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

Case Number: 2023/02247

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

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SIGNATURE

DATE

In the matter between:

CURRO HOLDINGS LIMITED

FIRST APPLICANT

CURRO ACADEMY, RIVERSIDE

SECOND APPLICANT

and

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

FIRST RESPONDENT

THE CITY MANAGER

SECOND APPLICANT

JUDGMENT

WINDELL, J:

Introduction

[1] The aim of this opposed application is to interdict the first respondent from disconnecting the water supply to the second applicant's premises at Erf 1[...] and Erf 1[...], B[...] C[...] Drive, R[...] V[...], Diepsloot (the premises), pending the final adjudication of the dispute lodged by the first applicant on the 12 August 2021, as amplified, and pending the review application between the first applicant and the first respondent under case number 8831/22.

[2] Curro Holdings Limited, the first applicant, is an independent school provider with its registered address in the Western Cape province. The second applicant is Curro Academy, Riverside and is one of several independent schools managed national wide by the first applicant with its physical address situated at Blue Crane Drive, Riverside View, Diepsloot.

[3] The first respondent is the City of Johannesburg Metropolitan Municipality (the municipality) with its principal place of business at 158 Civic Boulevard, Braamfontein in Johannesburg. The premises of the second applicant falls within Region A of the area of jurisdiction of the respondent. The second respondent is the City Manager who is an employee of the municipality.

Background facts

[4] The municipality contends that the applicants are indebted to it in the sum of R12 576 741.30. The applicants denied that they are indebted to the municipality in the amount claimed and consequently declared a dispute in terms of section 95(f) read together with section 102(2) of the Local Government: Municipal Systems Act¹ ("the Act") on 12 of August 2021. The cause of the applicants' complaint concerns the zoning of the premises from the which the second applicant runs its business as a school. Generally, land use zones are defined sections of a city or region that are allocated for specific purposes or uses in accordance with land zoning and urban

¹ Act 32 of 2000.

planning laws. The municipality previously zoned the premises as “Educational” in terms of a zoning certificate. Contrary to the second applicant’s zoning, the second applicant had been charged in accordance with the tariff pertaining to business tariffs.

[5] In the correspondence, Bruyns reminded the first applicant that it was prevented from taking any punitive action against a consumer once a dispute had been declared for alleged non-payment of the disputed account.

[6] Pursuant to the letter of 21 August 2021, Mr Bruyns wrote to the erstwhile attorney of record of the first respondent, Dali Mantlana & Partners, on 10 January 2022 to propose that a meeting be held to discuss the disputed municipal account as the municipality has issued the second applicant with a pre-termination notice on 22 December 2022. Mr Bruyns also sent a letter to municipality directly in which he sought an undertaking from the municipality that his client’s services would not be discontinued pending the resolution of the dispute. In the absence of such an undertaking, the applicants would be justified to approach this court for interdictory relief which would include a prayer for a punitive cost against the municipality.

[7] Meetings took place between the legal representatives for the parties on 13 October 2021, 2 February 2022 and 10 May 2022. On all three occasions, it was expressed by the participants that the disputes were capable of being resolved and, preferably, settled. The applicants expressed their willingness to make payment of those monies that could be determined as accurate and justifiably payable to the first respondent. At the last meeting, the municipality even undertook to make a proposal that would encapsulate the most appropriate manner in which to resolve the dispute.

[8] The proposal never materialised. Follow up correspondence was sent to by Mr Bruyns to the municipality’s legal representatives at the time on 9 June 2022 to which no response was received.

[9] Mr Bruyns was copied on an internal email of the first respondents dated 18 August 2022 sent by Mr Arthur Mbobo (Mbobo) to Mr Selby Rasoesoe (Rasoesoe) which stated as follows:

“Please note that I have referred all your Curro matters to the good hands of Mr Rasoesoe (Deputy Director Legal) and he is copied herein.”

[10] Subsequently, Mr Rasoesoe sent an email to Mr Bruyns on 6 September 2022 in which he requested Mr Bruyns to provide the municipality with the account numbers of the properties *‘which are threatened with termination of services so that we can duly flag these accounts to avoid the unwanted cut off of services.’* On the same day, Mr Bruyns provided a comprehensive written reply in response to Mr Rasoesoe’s email.

