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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
...8/4/2025.....	
DATE	SIGNATURE

Case No: 022825/2024

In the application between:

WILHELMINA MAGDALENA DREYER

Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

First Respondent

**THE MUNICIPAL MANAGER: CITY OF TSHWANE
METROPOLITAN MUNICIPALITY**

Second Respondent

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date for the handing down of the judgment shall be deemed to be 8 April 2025.

JUDGMENT

LG KILMARTIN, AJ:

A. INTRODUCTION:

[1] This is the return day in respect of a rule *nisi*.

[2] The application for interim interdictory relief was brought in the urgent court on 5 March 2024 (“the urgent application”) and the respondents agreed the day before, i.e. on 4 March 2024, to the granting of an interim order.

[3] I was required to consider whether to confirm or discharge the rule *nisi*.

[4] It was pointed out to the applicant that paragraph 3.2 of the rule *nisi* had become academic in the sense that the first and second respondents (collectively referred to as “the respondents”) had reconnected / unblocked / unrestricted the electricity supply to No. 1[...] C[...] Road, Shere AH, Pretoria (“the premises”) after the hearing of the urgent application. The applicant confirmed that it required a final order in the following terms:

[4.1] declaring that the termination / disconnection / discontinuation / blocking / restriction of service to the electricity supply to the premises was unlawful;

[4.2] interdicting and restraining the respondents from charging the applicant a reconnection fee as a result of the unlawful restriction / termination / disconnection / discontinuation / blocking of service;
and

[4.3] interdicting and restraining the respondents from unlawfully terminating / disconnecting / blocking / restricting the supply of electricity to the premises.

[5] The aforesaid order relates to the relief that was sought in paragraphs 3.1, 3.3 and 3.4 of the notice of motion in the urgent application.

[6] Before dealing with the merits of the application, it is necessary to consider the relevant background facts as they constitute the fundamental backdrop against which this dispute should be adjudicated.

B. RELEVANT BACKGROUND FACTS:

[7] The applicant is the owner of the premises and has a contractual relationship with the first respondent for the delivery and supply of electricity and other services to the property.

[8] The applicant has the right to be supplied electricity at the premises, upon tender of payment.

[9] The premises is currently zoned for agricultural purposes and is currently listed as “*non-permitted use*” which means that the first respondent is of the view that the property is being used by the applicant for something different than what it was zoned for.

[10] On or about 6 September 2022, under case no. L123/22, an action was instituted by the first respondent in the Tshwane Central Magistrate’s Court (“the pending Magistrate’s Court dispute” or “the pending Magistrate’s Court proceedings”).

[11] The pending Magistrate’s Court dispute appears to relate to alleged contraventions of the Spatial Planning and Land Use Management Act, 16 of 2013, and does not relate to overdue amounts in respect of her account.

[12] Subsequent to the pending Magistrate’s Court proceedings being brought, the applicant brought an application in this Court under case no. 2023-129520 (“the pending High Court application”). From a perusal of the founding affidavit, the dispute has nothing to do with the amounts which were due in respect of the account

itself. The applicant is seeking an order to have *inter alia* the summons in the pending Magistrate's Court proceedings declared unconstitutional, invalid, void and/or enforceable.

[13] After the institution of the pending High Court proceedings, the applicant started to make inadequate payments in respect of her accounts for *inter alia* rates and taxes. The applicant's account is substantially in arrears.

[14] On 7 November 2023, one Frans Elliot Malesela ("Mr Malesela"), delivered a final letter of demand in respect of the arrears to the premises at 12h19. It was not pointed out in the affidavit of Mr Malesela whether he handed it to a person who appeared to be not less than 16 years old. For reasons which are explained below, this has an impact on the outcome of this matter.

[15] The applicant alleges that during the week of 19 to 24 February 2024 and upon her return to the premises, she noticed that the electricity supply had been disconnected. This prompted her to contact attorneys and ultimately the urgent application was launched and enrolled for hearing on 5 March 2024.

