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

Case Number: 2024-056921

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

DATE

SIGNATURE

In the matter between:

SS GERANIUM MANSIONS

Applicant

and

CITY OF JOHANNESBURG

First Respondent

CITY POWER (SOC) LTD

Second Respondent

Delivered: *This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date and time for hand-down is deemed to be 10:00 on 10 February 2025.*

Summary: *Local Government: Municipal Systems Act 32 of 2000 – section 102 -- City of Johannesburg’s Credit Control and Debt Collection By-laws – dispute raised - - consumers have the right to utility services pending resolution of disputes if they meet statutory requirements.*

Judicial oversight – courts have repeatedly warned the municipality against ‘copy and paste’ practices and highlights the importance of accountability and adherence to legal and constitutional standards – costs -- attorney and client scale.

JUDGMENT

PG LOUW, AJ

Introduction

[1] The applicant seeks injunctive relief against the respondents on an urgent basis, including an order that:-

[1.1] the termination of the supply of electricity to the property known as Units 1 – 17 of Sectional Scheme Geranium Mansions (the property) is declared unlawful (prayer 2);

[1.2] the respondents are ordered to replace the damaged infrastructure and reconnect the electricity supply to the property within 24 hours (prayer 3);

[1.3] the respondents are interdicted and restrained from terminating the supply of services to the property pending the resolution of the disputes in the main application pending before this court for consideration (the main application) (prayer 4);

[1.4] should termination of services occur, the applicant may appoint its own professional contractors to reconnect the services, the costs of which are to be borne by the respondents (prayer 5); and

[1.5] the respondents pay the costs of the application on a punitive scale, jointly and severally, the one paying the other to be absolved.

The ongoing dispute

[2] The *lis* between the parties has an extended history. I do not intend to belabour this judgment with the entire history of the dispute between the parties, save to point out the pertinent events hereunder.

[3] It is undisputed that, on 5 December 2024, the respondents disconnected the electricity supply to the property.

[4] In the main application, the applicant *inter alia* seeks an order in terms of which:-

- [4.1] the respondents are interdicted and restrained from terminating the supply of electricity to the property, pending the resolution of the disputes in respect of Account 5[...];
- [4.2] the respondents are interdicted from charging the commercial tariff on the property;
- [4.3] directing the respondents to “*rebuild the account*”, essentially by crediting the account in respect of commercial tariff charges dating back to 2018 and rebilling the account on the residential tariff from 2018;
- [4.4] directing the respondents to provide reasons for unilaterally changing the meter without notification;
- [4.5] directing the respondents to provide the recording of the Microsoft Teams meeting held between the parties on 29 January 2024; and
- [4.6] the applicant is to continue paying consumption for reasonable charges.

[5] The applicant filed a number of affidavits in this matter, including *inter alia* the founding affidavit in the main application and the last one being the supplementary affidavit attached to the notice of motion in the December 2024 urgent application.

The first respondent filed an answering affidavit in the main application and further answering affidavits, the last one being in respect of the December 2024 urgent application. Replying affidavits were filed in the main application and in the December 2024 urgent application.

[6] The application was heard on 11 December 2024. Mr Sithole, who appeared on behalf of the respondents, urged the court to have regard only to the sets of affidavits filed in the December 2024 urgent application.

[7] Ms Subroyen, who appeared on behalf of the applicant, submitted that the supplementary affidavit sets out the events which transpired since the reconnection of the electricity services to the property on 4 September 2024 and refers to the founding affidavit in the main application. Although the applicant failed to seek the leave of court to introduce the supplementary affidavit,¹ the respondents did not object to the filing of the supplementary affidavit. In fact, the respondents delivered an answering affidavit in response thereto. The applicant then filed a replying affidavit.

[8] As already mentioned, it is undisputed that the respondents disconnected the electricity supply to the property on 5 December 2024. The respondents seek to justify the disconnection of the electricity supply on the basis that the applicant does not pay for the services and a pre-termination notice was served on the applicant. I deal with these issues hereinbelow, but pause to point out that the technical defect on the applicant's part – not to have sought leave for the delivery of the supplementary affidavit cannot trump the relief sought by the applicant in this matter. A full set of affidavits served before the court and argument was heard. It would be a matter of preferring form over substance if this court were to disregard the supplementary affidavit.² I accordingly allow the supplementary affidavit in the interests of justice.

