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

Case Number: 2025- 030201

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

24 March 2025

DATE

SIGNATURE

In the matter between:

MAMAILULA CC

(Reg No.: 2002/019669/23)

Applicant

and

EMFULENI LOCAL MUNICIPALITY

First Respondent

**MUNICIPAL MANAGER: EMFULENI LOCAL
MUNICIPALITY**

Second Respondent

JUDGMENT

NOKO J

Introduction

[1] The applicant brought an urgent application for an interim interdict with orders set out as follows: first, that the termination/disconnection/blocking by the respondents of electricity supply to the property situated at 4[...] B[...] L[...], Vereeniging, (“the premises”) registered under account number 1[...] be declared unlawful; secondly, that the respondents be directed to reconnect, continue, unblock electricity supply; thirdly, that the respondents be restrained from charging the applicant reconnection fee; fourthly, that the respondent be interdicted from disconnecting/terminating /blocking the supply of the electricity supply to the premises; and lastly that the above order serve as mandamus/interim orders pending the final determination of the matter.

[2] The application is opposed by the respondents who delivered their answering affidavit in terms of which they, *inter alia*, dispute urgency. The respondents have also delivered an application in terms of rule 6(5)(e) of the Uniform Rules of Court for to leave to file a supplementary affidavit.

Parties

[3] The applicant is Mamailula CC, a close corporation incorporated in terms of the laws of the Republic of South Africa with its business address situated at 3[...] F[...] E[...], T[...] R[...] E[...].

[4] The first respondent is Emfuleni Local Municipality, a municipality as contemplated in the Local Governments: Municipal Systems Act 2 of 2000. The first respondent carries its business at cnr Dr Klassie Havenga and Frikkies Meyer Boulevard, Vanderbijlpark.

[5] The second respondent is April Sotshengani Ntuli,¹ an adult male cited in his capacity as the municipal manager of the first respondent.

Background

[6] The factual background is uncomplicated and is set out as follows. The applicant is the registered owner of the property situated at 4[...] B[...] L[...], V[...] (premises). The said premises has three blocks of flats which are currently rented out to 92 students who are enrolled with Sedibeng College. The premises were accredited by Sedibeng College for the purposes of providing accommodation for students.

[7] The records of the first respondent indicate that there is outstanding amount for rates, taxes and services under the account registered with the applicant since 2019 in the sum of R856 612.91.² This amount has been outstanding and has led to the intermittent termination of the supply of the electricity to the premises over a period of time. The last termination of supply of electricity assailed by the applicant in this *lis* was on 24 February 2025.

[8] As will be detailed below the applicant made payments in the amount of R22 000,00 and subsequently R430 000.00 to the respondents prior to the institution of these proceedings.

[9] On a closer scrutiny of the papers filed by the parties it appears that there are two accounts which are under the management of the applicant. The first one registered in the Edinmoor Inv. (Pty) Ltd ³ under 1[...] the second account is under Lampoch Inv. (Pty) Ltd under account number 1[...].

¹ The particulars of the Municipal Manager are set out in the Respondents' Answering Affidavit uploaded on CaseLines.

² This amount was reduced as at the time of the institution of these proceedings.

³ Edinmoor Inv (Pty) Ltd is the previous name of the applicant as referenced in the CIPC printouts attached to the Applicant's Replying Affidavit.

[10] The applicant made payment of R22 000.00 was in respect of the Edinmoor's account (1[...]) as it appears on the proof of payment attached to the founding affidavit. This account reflects the following information gleaned from annexure attached to both parties:

10.1	Annexure MMC01	20 February 2024	R35 853.81
10.2	Annexure MMC 02	9 July 2024	R91 163.61
10.3	Annexure MMC 03	16 August 2024	R101 555.59
10.4	Annexure NT 2	22 October 2024	R31 989.05
10.5	Annexure NT	6 March 2025	R91 163.61

[11] Whereas the information with regard to Lampoch's account (11257902), outsourced for collection, to Ntiyis Consultants reflects the following information:

11.1	Annexure	21 February 2025	R856 661.11
11.2	Annexure ELM 03	24 February 2025	R868 763.92

[12] The payment of the amount of 430 000,00 was in respect of the second account.