[11] An increasingly exasperated Mr Bruyns directed further correspondence to Mr Rasoesoe on 25 October 2022 which sketched out the history of the dispute pertaining to the second applicant’s municipal account, including how the amount claimed by the municipality was arrived at and why an amount of R7 069 695.53 (the amount alleged by the applicant to be outstanding at the time) was actually due and payable to the municipality. It was also disclosed that the first applicant had installed its own meters at the premises to record the water consumed by the second applicant. The additional meter was to function as a control measure to check the first respondent’s readings for comparison.

[12] It transpired that the municipality had recorded the readings of the first applicant’s meter and that the municipality had charged amounts to the second applicant’s municipal account in duplicate.

[13] On 29 November 2022, Mr Bruyns wrote to Mr Rasoesoe in which the applicants opined their view that the applicants’ dispute should be resolved and finalised in its totality by the first applicant effecting payment to the first respondent in an amount of R7 069 695.53 in full and final settlement of all the disputes between the parties.

[14] Mr Bruyns pleaded with the municipality to settle the impasses between the parties in a letter addressed to Mr Rasoesoe on 25 February 2023. Weeks later on 2 May 2023, Bruyns wrote a letter directed to Mr Rasoesoe in which reference was made to the applicants’ correspondence dated 25 October 2022, 29 November 2022

and 15 February 2023. It was recorded that the series of correspondence sent to the municipality did not receive a satisfactory response from the first respondent. No response was forthcoming from the first respondent in respect of the applicants' correspondence dated 2 May 2023.

[15] Despite several attempts made by Mr Bruyns to resolve the dispute and avert the disconnection by the first respondent of its services at the premises, the municipality disconnected the water supply on 15 June 2023.

[16] Mr Bruyns informed Mr Rasoesoe in correspondence dated 15 June 2023 that he was instructed to approach this court to obtain the necessary relief in the event that the municipality did not restore the water supply by 15:00. In reply thereto, Mr Rasoesoe addressed correspondence to several of the municipality's employees in which Mr Bruyns was copied. The email records as follows:

"Please assist with urgent reconnection of water services herein....The customer has a pending enquiry which amongst other will be attended and by resolution arrived at during a meeting to be held with their legal representative, Mr Werner Bruyns, next week Monday at 12 noon. See attached Curro Account annexure...Livhuhani Mukwevho please liaise with Werner to provide us with all their accounts so that we are able to flag their accounts and withdraw the disconnection instructions and pre-termination notices already issued...Thank you and have a blaster of a long weekend."
(sic) (my underlining)

[17] Mr Rasoesoe's request to reconnect the water supply to the second applicant's was disregarded by the municipality's officials and the pre-termination notice was not withdrawn and the applicants launched an urgent application in which it inter alia sought the interim reconnection of the water supply pending the outcome of the dispute between the parties.

[18] On 17 June 2024 Tshombe AJ granted urgent interim relief in the following terms:

- a. Reconnection of the services on the interim basis returnable on 13 July

2023.

- b. An interim interdict pending the resolution of the dispute *alternatively* pending the finalisation of this application.
- c. Time periods for the delivery of further affidavits.
- d. Costs reserved.

[19] The return date was subsequently extended to 23 August 2024, the date of this hearing.

[20] The court order of 17 June 2023 made provision for the exchange of pleadings in accordance with Rule 6 of the Uniform Rules of Court. The municipality failed to file its answering affidavit in accordance with the time provided by the Rules. The municipality subsequently sought condonation for the late filing of its answering affidavit. It also sought permission to file a further answering affidavit.

[21] Sufficient reasons have been provided by the municipality to explain the late filing of the answering affidavit and the filing of a further affidavit. The interests of justice further favour that the application be properly ventilated.² Condonation is granted for the late filing of the answering affidavit and the filing of a further affidavit. The applicant's further replying affidavit is also admitted into evidence.

[22] The municipality opposes the application and contends that the dispute between the parties have been resolved in that it removed the double charges which was caused by the applicants' installation of the Check Meter and that the applicants have made payments to the outstanding amounts – save for the interests thereto (the double billing dispute). As of May 2024, the applicants are indebted to the municipality for an amount of R1 817 050.83 as per annexure CoJ 5.

