IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable / Not reportable

Case number: 6116/2024

In the matter between:

JUSTICE BENJAMIN SEGOMOTSO MOLOABI	**APPLICANT**
and	
ESKOM HOLDINGS SOC LIMITED	**RESPONDENT**

Neutral citation: *Justice Benjamin Segomotso Moloabi v Eskom Holdings Soc Limited* (6116/2024) [2025] ZAFSHC 194 (25 June 2025)

Coram: Chesiwe J

Heard: 20 March 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 13h00 on 25 June 2025.

Summary: Application for confirmation of a Rule *Nisi* – Application premised upon *mandement van spolie* – statutory electricity rights – contractual use of electricity – whether spoliation find application - Spoliation order in terms of *quasi-possessio*.

ORDER

The Rule *Nisi* is confirmed with costs on scale B.

JUDGMENT

Chesiwe J

[1] The application is a confirmation of a Rule *Nisi* in terms of an urgent application that was before Court on 1 November 2024. Applicant sought the urgent restoration of electricity supply to his business premises at 3087 Post Office Complex, Selosesha, Thaba Nchu, Free State Province (hereafter referred to as the property). This application is premised on *mandament van spolie*.

[2] In terms of the Rule *Nisi*, the Court granted urgency and the order with regard to the relief sought by the Applicant.

[3] The matter was then postponed to the 28th November 2024 whereupon parties agreed to postpone and extend the Rule *Nisi* to 27 February 2025. Respondent was to file opposing affidavit on or before 26 January 2025 and the Applicant to file a replying affidavit on or before 13th February 2025. On 27th February 2025 the Rule *Nisi* was postponed and extended to 20 March 2025, which matter is now before this Court. And the issue for determination is whether the *Rule Nisi* be confirmed or discharged.

Background

[4] The Applicant is the sole proprietor of two separate businesses that consists of a takeaway and printing shop. The Respondent (Eskom) supplies Applicant with electricity. The Applicant receives invoices from Eskom on a monthly basis by way of email. The

invoices are attached as annexures "FA1" and "FA2", which balances amount to R690, 75 (six hundred ninety rand seventy-five cents) and R607, 91 (six hundred seven rand ninety-one cents).

[5] During February/March 2023, Respondent installed a new electricity meter. On 17th March 2023 the Applicant received a tax invoice of R21 009, 71 (twenty-one thousand nine rand seventy-one cents) [1]. After receipt of this invoice, the Applicant attended to the Respondent's offices to enquire about the invoice.[2]

[6] Applicant was informed that the Respondent works on estimations from July 2021 until the new meter was to be installed in March 2023. According to the Respondent, the charges from July 2021 to March 2023 were incorrect and same was corrected in March 2023.[3] On 20 March 2024, Applicant then received another tax invoice of an amount of R148,995.70 (one hundred forty-eight nine hundred ninety-five rand seventy cents). [4]

[7] The Applicant attended to the Respondent's offices in Bloemfontein on 23 May 2024 for an explanation for the increased tax invoice of 20 March 2024, but did not get a proper explanation and this matter has not been finalized however, Respondent proceeded to terminate the electricity supply to the property on 25 October 2024. Applicant consulted with his attorneys of record. Correspondence was sent by the Applicant's Attorney wherein Eskom officials responded, but the dispute was not resolved.

[8] On 11 October 2024 Applicant received a short message service (hereafter referred to as SMS) [5] that, he must submit to the Respondent, the meter readings. A second SMS followed on 14 October that the Applicant must pay R197,585 23 (one hundred ninety-seven five hundred eighty-five rand twenty-three cents), to avoid disconnection. Respondent proceeded to disconnect the electricity to the property whereupon Applicant proceeded to launch the urgent application.

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[1] Annexure 'FA3'.
[2] Record, Founding Affidavit, page 12 at par 22.1.
[3] Record, Founding Affidavit, page 12 at par 22.2.
[4] Annexure 'FA5'.
[5] Record, Founding Affidavit, page 23 at para 40; (Annexure 'FA13' to the Founding Affidavit, page 58).

Submissions

[9] Counsel on behalf of the Applicant, Advocate Groenewald, submitted that Applicant was in possession of a right to electricity supply to the property, though it was *quasi-possessio* when Applicant was unlawfully deprived of possession. Further that, the SMSs were not a proper notice as it was insufficient, had no date, place, time or determination as to when the electricity would be disconnected. Counsel further submitted that Applicant is disputing the invoices of the Respondent as well as the incorrect billing. Thus, the dispute between the parties ought to be resolved and the Rule *Nisi* be confirmed and that Applicant has met the requirements of spoliation.