¹ See rule 6(5)(e) of the Uniform Rules of Court.

² *South African Broadcasting Corporation SOC Limited v South African Broadcasting Corporation Pension Fund and Others* (17/29163) [2019] ZAGPJHC 86; 2019 (4) SA 608 (GJ); [2019] 2 All SA 512 (GJ) at paras 39 and 41.

The December 2024 order

[9] After having heard argument in the urgent court on 11 December 2024, I reserved judgment. On 14 December 2024, I granted an order in terms of which:-

[9.1] termination of the supply of electricity to the property was declared unlawful;

[9.2] the respondents were ordered to reconnect the electricity supply to the property within 24 hours of the order being served on the respondents;

[9.3] the respondents were interdicted and restrained from terminating the supply of electricity to the property, pending the handing down of this judgment; and `

[9.4] judgment was reserved in respect of the remainder of the relief sought in terms of the notice of motion dated 5 December 2024.

[10] First, I set out the reasons for finding that the termination of the electricity supply to the property was unlawful and for granting the interim injunctive relief on 14 December 2024. I then deal with the remainder of the relief sought by the applicant.

[11] The pre-termination notice relied upon by the respondents is contained in a tax invoice dated 3 December 2024. It reads thus:

“This Pre-termination Notice is issued in respect of MUNICIPAL SERVICES charged reflecting arrears over thirty (30) days. Paying your municipal account in full and or enter into payment arrangement (sic) will avoid services being cut off.

You are hereby notified that unless immediate payment of the outstanding amount is made to the Council will issue (sic) instruction to cut off services and institute legal action.

Do you have a longstanding and unresolved service delivery-related issue with the City of Johannesburg? You may lodge your complaint today with the Office of the Ombudsman by contacting us 0[...]/emailing [c\[...\]](#).”

[12] I was referred to the credit control and debt collection policy of the first respondent³ by Mr Sithole. It provides that before the first respondent restricts or disconnects the supply of any service to any premises or property it will:⁴

“Send a written pre-termination notice by post, hand delivery or any other suitable means to the premises/property warning of the circumstance applicable in terms of clause 30.1 and affording the consumer 7 days in which to remedy such circumstance and/or make representations why the services should not be restricted or disconnected.” [Underlining added.]

[13] In *39 Van der Merwe Street Hillbrow CC v City of Johannesburg Metropolitan Municipality and Others*,⁵ the City of Johannesburg relied on a pre-termination notice which was dated two days before the disconnection, but purported to give fourteen days’ advance warning of disconnection if the applicant failed to pay its account.⁶ Dodson AJ referred to section 13(2)(a) of the City’s Credit Control and Debt Collection By-laws,⁷ which requires fourteen days’ advance warning in a final demand notice. The delivery of such a notice and failure to pay (or take other specified action) in terms of the pre-termination notice, is a precondition for the termination of the provision of electricity or water.⁸ Dodson AJ accordingly granted an order in the urgent court declaring the disconnection unlawful and requiring the City to reconnect the electricity immediately. In respect of the balance of the relief sought, the court postponed the matter *sine die* to consider its judgment and granted an interdict preventing disconnection until judgment had been handed down.⁹

[14] In *Joseph and Others v City of Johannesburg and Others*,¹⁰ the Constitutional Court, in respect of a pre-termination notice, held that:¹¹

³ COJ Credit Control & Debt Collection Policy Review: June 2022, approved August 2022.

⁴ Id at paras 29.1.12 - 29.1.13.

⁵ Unreported judgment of the Gauteng Division, Johannesburg, case number 23/7784 (24 March 2023).

⁶ Id at para 19-20.

⁷ Credit Control and Debt Collection By-Laws City of Johannesburg GN 1857 GG 213, 23 May 2005.

