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

CASE NO: **2024-018842**

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

DATE 29 May 2025

SIGNATURE

In the matter between:

TINTSWALO REGINAH MAKONDO

Applicant

And

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

1st Respondent

THE MUNICIPAL MANAGER:

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

2nd Respondent

JUDGMENT

This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 14:00 on 29 May 2025.

MOJAPELO AJ

INTRODUCTION:

1. This matter deals with the restriction and/or discontinuation of the water supply to the applicant's premises at No. 4[...] F[...] Street, The Reeds, Centurion, Pretoria, which is within the jurisdiction of the City of Tshwane Metropolitan Municipality. The applicant has a contractual relationship with the City for the supply of services, which include water and electricity, in terms of the applicable by-laws.
2. It is the applicant's case that on 16 February 2024, water supply was restricted and/or discontinued to her premises, and as a result, the applicant on 28 February 2024 obtained on an urgent basis a *rule nisi*, which the relevant parts read as follows:

“3. A Rule Nisi is issued calling upon the Respondents to show cause on 14 May 2024 at 10h00 or as soon thereafter as the matter may be heard why an order in the following terms should not be made final:

- 3.1 that the termination / disconnection / discontinuation / blocking / restriction of service to the water supply to NO. 4[...] F[...] STREET, THE REEDS, CENTURION, PRETORIA, (the premises”) be and is hereby declared unlawful;
- 3.2 that the Respondents be and are hereby directed to reconnect / unblock / unrestrict the water supply to the premises within 4 (four) hours after service of the court order at the office of the Second Respondent, by the Applicant's attorneys;
- 3.3 that the Respondents be and are hereby interdicted and restrained from charging the applicant a reconnection fee as a result of the unlawful restriction / termination / disconnection / discontinuation / blocking of service;
- 3.4 that the Respondents be and are interdicted and restrained from unlawfully terminating / disconnecting / blocking / restricting the water supply of the electricity to the premises,

without first affording the applicant the requisite 14-day pre-termination notice;

- 4. that both the Respondents and the Applicant is granted leave to serve and file Supplementary Affidavits, if any.*
- 5. that paragraphs 3.1 to 3.4 above shall operate as an interim mandamus/interdict pending the finalization of this Application;*
- 6. Costs of the application will be reserved for determination at a later stage.”*

3. This is therefore the return date of the *rule nisi*. The applicant's case is that the rule should be confirmed because the restriction and/or the discontinuation of the water supply to her premises was unlawful. The respondents argue otherwise.

THE APPLICANT'S CASE:

4. The applicant is the owner, the occupier, and the account holder of property known as The Reeds, 4[...] F[...] Street, Centurion, Pretoria, and has a contractual relationship with the City. The applicant states that on 16 February 2024, she returned home from work to notice that the water supply to her premises was abruptly disconnected. She states that upon further investigation, she was unable to determine the reason for the loss of the water supply.
5. The applicant states that on 14 February 2024, that is, two (2) days before the above realization, she obtained an order in this Court for the reconnection of her electricity supply. She states that the electricity supply was indeed restored, however, her water supply was restricted. She states that this was an attempt to frustrate her.
6. The applicant states that she does not receive regular statements from the City. She has now instructed her current attorneys to assist her in determining the cause of the restriction as well as to lodge a dispute for any outstanding amounts. However, the applicant does not state the amount that is alleged to be owed, alternatively, the amount that she is disputing. She continues to state

that her current attorneys have been appointed to assist her by entering into a payment arrangement with the City in an attempt to settle any outstanding amount owed to the City. Again, she does not specify which amount she has appointed an agent to dispute or to reach a settlement agreement with the City.

7. The dispute that was raised by the applicant's attorneys with the City was in the form of a letter of demand dated 20 February 2024. In that letter, the applicant's attorney stated that the discontinuation and/or blocking of the water supply to the applicant's premises is unlawful for failure to comply with the provisions of the by-laws, in particular, the disconnection and the limitation of water supply without any prior notice. They then demanded a written confirmation that the water supply would be reconnected and that the Municipality would not disconnect the water supply in the future, and further that the Municipality would not charge a reconnection fee and pay the applicant's legal costs. Again, this letter from the applicant's attorneys does not state an amount that is alleged to be owed, alternatively, an amount that has been put in dispute. This letter does not appear to be a settlement negotiation as the founding affidavit suggests. The dispute raised in the letter of demand is simply that the discontinuation of the water supply to the applicant's premises is unlawful.
8. Consequently, the urgent court granted in favour of the applicant a *rule nisi* as described hereinabove.