[13] The applicant avers that both accounts are under its management and in the dealings between the parties do not differentiate between the two accounts in that termination of the supply of the electricity by the respondents would apply to both accounts at the same time.

Urgency

[14] The applicant submit that the reasons underpinning the approach to Court on urgent basis is informed by the letter of demand on 18 February 2025 from College wherein a warning was sent out that if the electricity supply challenges experienced by the applicant are not resolved the lease arrangement with the applicant would be terminated. Subsequently attempts were made by the applicant to engage the respondents for the resolution and payment arrangement was made with Queen for

the amount of R22 000.00 per month. This was followed by payment in the sum of R22 000.00 in October 2024 whereafter the supply of electricity was restored. The supply was discontinued again on 24 February 2025 and further attempts to discuss with the respondents bore no positive results. Another message was sent from the college on 3 March 2025 and urgent proceedings were launched on 4 Tuesday 2025 against the respondents. The Court's intervention is required since the ramifications of losing accreditation and the lease agreement being terminated have far reaching implications to the applicant's business and may not await approaching court on a normal basis.

[15] The applicant's counsel submitted that the conduct of attempting to negotiate with the respondents before rushing to Court was encouraged by Courts as acceptable and does not constitute self-created urgency by a litigant.

[16] The applicant's counsel further argued that previously commercial urgency could not be considered as a factor to approach court on urgent basis and the position has changed and the current position is that in other instances commercial interest could be raised to advance arguments for urgency.

[17] The respondents on the other hand contended that there is no evidence presented by the applicant supporting the averments made for urgency and the alleged threats by the college were not supported by evidence. Further that the applicant should have exhausted remedies of internal appeal before approaching the Court on such truncated *dies*.

[18] In addition, the applicant contends that the applicant knew since 2019 that there are outstanding amounts which may lead to the termination supply of electricity and had not acted with requisite urgency to approach court. This argument fails to appreciate what transpired since 2019 and more particularly what took place in February 2015 as illustrated by the applicant.

[19] I have regard to submissions made by both parties and am persuaded that there was no evidence that urgency was self-created. In addition, the applicant's

submission engaged the principles elucidated in the *locus classicus* in *East Rock Trading*⁴ that a party must set out succinctly the basis for urgency as the process set out in rule 6(12)(a) of the Uniform Rules of Court is not just there for asking. Further that the applicant cannot be afforded substantial redress at a hearing in due course. The applicant's submission that commercial interests can be considered for urgent application resonates with some of the authorities on this issue.⁵

[20] The contentions advanced by the respondents particularly regarding exhausting internal remedies did not displace vigour and tenor of the persuasive arguments by the applicant and I conclude that urgency has been proved.

Application in terms of rule 6(5)(e) - Supplementary affidavit.

[21] The respondent requested that leave be granted for the supplementary affidavit to be admitted. The applicant did not resist the respondents' application pertaining to the annexure and attempted to dispute the essence of the affidavit. The respondent stated that the supplementary affidavit is intended to provide chronology of the demands and disconnection notices which documents could not be attached to the answering affidavit as the *dies* provided to file answering affidavits was too short.

[22] I am convinced that a proper motivation has been advanced by the respondents' counsel. Ordinarily, flexibility in urgent applications should be embraced within reason and in view of the fact that there is no real opposition and that no prejudice will visit the applicant, I grant the application for leave to file the supplementary affidavit.

Merits

Applicant's version and submissions.

⁴ *East Rock Trading 7 Pty Ltd and Others v Eagle Valley Granite and Others* (11/33767)[2011] ZAGPJHC 196 (23 September 2011).

⁵ *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC* [2023] ZAGPJHC 846 (1 August 2023), *Twentieth Century Fox Film Corporation v Anthony Black Films (Pty) Ltd* 1982 (3) SA 582 (W).