[16] Upon being criticised by the respondents in the answering affidavit that the applicant had not identified the specific day that she noticed the electricity supply had been disconnected, in the replying affidavit she indicated that she had realised that the electricity was disconnected on 23 February 2024.

[17] According to the applicant:

[13.1] the disconnection of the electricity supply is considered a debt collection measure;

[13.2] section 5 of the first respondent's Credit Control and Debt Collection Policy 2023 / 2024 Financial Year ("Credit Control Policy") specifically deals with Credit Control measures and section 5.2 thereof regulates the disconnection of electricity supply after providing 14-days' written notice to the account holder / occupant;

[13.3] there is a dispute pertaining to the account which is currently pending before this Court and therefore implementing debt collection measures is prohibited in terms of section 102(2) of the Municipal Systems Act, 32 of 2000 (“the Municipal Systems Act”); and

[13.4] even if the Court finds that there is no pending dispute as envisaged in section 102(2) of the Municipal Systems Act, the respondents still had to comply with Section 21 of the Standard Electricity Supply By-Laws published in the Provincial Gazette Extraordinary No. 227 on 7 August 2013 (“the Electricity Supply By-Laws”).

[18] However, of significance to the issues to be decided in this matter is that in the founding affidavit in the pending High Court application dated 6 December 2023, a month after Mr Malesela left the notice at the premises and over two and a half months before the applicant noticed that her electricity supply had been disconnected, the following was stated in paragraph 11 thereof:

“11. The street address of the property is where I reside as stated above. There is inter alia a residential dwelling on the property which is used by my husband and me as our residential dwelling.”

[19] Although it is common cause that the applicant continues to make monthly payments, they appear *prima facie* to be inadequate. Ms Erasmus, who appeared for the respondents pointed out that even in the event that there is a dispute between the parties as envisaged in section 102 of the Municipal Systems Act, the applicant is still obliged to pay an adequate average amount on her accounts monthly and her payments made do not meet the requirements as set out in section 5.4(b) of the Credit Control By-Laws, quoted below.

[20] As far as the dispute is concerned, I enquired from counsel on behalf of the applicant how the pending Magistrate’s Court dispute or pending High Court dispute related to the amounts referred to in the final letter of demand and he indicated that,

as there was a dispute regarding the zoning of the property, there was a dispute about the amounts being charged in respect of the rates and taxes.

[21] However, after considering the founding affidavit in the pending High Court application, nothing that was stated in the affidavit challenged the amounts which were due in respect of the account itself.

C. **THE RELEVANT LEGAL PROVISIONS AND AUTHORITIES:**

[22] Section 102 of the Municipal 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) *credit a payment by such a person against any account of that person; and*
- (c) ***implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person.***

(2) ***Subsection (1) does not apply where there is a dispute between the municipality and a person referred to in that subsection concerning any specific amount claimed by the municipality from that person.***

(3) *A municipality must provide an owner of a property in its jurisdiction with copies of accounts sent to the occupier of the property for municipal services supplied to such a property if*

the owner requests such accounts in writing from the municipality concerned.”

(Emphasis added)

[23] In *Body Corporate Croftdene Mall v Ethekwini Municipality*¹ (“Croftdene Mall”) the following was stated:

“[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'.

*[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.*

¹ 2012 (4) SA 169 (SCA) at paras [20] to [23] at 177 E to 178 D.