THE RESPONDENT'S CASE:

9. The respondent's case is that the applicant's current amount owed to the City is in excess of R200 000.00. Although there is a bare denial to this amount as I have indicated hereinabove, the applicant does not tell this Court how much she owes to the City. In other words, the applicant does not offer any version about the amount owed to the City.
10. The City states that it has then embarked on the following process:
 - 10.1. On 31 March 2023, the City sent a final demand to the applicant.

- 10.2. On or about 25 July 2023, the City officials left a restriction notice on the applicant's door and proceeded to restrict the applicant's water supply.
- 10.3. The City, during August 2023, noticed an increased usage of the applicant's water supply, then proceeded to inspect the applicant's water supply and discovered that the restriction had been removed by the applicant.
- 10.4. The City on 02 October 2023 further proceeded to restrict the water supply again.
11. The City states that on 22 February 2024, upon receipt of this application, its officials proceeded to the applicant's premises and discovered that the applicant's meter valve was closed off and that the restriction on the meter had been removed. They deny that the City was responsible for the meter valve that was closed off. They state that the applicant tampered with the water supply again. The City restored the water supply to the applicant's premises despite the City not being responsible for the termination of the water supply. On 23 February 2024, the City proceeded to restrict the water again, hence, the urgent application was brought for the restoration of the water supply and the removal of the restrictions.
12. It is stated on behalf of the City that despite the applicant's continued tampering with the water meter and the restriction imposed therein, the City has not terminated the applicant's water supply because in terms of their policy, they do not terminate the water supply but restrict the water supply to 12 kilolitres a month.
13. In her replying affidavit, the applicant disputes that a restriction notice was received. The City alleged that the water meter pre-restriction notice was placed on the applicant's door during 25 July 2023, that is, a period of about 7 months before the urgent application was brought. The applicant disputes the City's version that they have served a pre-restriction notice. She alleges that

the picture showing what the City alleges to be a pre-restriction notice is attached to a white gate, and that during 2023, the applicant did not have a white gate. And further, the applicant alleges that her son is always at home, and there would not have been a need to attach the notice to her gate. This dispute was raised for the first time in the replying affidavit.

14. The City alleges that after they implemented a pre-restriction notice and the subsequent restriction of the water supply to the applicant's premises, they have, on several occasions, noticed that the water supply to the applicant's premises has been tampered with and continued to re-implement the restrictions. They state that although there is evidence of tampering, they have a policy wherein they cannot disconnect the water supply but rather restrict it to 12 kilolitres per month.
15. The applicant in her replying affidavit admits that her water supply has been restricted on numerous occasions. This admission is made for the first time in the replying affidavit.
16. She continues to state that after those numerous restrictions, the agents of the City lifted the restrictions on various occasions, as on each occasion she has denied any indebtedness to the City. Although she denies any indebtedness to the City, the City alleges in this application that her current arrears stand in excess of R200 000.00, which allegation was only met by a bare denial from the applicant.
17. She states that she was under the belief that on each occasion that she addressed the matter with the City, they proceeded to lift the restriction. She does not state in what way has she addressed the dispute with the City. Whether she has reached a payment arrangement or has paid the debt in full. She further states that she has been billed for water during this period, and such is reflected on her account. She makes this submission in the replying affidavit after stating in her founding affidavit that she does not receive regular statements from the City. The City's version is that she has tampered with the water restriction placed on her premises.

LEGAL PRINCIPLES:

18. Section 152(b) and (d) of the Constitution provides that the objects of local government are *inter alia*, to ensure the provision of services to communities in a sustainable manner; and to promote a safe and healthy environment. In the matter of **Mkontwana v Nelson Mandela Metropolitan Municipality 2005 (1) SA 530 (CC)**, the Constitutional Court held in paragraph [1] that; *“One of the five objects of local government in our Constitution is to ensure the provision of services to communities in a sustainable way. Municipalities supply water and electricity to consumers in their area subject to the payment of a consumption charge.”*
19. The Constitutional Court in **Mkontwana** went on to state that:

“The importance of the purpose of the provision has been discussed earlier. It is emphasised that municipalities are obliged to provide water and electricity and that it is therefore important for unpaid municipal debt to be reduced by all legitimate means. It bears repeating that the purpose [of s 118 of the Municipal Systems Act, requiring settlement of municipal arrears before property may be transferred] is laudable, has the potential to encourage regular payments of consumption charges, contributes to the effective discharge by municipalities of their obligations and encourages owners of property to fulfil their civic responsibility.”¹
20. Section 96 of the Local Government: Municipal Systems Act 32 of 2000 provides for debt collection responsibility of the municipalities, and states that a municipality; *“(a) must collect all money that is due and payable to it, subject to this Act and any other applicable legislation; and (b) for this purpose, must adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariff policies and complies with the provisions of this Act.”*

¹ Mkontwana (Supra), paragraph 52.