[23] The applicant avers that the quantum on the bill from the first respondent was formally disputed through a letter addressed to the first respondent on 29 October 2024 contending that to its knowledge the amount due on the account should be in the region of R100 000.00 and was astounded to note that it was R856 612.91.⁶ In this regard a dispute was declared and the first respondent was invited to adjudicate thereon in accordance with its regulatory prescripts.

[24] The dispute declared above was preceded by the termination of the supply of the electricity by the respondents in September 2024 whereafter the applicant visited the first respondent and was assisted by an official named Queen. The said official orally agreed with the applicant's representative that the applicant should pay amount of R22 000.00 per month and the supply of electricity will be restored. The amount of R22 000.00 was paid in October 2024 and the electricity supply was restored. Astonishingly, few days later the supply was disconnected again without a prior notice.

[25] The applicant was made aware that the first respondent has a policy or a practice in terms of which arrangement can be entered into to pay the arrears over a period of time whilst at the same time receiving municipal services. Further that in terms of the policy if a customer is a juristic person a deposit of 50% of the outstanding amount must be paid first and the balance would be paid over a period of 12 months. The applicant's representative visited the first respondent on 20 February 2025 and the same official, Queen, entered into an arrangement with the applicant requiring the applicant to pay 50% of the outstanding amount and to complete the forms for the application of payment arrangement. Payment of 50% in the sum of R430 000.00 was made on 21 February 2025. Both the proof of payment and completed arrangement form are attached to the founding affidavit marked NT 6 and NT 7 respectively. The supply of the electricity was restored immediately.

⁶ See n 2 above.

[26] The applicant averred that a letter of demand was received on 21 February 2025 (dated 20 February 2025) in terms of section 129 of the National Credit Act⁷ from Ntiyiso Consulting on behalf of the first respondent demanding payment of R856 612.91 payable within 14 days. The letter further invited the applicant to attend at the offices of the first respondent within 3 days to make arrangements for payment.

[27] The first respondent disconnected electricity again on 24 February 2025 without a written notice and on making enquiries with the first respondent the applicant was informed that the application form completed for payment arrangement was incomplete as the deponent did not attach the resolution from the applicant that he is authorised to enter into an arrangement on behalf of the applicant. The required authorisation was submitted to the first respondent on 25 February 2025. That notwithstanding the electricity supply remained terminated.

Interim Interdict

[28] For the purposes of complying with the requirements for an interdict the applicant contends that, first, the respondent is obliged to furnish the applicant with a notice to terminate 14 days before the termination. The termination without notice infringed on the applicant's right to fair administrative process. Secondly, there was an oral agreement to pay R22 000.00 which was duly complied with and the rights to restore the electricity emanating from the agreement have been breached as it was terminated after the payment. Thirdly, there was also payment of 50% of the outstanding balance which also entitled the applicant to enter into an arrangement to settle the arrears and the respondent unlawfully decided to act contrary to the said policy. Fourthly, a dispute has been lodged with the respondent regarding the outstanding amount and same has not been resolved. And to this end the respondent should not be allowed to act as if there is no dispute which await adjudication.

⁷ Act 34 of 2000.

[29] In the premises, the applicant argued, a right flowing from the above arrangements satisfies the requirement of a clear right for a final interdict or at least a *prima facie* right as required in respect of an interim interdict.

[30] The fact that there is no supply of the electricity let to the college threatening to terminate lease agreement and also sue the applicant for damages suffered to the food being spoilt due to lack of electricity. The likelihood of losing lease agreement is imminent and will cause undue financial hardship to the applicant.

[31] The balance of convenience favours the applicant as there is potential for irreparable financial hardship if lease agreements are terminated. On the other hand, no prejudice will visit the respondent more so that payment has been effected in terms of its policy. The applicant further submits that there is no alternative remedy which can substantially be undertaken to assuage the potential damages.

Respondents' version and submissions.