⁸ *39 Van der Merwe Street Hillbrow CC v City of Johannesburg Metropolitan Municipality and Others*, unreported judgment of the Gauteng Division, Johannesburg, case number 23/7784 (24 March 2023) at para 19 footnote 3.

⁹ Id at para 20 to 21.

¹⁰ *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009] ZACC 30; 2010 (4) SA 55 (CC); 2010 (3) BCLR 212 (CC).

“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 sufficient time to make any necessary enquiries and investigations, to seek legal advice and to organise themselves collectively if they so wish.” [Underlining added.]

[15] The pre-termination notice (dated 3 December 2024), relied upon by the first respondent in this matter does not comply with:-

[15.1] the 7 day period in which to remedy the breach as provided for in the credit control and debt collection policy I was referred to;

[15.2] the fourteen day advance warning in a final demand notice referred to in *39 Van der Merwe Street Hillbrow CC*;

[15.3] the requirements of containing all relevant information, including the date and time of the proposed disconnection, as set out in *Joseph*; or

[15.4] the requirement of affording the applicant sufficient time to make enquiries, seek legal advice and organise itself collectively, as set out in *Joseph*.

[16] In the circumstances, the precondition for the termination of the provision of electricity,¹² was not complied with. The disconnection of the electricity supply to the property on 5 December 2024 was accordingly unlawful. The applicant was therefore entitled to an order that the electricity supply to the property be reconnected within 24 hours of the order.¹³

[17] The order granted on 14 December 2024 is therefore dispositive of prayers 1 (that the matter is dealt with on an urgent basis and that the applicant’s non-compliance with the rules, the practice manual and practice directives be condoned),

¹¹ Id at para 61.

¹² *39 Van der Merwe Street Hillbrow CC v City of Johannesburg Metropolitan Municipality and Others*, unreported judgment of the Gauteng Division, Johannesburg, case number 23/7784 (24 March 2023) at para 19 footnote 3.

¹³ Id at para 20 - 21.

2 and 3 of the notice of motion, save for the portion in paragraph 3 of the notice of motion in which an order is sought that the respondents “*replace the damaged infrastructure*”. I deal with this later in the judgment.

Interim interdict pending finalisation of the dispute between the parties

[18] Section 102 of the Local Government: Municipal Systems Act¹⁴ (the Systems Act) provides that:

“(1) A municipality may –

(a) ...

(b) ...; and

(c) implement any of the debt control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person.

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

[19] Debt control measures include “*termination of services or the restriction of the provision of services when payments are in arrears*”.¹⁵ In *39 Van der Merwe Street Hillbrow CC*, the court summarised the requirements an applicant needs to meet to be afforded the protection under section 102(2) of the Systems Act, as enumerated by the Supreme Court of Appeal in *Body Corporate Croftdene Mall v Ethekewini Municipality*¹⁶ as follows:¹⁷

“[27] *Croftdene Mall* thus imposes the following requirements before a consumer of municipal services may rely on the protection from disconnection afforded by section 102(2) of the Systems Act:

27.1 there must be a dispute, in the sense of a consumer, on the one hand, and the municipality, on the other, advancing irreconcilable contentions;

27.2 the dispute must be properly raised, which would require, at least, that it be properly communicated to the appropriate authorities at the municipality

¹⁴ Act 32 of 2000.

¹⁵ Id section 97(1)(g) read with section 96(b).

¹⁶ 2012 (4) SA 169 (SCA) at paras 21 - 22.

¹⁷ *39 Van der Merwe Street Hillbrow CC v City of Johannesburg Metropolitan Municipality and Others* at para 27.

and that this be done in accordance with any mechanism and appeal procedure provided in terms of section 95(f) of the Systems Act for the querying of accounts;

27.3 the dispute must relate to a specific amount or amounts or a specific item or items on an account or accounts, with the corollary that it is insufficient to raise a dispute in general terms;

27.4 the consumer must put up enough facts to enable the municipality to identify the disputed item or items and the basis for the ratepayer's objection to them;

27.5 it must be apparent from the founding affidavit that the foregoing requirements have been satisfied."