² *Grootboom v National Prosecuting Authority* [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC) at para 22. *Freedom of Religion South Africa v Minister of Justice and Constitutional Development* 2020 (1) SA 1 (CC) at para [18].

[23] It is argued that there is therefore no current dispute for the amount of R1 817 050.83 under section 102 of the Act, instead the applicants challenge the categorisation of its property and services being charged on Business instead of Educational (the zoning dispute). It is submitted that the applicants are abusing the court processes in persisting with the application and seeking an interdict against the municipality.

Evaluation

[24] The municipality has failed to engage with the applicants' attorneys of record since the initial dispute was declared in 2021, as evidenced by the correspondence addressed to it by the applicants' attorney from 12 August 2021 to 15 June 2023. Additionally, the applicants' grounds of dispute were not addressed.

[25] It is significant that the municipality never denied in all these years that the applicant has lodged a dispute in terms of the Act and the reference to "*pending enquiry*" in the correspondence referred to above shows the dispute lodged is undisputed.

[26] The municipality initially claimed that R12 576 741.30 was outstanding. The applicant paid the municipality R7 069 695.53, which they claim is the amount that is due and owing. The amount was determined by the applicants by applying the charges applicable to a premises zoned as educational and not business. Additionally, the municipality rectified the bill and eliminated the duplicated charges caused by the double billing dispute.

[27] Therefore, the sole question that must be determined is whether there is a current dispute with the municipality concerning the amount that the municipality claims is outstanding, namely an amount of R1 817 050.83

[28] The pleadings and the correspondence between the parties clearly shows that the dispute that was raised with the municipality in terms of section 102 of the Act was not the so-called 'double billing' dispute. The double billing dispute arose much later, after the 'offending' water meter was installed by the applicants. The applicants

had raised a dispute in terms of section 102 of the Act six months prior to the installation of the applicants' water meter. The applicants' dispute was amplified in the applicants' attorneys of record's letter to the municipality dated 25 October 2022.

[29] The 12 August 2021 correspondence details the dispute as follows:

1. That the applicant, although operating in the educational sector, and having been zoned for usage as "educational" has been billed on a business tariff.
2. That invoices as far back as July 2017 have been reversed and re- billed during March 2021 with business tariff rate adjustment done as of November 2019 and which was also reflected in the March 2021 account.
3. That the determinations and calculations made by the first respondent does not make sense, is irrational and confusing.

[30] Since the dispute raised in terms of section 102 of the Act, the municipality has failed to deal with the "zoning dispute". Despite the respondents' averments to the contrary, the applicants' dispute as amplified, has not been dealt with and/or resolved and/or settled. The "zoning dispute" has been the subject of litigation between the first applicant and the municipality under case number 22/24174 and which matter has been heard by Kuny J. The court found against the municipality and the municipality has now petitioned the Supreme Court of Appeal to appeal Kuny J's finding. Consequently, this dispute is still alive between the first applicant and the municipality and as such there has not been a resolution of the zoning dispute.

[31] The payment made to the municipality during January 2024 must therefore be placed in context and the recalculation done by the municipality and the details thereof remain disputed. As is evident, the payment made to the first respondent in January 2024 was not a payment as a result of the resolution of the dispute between the parties. Consequently, the respondent may not enforce its bylaws, in particular its debt collection and credit control measures if there is a dispute pending.

[32] In the matter of *Body Corporate Croftdene Mall v Ethekezwini Municipality*³ the Court had the opportunity to consider section 102(2) of the Act. At paragraph 20 to 22 the Court held as follows:

[33] “[20] Section 102(1) of the Systems Act presents no controversy. The question for determination is whether the respondent was entitled in the circumstances of this case, to terminate the services to the property in order to enforce payment of arrear rates in view of the provisions of s 102(2). The provisions of this section exclude the application of ss (1), 'where there is a dispute between the municipality and a person referred to in that subsection concerning any specific amount claimed by the municipality from that person'. Clause 22 of the policy makes provision for dispute resolution. Clause 22.1 thereof requires a customer who disputes a municipal account to submit it in writing to the chief financial officer stating the reasons therefor and any relevant facts, information or representation which the chief financial officer should consider to resolve it. But, in terms of clause 22.3, the submission of a dispute 'shall not stop or defer the continuation of any legal procedure already instituted for the recovery of arrear payment relating to such dispute'.