[32] The respondents aver that the applicant was given a Disconnection notice as notification of the outstanding balance and invited the applicant to attend at the first respondent's offices within three days of receipt of the notification to conclude the payment arrangement in respect of arrears. Further that failure to pay or make arrangement for the full outstanding amount entitled the first respondent to disconnect of the supply of the electricity. The balance as of 5 March 2025 was R438 736.92.⁸

[33] In view of the statutory framework, respondents argued, the applicant does not have a clear right for the purposes of approaching the Court for an interim interdict. There are also alternative remedies available to the applicant which includes having to exhaust internal appeal process with the respondents. The respondent is endowed with powers by both the Constitution and Local Government Systems Act to provide services in an efficient, equitable and sustainable manner. The said regulatory prescripts allows the first respondent to pass and implement by-

⁸ This was the balance of one of the accounts after the applicant paid amount of R430 000.00.

laws, including Credit Control and Debt Collection policy by-law (By-law), for the effective management and administration of services.

[34] The applicant's alleged arrangement with Queen for payment of R22 000.00 per month does not satisfy the requirement set out in clause 22.4 of the By-law as it was not "... accompanied by a payment constituting the amount due and payable in respect of the amount, minus in respect of which a query or complaint is lodged."⁹ Furthermore, the applicant's query which was lodged was not compliant as the applicant "... lodged an incomplete query which does not reflect the query reference number herewith...".¹⁰

[35] In addition, clause 28 of the By-law permits the municipality to disconnect the municipal services to customers on a 3 days' notice in the event of non-payment. This is the basis why the respondent proceeded to terminate the supply to the applicant and having produced a Job Cards under the name and style Ntiyiso Consulting.

[36] There is no evidence, respondents continued, furnished to prove that the applicant will suffer irreparable harm and instead the respondent would suffer loss of revenue due to non-payment which will hinder the functions of local government.

[37] In addition, the respondents contend that the remedy of *mandament van spolie* finds no application as the applicant is unable to demonstrate that the respondents resorted to self-help which was perpetrated without an order of court or permitted in terms of the statute.¹¹ The applicant, argument continued, was not in an undisturbed possession and there was no unlawful dispossession. If anything, the conduct on the part of the respondent was *contra spolie*.¹² In any event the applicant failed to prove that the supply of electricity is incidental to possession of the property by the applicant.

⁹ See para 37 of the AA at CL 02-162

¹⁰ Para 38 of the AA at CL02-162.

¹¹ See para 19.1 of the Respondents' Answering Affidavit at CL 02-156.

¹² Id at para 19.7 on CL 02-157.

[38] The respondents further dispute that disconnection notice was not issued and states that the notices "... can be evinced by the Job Cards of a service provider appointed by the respondent."¹³ In addition if an order is issued as prayed for the flood gates would be opened for all and sundry to demand unfettered access to electricity supply without more and this will lead to municipalities collapsing to prejudice of the general populace.

[39] Lastly the respondent contended that there is a confusion as to which party can exert rights with regard to the supply of electricity. Some correspondence relate to Edinmoor Inv. (Pty) Ltd and others Lampoch Inv. Pty Ltd. This contention was clarified in the replying affidavit that the applicant's name was previously Lampoch Inv. cc and was subsequently changed as evidenced by a confirmation from CIPC attached to the replying affidavit marked RA 2. In addition, Lampoch Inv. (Pty) Ltd ("Lampoch") is also under the applicant's management. There are three buildings at the premises and one of them is in the name of Edinmoor Inv. (Pty) Ltd ("Edinmoor").

Issues

[40] Issues for determination is whether the applicant has satisfied the requirements for an interim interdict.

Legal principles and analysis.

[41] The requirements for interim interdict are settled in our jurisprudence and were clearly delineated more than a century ago in *Setlogelo*¹⁴. The applicant has to present evidence of *prima facie* right even if it may be open to some doubt; that there is imminent and irreparable harm, that there is no alternative remedy and that the balance of convenience tilt in favour of the applicant.