[20] The question for determination is therefore whether these requirements have been met in this matter.

[21] There is clearly a dispute between the applicant and the first respondent, advancing irreconcilable contentions. The contested main application is testament of this long-standing controversy between the applicant and the respondents.

[22] Insofar as the second requirement is concerned, namely that the dispute must have been properly raised, in my view this requirement has been satisfied. This is confirmed by the fact that a Microsoft Teams meeting was held between the parties on 29 January 2024 to resolve the dispute. In a letter addressed by the applicant's attorney of record to the respondents' attorney of record on 5 December 2024, is also recorded that the applicant *"has formally declared a dispute with you, in terms of Section 102(2) of the Local Government: Municipal Systems Act No. 32 of 2000 ..."*.

[23] The respondents rely heavily on an acknowledgment of debt concluded by the applicant in favour of the first respondent on 1 June 2022. According to the respondents, the conclusion of the acknowledgement of debt *"means that the Applicant has no dispute to the amount claimed by the Municipality"*. The respondents allege that the dispute relied upon by the applicant was resolved prior to

the conclusion of the acknowledgement of debt and that the applicant has not paid in accordance with the terms of the acknowledgement of debt.

[24] The applicant alleges that it had no choice but to sign the acknowledgement of debt because it was the only way to get the electricity reconnected “*despite trying to resolve the matter with the Respondents*”. Although I make no finding in this regard, the applicant’s version is in line with the credit control and debt collection policy I was referred to, which provides that if the full outstanding amount is not paid and/or an acknowledgment of debt is not concluded within a stipulated period electricity may be disconnected.¹⁸ The applicant then tried to resolve the matter by filing a complaint with the Ombud a month after it signed the acknowledgment of debt, but to no avail.

[25] After further attempts to resolve the matter with the respondents were fruitless, the main application was instituted.

[26] Seen as a whole, in my view, there is clearly a dispute between the parties, and the dispute has been properly raised.

[27] Insofar as the third and fourth requirements are concerned, the applicant is disputing liability for the demand charges and surcharges which apply to commercial properties on the basis that the property is a residential property. According to the applicant, it has been making payment as reflected on the invoices provided by the respondents, but these payments excluded the demand charges, business surcharges and disconnection fees plus VAT because these are in dispute in the main application. The applicant says that all other charges were paid monthly. A simple comparison of the November 2024 and December 2024 tax invoices of the first respondent attached to the answering affidavit confirms the applicant’s allegation, in respect of this period. I do not think it is the duty of the urgent court to do a meticulous calculation of the undisputed charges versus the payments made by

¹⁸ Paragraph 14.1.6 of COJ Credit Control & Debt Collection Policy Review: June 2022, approved August 2022.

the applicant, for the entire period of the dispute. In my view, the third and fourth requirements are also satisfied.

[28] Insofar as the fifth requirement is concerned, I am satisfied having regard to the applicant's supplementary affidavit, read with the founding affidavit in the main application that the other requirements have been met.

[29] In the circumstances, the applicant has made out a case for the interim injunctive relief sought in prayer 4 of the notice of motion. The respondents should accordingly be interdicted and restrained from terminating the supply of services to the property pending the resolution of the disputes in the main application already before the court for consideration. The nature of the relief is not final. Granting such relief will not result in the respondents "*forfeiting a single cent of what applicant might owe*".¹⁹

[30] Insofar as the outstanding portion of prayer 3 of the notice of motion is concerned, namely that the respondents be ordered to replace the "*damaged infrastructure*", I am not satisfied that sufficient evidence of any damaged infrastructure has been set out in the supplementary affidavit. No case is made for this part of the relief sought.

[31] I now turn to deal with the relief sought in terms of prayer 5 of the notice of motion, namely that should termination of services occur again, the applicant may appoint its own professional contractors to reconnect the services, the costs of which are to be borne by the respondents. The respondents contend that such an order would be unlawful. This issue became moot because the applicant abandoned the relief sought in prayer 5 in the midst of argument.

