specifies the objectives of local government⁴ as follows:

[87.1] To provide democratic and accountable government for local communities.

[87.2] To ensure the provision of services to communities in a sustainable manner.

[87.3] To promote social and economic development.

[87.4] To promote a safe and healthy environment.

[87.5] To encourage the involvement of communities and community organizations in the matters of local government.

[88] This section affirms that municipalities must strive, within their capacity, to achieve these objectives. While resource constraints exist, municipalities must make reasonable efforts to meet these goals, balancing practical limitations with the need to serve communities effectively. Adherence to these principles is vital for fostering trust and development.

[89] The Court finds that the City's actions, especially its failure to engage meaningfully with the applicant, are procedurally and substantively flawed. The City's failure to provide clear responses and its repeated non-compliance with its statutory and constitutional obligations demonstrate a disregard for its legal duties.

[90] Furthermore, the City has conceded that disputes exist and even undertook to investigate them. It cannot now argue that the applicant did not follow due process. The applicant submitted numerous written demands, which were acknowledged by the City. The applicant also continued to pay undisputed amounts, showing compliance and good faith.

⁴ *Joseph v City of Johannesburg and Government of the Republic of South Africa v Grootboom*

[91] The City's conduct reveals ongoing non-compliance with constitutional and statutory obligations. Its threats to disconnect services and refusal to flag the account to prevent disconnections are uncontested. Even after the application was served, the City proceeded to terminate water supply and threatened to disconnect electricity based on arrears of defaulting tenants. Such actions, compounded by the issuance of termination notices that did not comply with due process, further undermine the City's position.

[92] According to Section 7.1 of the City's policy, a minimum of 14 days' notice must be given before any disconnection, specifying the date and time of the proposed action, the reason, and how affected parties can challenge it. This is consistent with the Constitutional Court's ruling in *Joseph v City of Johannesburg supra*, emphasizing the importance of procedural fairness.

[93] The City's failure to meet its obligations warrants judicial intervention to ensure compliance with the Constitution, MSA, and its own policies.

[94] The Court holds that the City's actions cannot be condoned. Its failure to adhere to its policies and constitutional obligations requires intervention to protect the applicant's rights and ensure municipal accountability.

[95] The doctrine of separation of powers does not shield the City from judicial oversight. On the contrary, the judiciary is duty-bound to intervene when organs of state fail to fulfil their constitutional and statutory obligations. Allowing the City's blatant disregard for its duties to go unchecked would undermine the separation of powers and the rule of law. This principle was affirmed by the Constitutional Court in *Mwelase v Director-General for the Department of Rural Development and Land Reform*⁵, which held that Courts must ensure compliance with constitutional mandates.

⁵ *Mwelase v Director-General for the Department of Rural Development and Land Reform* 2019 (6) SA 597 (CC).

[96] In this matter, the Court has to compel the City to adhere to its obligations under Section 195 of the Constitution, Section 95 of the MSA, and its own policy. This is not an encroachment on the separation of powers but a necessary intervention to enforce constitutional compliance.

[97] To determine whether an interim interdict is warranted in this case, the applicant must meet the well-established legal requirements for interim interdictory relief. These include establishing:

[97.1] A clear or prima facie right.

[97.2] A reasonable apprehension of harm.

[97.3] The absence of an alternative remedy.

[97.4] The balance of convenience favouring the granting of the interdict.

[98] The applicant has successfully demonstrated a clear right, though the standard for an interim interdict only requires a prima facie right. The applicant argues that the City is not entitled to terminate or threaten to terminate municipal services while disputes remain unresolved, as mandated by section 102(2) of the MSA. The City's actions—terminating services without resolving disputes or providing proper notice—violate procedural fairness, as outlined in the *Joseph* case, PAJA, the City's own policies, and constitutional requirements for fair administrative action. Therefore, the applicant has shown a clear right to resist such actions.

[99] The applicant has presented a reasonable apprehension of harm if the City is not prevented from continuing its unlawful actions. Despite the application being served, the City has proceeded to terminate the water supply and issue threats to disconnect electricity. These actions reflect the City's ongoing intent to act in defiance of its statutory and policy obligations. Furthermore, the City's dismissive response to the applicant's repeated requests for assurance only heightens the apprehension of harm. The applicant has complied with all undisputed payments, which underscores the need for judicial intervention to avert irreparable harm caused by the City's failure to follow due process.

[100] The applicant has demonstrated the lack of an alternative remedy. Despite repeated attempts to resolve the disputes through correspondence, meetings, and

formal demands, the City has failed to engage meaningfully or comply with its statutory duty to resolve disputes in a timely and lawful manner. As such, the applicant has no recourse other than seeking judicial intervention. This satisfies the requirement that no alternative remedy is available.

[101] The balance of convenience strongly favours granting the interdict. The applicant has made all payments that are lawfully due, including ongoing charges based on bulk meter readings. Granting the interdict will not prejudice the City, as its right to disconnect services for future unpaid consumption is preserved under prayer 6 of the notice of motion. Furthermore, section 102(2) of the MSA provides a statutory safeguard against unfair treatment, aligning with the City's obligations. The tenants responsible for the arrears that led to the disconnection vacated the property on 4 May 2022, making any further disconnections irrelevant to securing payment. The City's failure to resolve disputes, engage meaningfully with the applicant, or provide proper notice further supports the applicant's position.

[102] The applicant has met all the requirements for the granting of an interim interdict. The City's unlawful disconnections and its persistent non-compliance with statutory obligations justify judicial intervention. The interdict should be granted to prevent further harm and to ensure the City adheres to constitutional, statutory, and policy requirements.

Costs

[103] The final matter to address is the issue of costs. The awarding of costs lies within the discretion of the Court, and this discretion must be exercised judicially, taking into account the conduct of the parties and the broader interests of justice.