21. Section 97 of the Local Government: Municipal Systems Act of 2000 provides for what must be the content of the policy. The policy must, amongst others, provide for; *“(g) termination of services or the restriction of the provision of services when payments are in arrears; and (h) matters relating to unauthorised consumption of services, theft and damages.”*
22. Section 9(1) of the Water Supply By-Laws provides for the restriction and the discontinuation of water supply services. It provides that; *“The Engineer may restrict or discontinue water supply services that are provided for the premises of a customer in terms of these by-laws if; (a) the customer has failed to pay the applicable charges on the date specified, after the procedure set out in the Municipality's by-laws relating to credit control and debt collection has been followed; and (b) the customer has interfered with restricted or discontinued water supply services.”*

DISCUSSION:

23. The applicant in her notice of motion has characterized the actions of the city that she is challenging as either termination, disconnection, discontinuation, blocking, or restriction of service to the water supply. She uses the words disconnection and restriction interchangeably in relation to her water supply in the founding affidavit. She says in her founding affidavit that on 20 February 2024, she opened her cold water tap but was still denied full service. She states that; *“I remain restricted or throttled as they commonly refer”*. There is no doubt that what is the issue in this matter is the restriction on the applicant's water supply.
24. The issue is whether the restriction of the applicant's water supply was unlawful. The applicant argues that it is unlawful for want of notice prior to the restriction. The applicant's case is that there was no notice during February 2024 prior to the restriction, hence the urgent application. The respondent's case is that the notice was served on the applicant in July 2023, and thereafter,

the respondent alleges that there were several incidents of tampering with the water meter by the applicant.

25. The disputed notice would have been served, according to the City, on the applicant by leaving it on the applicant's door in July 2023, that is, 7 months prior to the urgent application. During that period of 7 months, the applicant admits that there were several restrictions on her water supply, and she engaged the City on several occasions. The City's version is that they, on several occasions, have found that the applicant has tampered with the water supply, but still continued to provide her with a restricted water supply because of the policy the City has with respect to the water supply.
26. Insofar as disputes of fact are concerned, these are motion proceedings. It is instructive to refer to **Plascon- Evans Paints Ltd v Van Reibeeck Paints (Pty) Ltd 1984 (3) SA 623A**, where the Court said that an applicant who seeks final relief on motion proceedings must in the event of conflict of facts, accept the version set out by the respondent, unless the latter's allegations are, in the opinion of the Court, not such as to raise a real, genuine or bona fide dispute or are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on papers.
27. The general rule is that final relief may only be granted if those facts as stated by the respondent, together with those facts stated by the applicant that are admitted by the respondent, justify the granting of an order. Simply stated, the Court will consider what facts have been alleged by the respondent in its answering affidavit, against the facts and/or version of the applicant which have been admitted by the respondent. Therefore, the version of the respondents that the applicant was served with the notice during July 2023, that is, a period of about 7 months before the urgent application was lodged, should prevail.
28. On the balance of probabilities, this Court has to accept that the applicant has received a pre-termination notice during July 2023, a period of 7 months before she lodged the urgent application. It is also not convincingly disputed that the applicant is, at the time of the application, in arrears in the amount in excess of

R200 000.00, and further that after the restriction that would have occurred during July 2023, the applicant has on various occasions engaged with the City. I therefore find the version of the applicant that she did not receive a pre-restriction notice in July 2023 to be highly improbable. Therefore, this application should fail.

COSTS:

29. There is no reason why the cost should not follow the result. The City is a state organ that is obliged in terms of the law to collect the revenue and to use all legal avenues, including restricting or discontinuing the water supply to the applicant's premises. There is no reason why the City should be out of pocket in its attempt to collect the revenue, as it is obliged to do so by law. Under the circumstances, this application should fail.

30. I therefore make the following order:

1. The *rule nisi* issued on 28 February 2024 is hereby discharged.
2. The application is dismissed.
3. The applicant is to pay the cost of this application, including the reserved costs of 28 February 2024 on a party and party scale, including counsel's costs on scale A.

MM MOJAPELO
ACTING JUDGE
HIGH COURT GAUTENG DIVISION, PRETORIA

Counsel for the Applicant : Mr Nico du Plessis (Attorney)

Attorney for the Applicant : NJ du Plessis & Associates Inc.

Counsel for the Respondent : Adv. D Thumbathi

Attorneys for the Respondent : Motshoeneng Bill Attorneys Inc

Date heard : 05 February 2025

Date of the Judgement : 29 May 2025