Costs

[32] There is no reason why the general rule that the successful party is entitled to a cost order should be departed from. The applicant seeks a punitive cost order

¹⁹ *Millu v City of Johannesburg Metropolitan Municipality and Another* (25039/2021) [2024] ZAGPJHC 419 at para 37.3.

against the respondents. A punitive cost order is justified in light of my finding that the termination of the supply of electricity to the property on 5 December 2024 was unlawful.

[33] There is another reason why a punitive cost order is justified in this matter. In *Robindale Five (Pty) Ltd v City of Johannesburg Metropolitan Municipality*,²⁰ Badenhorst AJ referred to the “*continued abuse of power with unflinching resolve*” of the first respondent. In the three matters which served before the court, the deponent to the answering affidavits was one Mr Tuwani Ngwana, a legal advisor employed by the first respondent (Mr Ngwana). In this matter the deponent to the respondents’ answering affidavit is also Mr Ngwana. Mr Ngwana states that:-

“the facts deposed to hereunder are known to me through the documents and information which I have access to under the Municipality’s system and also in discussion with the colleagues employed by the department such as City Power together with their sub-contractors”;

and

“my authority to depose to this affidavit emanates from my employment with the Municipality and on consideration of the records relating to the Applicant consumer account under which services are supplied and on discussions with the officials employed by the Municipality’s departments.” [Underlining added.]

[34] These colleagues and officials are neither identified nor did they file affidavits confirming Mr Ngwana’s allegations.

[35] In *Millu*, Sutherland DJP stated the following:²¹

“The practice of requiring a legal advisor to depose to the affidavits is both a clue to the cause of the debacle and a manifestation of the City’s reckless attitude. It should be self-evident that the City’s legal advisor has no personal knowledge of the accounting. He cannot ever be more than a conduit. His affidavit craftily states that he makes it based on the information provided to

²⁰ *Robindale Five (Pty) Limited v City of Johannesburg Metropolitan Municipality* (2024/136466; 2023/077080; 2020/15428) [2025] ZAGPJHC 30 at para 2.

²¹ *Millu v City of Johannesburg Metropolitan Municipality and Another* (25039/2021) [2024] ZAGPJHC 419 at para 45.

him, deftly evading the typical formula that the deponent has access to and control over the documents *qua* evidence. From whom the facts were truly obtained is never said. And in this wholly unsatisfactory manner, the anonymous officials who composed the accounts are shielded from accountability. If Mr Ngwana is ever [to] be cross-examined on his affidavits, it seems likely that embarrassment would soon follow. It must be stated bluntly that the affidavits in litigation should be from persons who administer the accounts. The practice of a legal advisor being a deponent to facts of which he has no personal knowledge must stop.” [Underlining added.]

[36] Granted, in the answering affidavit *in casu*, Mr Ngwana states that the facts deposed to are known to him through documents and information “*which I have access to under the Municipality’s system*”. But, it is not stated in the answering affidavit who the colleagues and officials are from which Mr Ngwana obtained knowledge of the facts deposed to by him, through their discussions.

[37] Despite this recent stern warning by Sutherland DJP, the respondents have persisted in the manner objected to in *Millu*.²²

[38] Another aspect dealt with in *Robindale*,²³ which is relevant *in casu* is the respondents’ failure to comply with basic requirements in the answering affidavit. The answering affidavit includes a series of argumentative contentions and does not deal squarely with the relevant facts of the matter. The answering affidavit includes long quotations from judgments (which are not cited fully), and should rather have been included in heads of argument. The answering affidavit also contains, what appears to be, the fruit of a so-called “*copy and paste*” exercise. For example, in paragraph 105.12 of the answering affidavit Mr Ngwana states that: “*The Municipality is highly prejudiced by the Applicant who is a large consumer and does not make payment and yet it makes profit.*” [Underlining added.] The applicant is a residential property. It is not explained on which basis it is contended that the applicant “*makes profit*”.