[104] In this case, punitive costs are warranted due to the City's egregious conduct. Despite the applicant's persistent efforts to resolve the disputes since December 2021, the City has failed to engage meaningfully or address the issues. The City's refusal to acknowledge its shortcomings, particularly its non-compliance with the MSA and its own policies regarding the unlawful termination of services, is inexcusable.

[105] The City has adopted a dismissive and obstructive approach, raising fictitious defences, blaming the applicant for not approaching the Court sooner, and deflecting responsibility. This conduct is reprehensible and calls for a strong judicial response. The claim that the applicant failed to exhaust internal remedies has been thoroughly addressed and disproved. It is unreasonable to accuse a litigant, who has actively sought resolution since December 2021, of failing to pursue alternative remedies.

[106] Rather than taking responsibility for its actions, the City has responded with evasive tactics, baseless conclusions, convoluted arguments, and a mere recitation of statutory provisions. Such behaviour is unacceptable for an organ of state, which is constitutionally required to act lawfully, reasonably, and in a procedurally fair manner. As a public entity, the City is held to the highest standards of accountability and must uphold the rule of law. Its failure to do so in this case, coupled with its frivolous and unconscionable opposition to the application, justifies the imposition of punitive costs.

[107] The applicant should not be burdened with the costs of an application that was necessitated solely by the City's actions. The City's actions have contributed significantly to the delay and expense of these proceedings. The awarding of punitive costs reflects the Court's disapproval of the City's conduct and serves as a deterrent against similar behaviour in the future. Therefore, the applicant is entitled to full indemnification for the costs incurred in this application, on an attorney-and-client scale.

Order

[108] In the circumstances the following order is made:

1. Condonation for the late filing of the answering affidavit is granted.
2. It is declared that the first respondent's termination of electricity supply to the whole of the applicant's property, physically situated at 3[...] B[...] Road, W[...] Ext. 4 Johannesburg, being Erf 3[...], W[...] Ext. 4 Johannesburg ("the property"), on 29

September 2021 and 13 May 2022, for arrears on account numbers 2[...], 2603364342 and 2602717770, was unlawful.

3. Subject to paragraphs 4 to 4.7 below:

3.1 the first respondent is interdicted and restrained from holding the applicant liable for payment of, or reflecting/transferring the liability under, account numbers 2[...], 2[...], 2[...] and 2[...] to the applicant's municipal account bearing account number 2[...] ("the applicant's account"), or any other account of the applicant;

3.2 the first respondent is interdicted and restrained from terminating or restricting municipal services to the property, based on any amount owing under account numbers 2[...], 2[...], 2[...] and 2[....].

4. The relief in paragraphs 3.1 to 3.2 above shall operate as an interim interdict, effective immediately, and remain effective pending:

4.1 the first respondent fully complying with this order; and

4.2 the final resolution of the disputes/queries raised by the applicant for the period December 2021 to date hereof ("the disputes"), in respect of the applicant's account, and account numbers 2[...], 2[...] 2[...] and 2[...]; and

4.3 the first respondent, rendering full, comprehensible, and comprehensive written reasons, within 30 (thirty) calendar days from date of service of this order on the first respondent or its attorneys, explaining all entries, charges, reversals, credits and debits reflected on the applicant's account, and account numbers 2[...], 2[...], 2[...] and 2[...] duly supported by source documents, such as meter reading reports, job cards and similar documents, for the period three years prior to the date of this order; and

4.4 the first respondent responding in writing to the written demands dispatched by the applicant's attorneys on/dated 7 December 2021, 30 May 2022, 13 June 2022, 4 July 2022, 19 July 2022, 2 August 2022, 18 August 2022, 26 August 2022, 16 September 2022, 21 September 2022, 22 September 2022 and 14 October 2022; and

4.5 the exhaustion/finalisation of internal remedies by the applicant in terms of the first respondent's by-laws and the Municipal Systems Act 32 of 2000 ("MSA"), upon

the first respondent complying with paragraphs 4.1 to 4.4 above; and
4.6 the finalisation of any review/appeal pursued by the applicant of any decision reached by the first respondent, pursuant to paragraphs 4.1 to 4.6 above.

5. Subject to the interdictory and related relief in paragraphs 3 to 4.6 above, the relief granted in this order does not affect the first respondent's rights nor its entitlement to terminate municipal services to the property for non-payment of current and future municipal charges incurred and arising after 4 April 2023 under the applicant's account, unless a dispute is lodged on such charges, as contemplated *inter alia* in section 102(2) of the MSA.

6. The second and third respondents are to advise the relevant officials of the first respondent of the content of this order and the obligations imposed by same via email and copy the applicant's attorney into such email, at [v\[...\]](#)

7. The aforesaid e-mail to be addressed to the relevant officials of the first respondent is to be sent within 7 (seven) days of service of this order on the first respondent or the respondents' attorney.

8. The second and third respondents are to render a progress report to the applicant's attorney, on/before the 30th of each month following service of this order, to [v\[...\]](#) detailing the steps taken to ensure compliance with this order, and should it not be possible to comply with this order within the prescribed time frames, reasons for such non-compliance are to be given.

9. Any documents, invoices, reasons or other information to be provided/rendered to the applicant in terms of this order is to be provided, within the time frames specified in the relevant paragraphs, and is to be provided in writing to [v\[...\]](#)

10. The costs of this application are to be paid by the first respondent on a scale as between attorney and client.

**CSP OOSTHUIZEN-SENEKAL
ACTING JUDGE OF THE HIGH COURT**

GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *Case Lines* and by release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 13 December 2024.

DATE OF HEARING:

6 November 2024

DATE JUDGMENT DELIVERED:

13 December 2024

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