[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."*

(Emphasis added)

[24] Section 115 of the Municipal Systems Act provides as follows:

"115 Service of documents and process

(1) *Any notice or other document that is served on a person in terms of this Act or by a municipality in terms of any other legislation is regarded as having been served-*

(a) *when it has been delivered to that person personally;*

- (b) *when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;*
- (c) *when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgement of the posting thereof from the postal service is obtained;*
- (d) *if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c); or*
- (e) *if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates.”*

(Emphasis added)

[25] In *Joseph and Others v City of Johannesburg and Others*,² the Court stated the following:

“[61] I agree that affording notice to the applicants would not undermine City Power's ability to provide an efficient service. **Accordingly, City Power must afford the applicants pre-termination notice.** For the notice to be 'adequate' it must contain all relevant information, including the date and time of the proposed disconnection, the reason for the proposed disconnection, and the place at which the affected parties can challenge the basis of the proposed disconnection. Moreover, it must afford the applicants

² 2010 (4) SA 55 (CC), para [61] at 76 H to 77 A.

sufficient time to make any necessary enquiries and investigations, to seek legal advice and to organise themselves collectively if they so wish. At a minimum, it seems to me that 14 days' pre-termination notice is fair, and is consistent with the provisions of the credit control bylaws."

(Emphasis added)

[26] Section 5(1) of the Electricity Supply By-Laws states that written notice is deemed to have been served when it has been served in accordance with the provisions of the Local Government Municipal Systems Act, which written notice must be authorised by means of a signature of the Engineer of an Official appointed or nominated by him or her.

[27] Public authorities possess only so much power as is lawfully authorised, and every administrative act must be justified by reference to some lawful authority for the act.³

[28] If there is no authorisation for the action in some or other recognised way, the action will be invalid.⁴

[29] Section 5.4(b) of the Credit Control By-Laws of the first respondent provide as follows:

"(b) Should any dispute arise as to the amount owing by an owner in respect of municipal services the owner shall notwithstanding such dispute proceed to make regular minimum payments based on the calculation of the average municipal account for the proceeding three months prior to the arising of the dispute and taking into account interest as well as the annual amendments of tariffs of the Council."

³ Baxter: Administrative Law, p 384.

⁴ Hartzenberg and Others v Nelson Mandela Metropolitan Municipality (Dispatch Administrative Unit) 2003 (3) SA 633 (SE).

[30] The requirements for the right to claim a final interdict are:⁵ (i) a clear right; (ii) an injury actually committed or reasonably apprehended; and (iii) the absence of similar protection by any other ordinary remedy.

[31] Whether or not one has a “*clear right*” is a matter of substantive law.⁶

[32] The term “*injury*” must be understood to mean infringement of the right which has been established and results in prejudice.⁷ Prejudice is not synonymous with damages and it is sufficient to establish potential prejudice.⁸

[33] The discretion of the Court to refuse a final interdict, provided the abovementioned three requisites are present, is very limited⁹ and depends exclusively upon the question whether the alternative remedy is adequate.¹⁰

B. DISCUSSION OF THE MERITS:

[34] The crux of this matter depends on the determination of two issues, namely:

[34.1] whether there is a “*dispute*” as envisaged in section 102(2) of the Municipal Systems Act which would preclude the respondents from implementing debt collection measures; and

[34.2] if there is no “*dispute*” as envisaged in section 102(2) of the Municipal Systems Act, whether proper notice was given to the applicant prior to the disconnection of her electricity on 21 February 2024.

⁵ *Setlogelo v Setlogelo* 1914 AD 221 at 227 (“*Setlogelo*”).

⁶ *Minister of Law & Order, Bophuthatswana v Committee of the Church Summit of Bophuthatswana* 1994 (3) SA 89 (BG) at 97-98.

⁷ *Setlogelo* at 221.

⁸ *Capital Estate and General Agencies (Pty) Ltd and others v Holiday Inns Inc and Others* 1977 (2) SA 916 (A) at 930-932.

⁹ *Tvl Property and Investment Co Ltd v Reinhold & Co v SA Townships Mining & Finance Corporation Limited and the Administrator* 1938 TPD 512 at 521.

¹⁰ *Setlogelo* at 221 and 227.

[35] As far as the first question is concerned, there is no indication in the pending litigation that it relates to “*specific amounts*” that are due and payable: The dispute relates to a zoning issue. I am therefore of the view that there is no “*dispute*” as envisaged in section 102(2) of the Municipal Systems Act which precludes collection steps being taken.