²² *Robindale Five (Pty) Limited v City of Johannesburg Metropolitan Municipality* (2024/136466; 2023/077080; 2020/15428) [2025] ZAGPJHC 30 at paras 68 and 88.

²³ *Id* at para 106.

[39] Mr Ngwana states further in paragraph 110 of the answering affidavit that:
“The Applicant on the other hand, does not make payment to the consumed services and it seeks to continue to consume without it making any payment, simply for profit reasons, it cannot therefore be contended that the balance of convenience favours the Applicant, the opposite is correct.” [Underlining added.]

[40] Having regard to at least the November 2024 and December 2024 invoices of the first respondent, the applicant does in fact appear to make (at least part) payment of “*consumed services*”. Insofar as the alleged “*profit*” is concerned, no factual basis is set out.

[41] For all these reasons, a punitive cost order is, in my view, justified in this matter.

[42] I intend to adopt a similar approach to the one adopted by the court in *Millu* and in *Robindale*, insofar as Mr Ngwana’s conduct as referred to in this judgment is concerned.²⁴ That is, that Mr Ngwana is invited to make representations within 20 court days of the publication of this order in which he offers reasons why he should not personally be ordered to pay 20% of the costs incurred in this application, failing which a supplementary order to that effect will be made.

[43] Counsel for the respondents, Mr Sithole, also appeared for the respondents in *Millu* and *Robindale*, respectively. The abuse of process and contempt of court issues which featured in *Millu*, were not raised *in casu*. The criticism levelled against the arguments presented on behalf of the respondents in *Robindale*,²⁵ are not to be attributed to Mr Sithole in this matter. The attorneys on record for the respondents are not the same attorneys that acted for the respondents in *Millu* and *Robindale*. In the circumstances, I do not intend to make a similar order to the one granted in

²⁴ Mr Ngwana has been warned in prior judgments of this court that such conduct may result in punitive costs being awarded. See *Millu* at para 49.

²⁵ *Robindale Five (Pty) Limited v City of Johannesburg Metropolitan Municipality* (2024/136466; 2023/077080; 2020/15428) [2025] ZAGPJHC 30 para 108.

Millu,²⁶ in respect of the legal practitioners acting for the respondents in this application.

Order

[44] In the circumstances, I grant the following order, which should be read with the order I granted on 14 December 2024:

1. The respondents are interdicted and restrained from terminating the supply of electricity to Units 1 to 17 of sectional scheme Geranium Mansions, located at **4[...] G[...] STREET, R[...]** (the property), pending the resolution of the disputes in the main application under case number 2024/056921 (the main application).
2. The interdict in paragraph 1 above does not affect the respondents' right to terminate the municipal supply to the property, in respect of amounts accruing from municipal consumption at the property after the date of this order and falling outside the ambit of the disputes in the main application.
3. The respondents shall pay the costs of the application on an attorney and client scale, jointly and severally, the one paying the other to be absolved.
4. Mr Ngwana, the legal advisor which deposed to the answering affidavit dated 10 December 2024 is invited to make written representations to this court within 20 court days of the publication of this order, providing reasons why he should not be personally ordered to pay 20% of the costs incurred in this application, arising from his failure to heed the Deputy Judge President's warning in paragraph 45 of the decision in *Millu v City of Johannesburg Metropolitan Municipality and Another (25039/2021) [2024] ZAGPJHC 419*. If such representations are not filed in a timely manner, or if they are deemed unpersuasive, a supplementary order to that effect will be issued.
5. Mr Ngwana is directed to email any such written representations to my Secretary, Mr K Ramoroka at [K\[...\]](#) for the consideration of the court, copied to the applicant's attorneys and the Secretary of the Deputy Judge President's Office at secretarydjp@judiciary.org.za.

²⁶ At para 14 of the order.

PG LOUW
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances

Counsel for applicant:	Adv S Subroyen
Instructed by:	KG Tserkezis Inc.
Counsel for first and second respondent:	Adv E Sithole
Instructed by:	Ncube Incorporated Attorneys
Date of hearing:	11 December 2024
Date of interim order:	14 December 2024
Date of judgment:	10 February 2025