[34] [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.

[35] [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

³ 2012 (4) SA 169 (SCA).

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.” (my emphasis).

[36] In *39 Van der Merwe Street Hillbrow CC v City of Johannesburg Metropolitan Municipality and another*⁴ the court summarised the requirements from *Croftdene* and held that ‘there must be a dispute, in the sense of a consumer, on the one hand, and the municipality, on the other, advancing irreconcilable contentions’ and ‘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’.

[37] In *Ackerman v City of Johannesburg and Others*⁵ the Court referred to 39 Van der Merwe Street and held as follows:

“31. 39 Van der Merwe Street appears to indicate a slight departure from the reasoning in *Croftdene*, in which the Court referred to a ‘specific amount’ claimed by the municipality. The suggestion was that this was a reference to a single amount being disputed. This, on a sensible interpretation, cannot be what the court in *Croftdene* intended. This conclusion receives support from the court’s subsequent wording in paragraph 22 of *Croftdene* where the following is said ‘The ratepayer is required to furnish facts that would adequately enable the municipality to ascertain or identify the disputed item or items. . .’. (My emphasis.)

32. In light of the above analysis of s 102(2) of the Systems Act, together with an assessment of the facts before me, I am of the view that the litany of

⁴ Unreported case number 7784/2023 (24 March 2023) para 27.

⁵ 2024 JDR 1449 (GJ) at para. 31 to 32.

queries lodged by the applicant in respect of her municipal services account held with the City, as well as the formal demands made by her attorney, are sufficient to meet the burden of proof for the injunctive relief sought by the applicant, and that such queries and demands constitute a 'dispute' within the meaning of s 102(2). This has been the fundamental obstacle standing in the way of the applicant moving forward to resolve the perceived or real inaccuracies in her account. Once an explanation or reasons are tendered for the various queries raised regarding the account, the provisions of the Credit Control and Debt Collection By-laws prescribe the path towards a resolution of the dispute. It is not for the court to fashion, through its order, a process for the parties. That procedure has already been crafted by the City." (my emphasis).

[38] I am satisfied that the dispute that was lodged with the municipality has not been resolved between the parties. It is not this court's function in disputes such as this is to ensure that the parties' respective rights are fully accommodated within the municipality's internal procedures and law. Its function is not to resolve the dispute between the parties.⁶ This remains the municipality's primary responsibility.

[39] **Requirements for an interim interdict**

[40] The requirements for the granting of an interim interdict are well known. The decisions are legion. The requirements are the following: a *prima facie* right, a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted, that the balance of convenience favours the granting of an interim relief, and that the applicant has no other satisfactory remedy.

[41] At the commencement of the hearing of this application the municipality acknowledged that if the court finds in favour of the applicant on whether there is a dispute pending between the parties in line with section 102 of Act, then the applicants would be entitled to the interdictory relief only to the extent of the

⁶ See in this regard *Body Corporate of Willow and Aloe Grove v City of Johannesburg and others* 2023 JDR 4762 (GJ).

remaining disputed amount.

[42] Despite this concession I am in any event satisfied that the requirements for an interim interdict has been met.

Costs

[43] The costs of 17 June 2023 were reserved for determination on 13 July 2023. On 13 July 2023, the costs were again reserved for determination on 5 February 2024.

[44] The application was postponed on 13 July because the municipality had failed to file a notice of its intention to oppose the proceedings and to file a subsequent answering affidavit. There is no reason why the applicants should not be awarded the costs of 13 July 2023, as well as the costs of 5 February and 17 June 2023.

[45] In the result the following order is made

1. Pending the final adjudication of the dispute lodged by the first applicant on the 12 August 2021, as amplified, and pending the review application between the first applicant and the first respondent under case number 8831/22, the first respondent is interdicted from disconnecting the water supply to the second applicant.
2. The costs first respondent is ordered to pay the costs of the application, which include the reserved costs of 17 June 2023, 13 July 2023 and 5 February 2024.