[36] The next question which arises is whether proper notice was given prior to termination. In this regard, it was submitted on behalf of the respondents that there was no indication in the founding papers or the replying papers that the respondents were, in fact, residing at the premises and that this Court should therefore accept that service had been affected in terms of section 115(1)(e) of the Municipal Systems Act.

[37] I had difficulty with this argument because attached to the answering affidavit of the respondents was the founding affidavit in the pending High Court application and paragraph 11 thereof which is quoted above expressly stated that the applicant and her husband reside on the property and it is used as their residential dwelling. In the circumstances, service of the notice could have been effected in terms of section 115(1)(b). It was also correctly pointed out by the legal representative of the applicant, Mr du Plessis, that there was even a different option available to the respondent as the actual municipal accounts refer to a Post Box address, namely, Post Box 7[...], Lynnwood Ridge, 0040 and service could therefore also have been effected in terms of section 115(1)(c) of the Municipal Systems Act. This was also not done.

[38] Although it may be so that, at the time the final demand was served by Mr Masalesa, the respondents may not have been aware of the fact that the applicant resided at the premises, they did know the applicant’s postal address and could have served the final demand in terms of section 115(1)(c) of the Municipal Systems Act.

[39] Also, the respondents were well aware of the applicant’s residential address from December 2023 and should then have effected service in terms of section 115(1)(b) of the Municipal Systems Act.

[40] Service should be effected in terms of sections 115(1)(a), (b) and (c) in instances where the respondents: (i) know the address of the applicant (section 115(1)(a)); or (ii) know that a specific address is the applicant's residential address (section 115(1)(b)); or (iii) know the postal address of the applicant (section 115(1)(c)).

[41] As is clear from the wording of sections 115(1)(d) or (e), service can only be effected under those sections where: (i) a person's address in the Republic (i.e. any of the addresses referred to in sections 115(1)(a), (b) or (c)) are "unknown" to the respondents; and (ii) if that person's address and agent or representative in the Republic is "unknown". That is not the case in this instance.

[42] In argument, I was advised that there was no need to serve more than one notice in accordance with the legislation. Although I agree that the legislation does not refer to the need to serve a notice more than once, one cannot ignore the fact that: (i) service in terms of section 115(1)(c) was possible in November 2023; and (ii) a month later – on 6 December 2023 – long before the termination date in the latter part of February 2004, the respondent was made aware that the applicant and her husband reside at the premises. From that date, service of the notice in terms of section 115(1)(b) was also possible.

[43] The service in terms of section 115(1)(e) was not sufficient having regard to the facts of this case.

[44] In the circumstances, I am of the view that there was no proper service of the final demand and this renders the termination of the applicant's electricity supply unlawful.

[45] I am also of the view that the requirements for final interdictory relief have been met.

[46] As far as the issue of costs was concerned, Ms Erasmus argued that it is the constitutional obligation of the first respondent to collect outstanding monies due to it. Although I agree with this, it has to do so within the parameters of the law and

cannot merely, despite knowing of the factual position of the applicant, proceed without given proper notice under section 115 before disconnecting the electricity supply to an applicant's residential premises.

[47] I see no reason why the costs should not follow the result.

ORDER

In the circumstances, I make the following order:

1. The rule *nisi* is confirmed, save for paragraph 3.2 thereof; and
2. The respondents are directed to pay the applicant's costs, including the reserved costs of the hearings on 5 March 2024, 16 May 2024, 10 July 2024, 28 August 2024 and 24 October 2024, on party and party scale B.

LG KILMARTIN
ACTING JUDGE OF THE HIGH COURT
PRETORIA

Dates of hearing:	20 March 2025
Date of judgment:	8 April 2025
For the applicant:	NJ du Plessis
Instructed by attorneys for applicant:	NJ du Plessis & Associates Inc.
For the respondents:	N Erasmus
Instructed by attorneys for applicant:	Marivate Attorneys