[42] The application was crafted as an interim relief though the applicant failed to clearly indicate as to what should occur before the final determination thereof. One

¹³ Para 47 of the Respondents' Answering Affidavit at CL 02-165

¹⁴ *Setlogelo v Setlogelo* 1914 AD 221.

would from the reading of papers think that it was maybe meant to be in the interim pending the resolution of a dispute declared with regard to the account reflecting approximately R100 000,00 late last year and reflecting amount if above R800 000.00 this year. In view of the fact that the two amounts do not refer to the same account then it would be incorrect that the applicant has properly characterised dispute pertaining to account number 1[...]. This judgment should not be considered a final pronouncement of the said dispute.

[43] That notwithstanding the court is large to grant a relief if the evidence presented support such a relief. In this instance if the requirements for a final relief are satisfied then same would have to be granted.

[44] The applicant has successfully demonstrated that he made an arrangement with first respondent's official and started payments of R22 000.00. The respondent contends that the payment was not coupled with clause 22 relating to lodging of complaints is unsustainable.

[45] The applicant has further lodged a dispute which has not been resolved and the regulatory prescripts¹⁵ provides that the respondents shall not embark collection pending the resolution of the dispute. The contention that the referral of the dispute is incomplete as there is reference is of no moment. That notwithstanding and as set

¹⁵ Section 102 (2) of the Municipal Systems Act provides that collection measures cannot be invoked where there is a dispute between the parties regarding the quantum of the bill. In *3[...] V[...] D[...] M[...] Street H[...] CC v City of Johannesburg Metropolitan Municipality and Another* (2023-069078)[2023] ZAGPJHC 963 (25 August 2023) this Court explained that in *Croftdene Mall* the SCA imposes the following five requirements before a consumer of municipal services may rely on the protection against disconnection provided by section 102(2) of the Systems Act:

- 1.1 "there must be a dispute, in the sense of a consumer, on the one hand, and the municipality, on the other, advancing irreconcilable contentions;
- 1.2 the dispute must be properly raised, which would require, at least, that it be properly communicated to the appropriate authorities at the municipality and that this be done in accordance with any mechanism and appeal procedure provided in terms of section 95(f) of the Systems Act for the querying of accounts;
- 1.3 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;
- 1.4 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;
- 1.5 it must be apparent from the founding affidavit that the foregoing requirements have been satisfied."

out above it appears that the dispute confused both accounts as the account making reference to the amount of at least R100 000,00 is the account in the name of the Lampoch and the provisions of section 102 (2) may not be applicable.

[46] At best the applicant has proved clear right as payment of 50% was made and the arrangement form being completed. The arrangement cannot just be frustrated by the contention that there was no authority granted to the applicant's representative to enter the arrangement.¹⁶ The applicant stated that this is a practice and same was not denied by the respondent who stated at para 49 of the answering affidavit that the averments by the applicant of the existence of the practice is noted.

[47] In any event the respondent restored the electricity supply immediately after payment on 21 February 2025 even though without a notice being furnished for disconnection. The letter from the consultant which was received after the payment and arrangement forms indicated that the amount demanded was the original figure of R856 612.91. This was the figure before the applicant entered into an arrangement and having paid R430 000.00 and indicates that there was no communication between the applicant and its consultants.

[48] The applicant further correctly questioned the termination on 24 February 2025 as the letter of demand of 21 February 2025 gave the applicant 14 days to pay or 3 days to attend to make an arrangement. There was no basis then to terminate within 3 days whilst the applicant is granted 14 days to pay. The respondents should take a position and stick with it and not approbate and reprobate.

[49] I am persuaded that irreparable damage would ensue if the conduct of the respondents is not arrested. The loss of benefit for losing a business opportunity cannot be readily quantified and referral to internal appeals as suggested by the respondents would not assuage the damage the applicant is likely to suffer.

¹⁶ Clause 6.9.1.e of the Credit Control and Debt Collection Policy By-Law provides that for customers who want to enter into arrangement should pay 50% deposit and the balance to be paid within a period of 12 months. There are provisions providing for the signing of the acknowledgment of debt or sign a consent to judgment.¹⁶

[50] The contention by the respondents that granting an order in this instance would lead to chaos as members of the public would demand reconnection of electricity is unsustainable. In this case the *raison d'être* underpinning this court's order is because of the failure by the respondents to comply with its commitments and regulatory prescripts. This would ordinarily justify a similar relief to any other person who would have to demonstrate that the respondents have acted contrary to the regulatory prescripts.

[51] The contention that the applicant would fail in its application as it does not satisfy the requirement for *mandament van spolie* appears to be misplaced. Whilst it is correct that one may not claim restoration of the electricity supply if such supply is not incidental to the possession¹⁷ the applicant's relief sought is not predicated on the common law remedy of *mandament van spolie*. I also fail to fathom if the respondents could in this case argue counter spoliation in terms of which a party is entitled to counter spoliating a litigant.¹⁸ There is no evidence to suggest that the applicant was spoliating the electricity. Having regard to the findings above the issues in this paragraph raises a debate of no practical value. All other issues raised by the parties deserves no further attention of the Court.

Conclusion

[52] It has not been disputed that the respondent has terminated the supply of electricity to both accounts and further that it appears as if the two accounts are being treated as one for termination purposes the outcome of the application would not be different more particularly that termination of the applicant's (Edinmoor's account) was not preceded by a notice of termination. The respondent further relayed its confusion in the affidavit stating that it is not clear as to which company is the customer to the respondent but nevertheless argued that either way termination of electricity was above board.

¹⁷ *Eskom Holdings SOC Ltd v Masinda* 2019 (5) SA 386 (SCA), *Simons v The City of Johannesburg Forensic DPT* 2019 JDR 2664.

¹⁸ *City of Cape Town v South Africa Human Rights Commission* (1337/2022; 368/2023) [2024] ZASCA 110 (10 July 2024).

[53] Strictly speaking the above should only apply to account 1[...]. It would however not make sense for the respondents to attempt to differentiate the accounts for the purpose of the order as the Lampoch's account which received payment of R430 000.00 could not have been properly terminated as the payment was in accordance with the arrangement predicated by the first respondent's policy requiring 50% deposit and the balance payable over a period of 12 months. The incomplete arrangement forms appears to be an administrative activity to give effect to the payment arrangement and cannot be used to frustrate the arrangement itself. With this state of affairs another court may frown at the attempt to differentiate the accounts where the applicant has exploited an option availed by the respondents to enter into arrangement for payment and also where the termination was done just few days after the payment of R430 000.00 was made and the termination not been preceded by the requisite notice.

[54] I therefore conclude that the respondent should restore supply of the electricity to the premises.

Costs

[55] The question of costs is within the discretion of the court. It was held in *Bam*¹⁹ that “[T]he general rule relating to the costs is that costs follow the result. Reimbursing a successful party of his or her out of pocket expenses is a settled principle which brooks no further ventilation.” I am not persuaded to unsettle the well-trodden principle that costs should follow the cause.

Order

[56] In the premises I make the following order:

1. The disconnection of electricity by the respondent from 4[...] B[...] L[...], Vereeniging, registered under account number 1[...] is unlawful.

¹⁹ *Bam v Holtzhausen and Others* (2024/097438) [2025] ZAGPPHC (21 February 2025).

2. The respondents are ordered to immediately restore the supply of electricity to the applicant's premises situated at 4[...] B[...] L[...], Vereeniging.
3. The respondents are restrained from charging the applicant reconnection fee.
4. The respondents are order to pay costs of the application jointly and severally the one paying the other one is absolved.

M V NOKO

Judge of the High Court
Gauteng Division, Johannesburg

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Dates:

Hearing: 5 March 2025.
Judgment: 24 March 2025

Appearances:

For the Applicant: Mr Gwebu
Instructed by : Gwebu Madlela Mashamba Attorneys Inc.

For the Respondents: Ms Dludla-Mosia.
Instructed by: Tsotetsi Mchunu Attorneys.