[10] Counsel on behalf of the Respondent, submitted in oral argument that the Applicant has a contractual relationship of buying and the Respondent to supply electricity. Further that, Applicant knew he was liable to pay for the electricity, and Applicant cannot consume electricity for free. Counsel submitted that the notices sent via SMS, were sufficient as these were sent 14 days before the electricity was disconnected. Moreover, Counsel submitted that, the only remedy that the Respondent had particularly if a client does not pay, is to discontinue the service. Counsel indicates that Applicant failed to make payment arrangements and therefore, Applicant cannot claim unlawful dispossession as the requirements of *mandatement van spolie* were not met, and the *Rule Nisi* ought to be discharged.

Applicable Legal Principles for the *mandament van spolie*

[11] The applicable principle is that *mandament van spolie* has three characteristics. It has a possessory remedy. It is an extraordinary remedy and robust remedy and a speedy remedy. It further protects the possessor from an unlawful undisturbed possession.

[12] Counsel on behalf of the Applicant submitted in the heads of argument that a consumer's rights to the supply of electricity is so incidental and so closely connected to his or her rights to the occupation of a particular business premises it could be considered as the subject of *quasi-possesio* and therefore, spoliation of such *quasi-possesio* constitutes an act of spoliation in relation to the respective premises.

[13] Counsel on behalf of the Respondent submitted in the heads of argument that Applicant is an end user who purchases electricity for their own use and pays the respondent for the supply of such service and this constitutes a contractual relationship between the parties. A further argument advanced on behalf of the Respondent, is the relief sought by the Applicant as per the founding affidavit which is solely based on the *mandament van spolie* and not seeking a relief based on the provisions of PAJA. [6]

[14] The issue for determination is the question of a remedy being available to the Applicant based solely on the *mandament van spolie*.

[15] Based on a contractual right such as the right of access to electricity under a contract, a legal protection of this right premised by *quasi-possesio* is protected by the *mandement van spolie* however, which remedy is a remedy against unlawful deprevation.

[16] In Scoop Industries (Pty) Ltd v Langlaagte Estate and GM Co [7], the Court said the following:

"Two factors are required to find a claim for an order for the restitution of possession on an allegation of spoliation. The first is that the applicant was in possession and the second, that he has been wrongfully deprived of that possession and against his wish. It has been laid down that there must be clear proof of possession and of the illicit deprivation before an order should be granted ... It must be shown that the applicant had had free and undisturbed possession."

[17] Thus, Applicant bears the onus to prove that he was in possession of the premises to which the electricity is supplied and that Respondent deprived him of possession wrongfully and unlawfully.

[18] Applicant in the founding affidavit contends that he has been in possession of the property from which the business is run since 2014. Further that the Respondent since then, has been supplying electricity, whereupon Applicant receives the invoice on a monthly basis and has been paying the invoices. It is only after receipt of the invoice of R148,995, and Eskom disconnecting the electricity, inquiries were made by the Applicant. According to the

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[6] Respondent's Heads of Argument, page 6 at paragraph 19.
[7] 1948 (1) SA 91 (W) at 98.

Applicant, he was in a peaceful and undisturbed possession of the property when he was unlawfully deprived of possession by Eskom.

[19] The Respondent in its answering affidavit contends that s 21(5) of the Electricity Regulation Act 4 of 2006 "empowers the Respondent to disconnect the electricity supply by NRS047, and it stipulates that a client must be given 14 days' notice before such disconnection." [8]

[20] S 21(5) of the Electricity Regulation Act 4 of 2006 [9], states as follows:

21. Powers and duties of licensee

(5) A licensee may not reduce or terminate the supply of electricity to a customer, unless—

(a) the customer is insolvent;

(b) the customer has failed to honour, or refuses to enter into, an agreement for the supply of electricity; or

(c) the customer has contravened the payment conditions of that licensee.

[21] Respondent in its answering affidavits, contends that Applicant has been requested on numerous occasions to conclude an Electricity Supply Agreement (ESA), but failed to do so and this does not absolve the Applicant from liability.[10]

[22] Respondent further states that Applicant received electronic communication informing him of the pending disconnection as the invoices had not been paid and that the relationship between the Applicant and the Respondent is contractual and that m*andamus* cannot be sustainable.[11] Moreover, an explanation to the Applicant was given about the increase of the invoices, which stem from the corrected previous invoices.

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[8] Pages 66 to 67 at paragraph 11.
[9] Updated to 17 January 2023; GN 2875 in G. 47757 of 15 December 2022 (as corrected by GN 2935 in G. 47877 of 17 January 2023).
[10] Respondent's Answering Affidavit, page 72.
[11] Respondent's Answering Affidavit, page 70 at paragraph 30.

[23] In Eskom v Masinda [12], the court held that quasi possession of a right, specifically electricity supply does not enjoy protection under the *mandament* if the right is sourced in contract. Further stated by the Court was that, "in the context of a disconnection of the supply of such a service, spoliation should be refused where the right to receive it is purely personal in nature" as per consideration in the Zulu v Minister of Works, KwaZulu, & Others [13] judgment.

[24] In Makeshift 1190 (Pty) Ltd v Cilliers [14], the court decided that *mandament* is available for restoring the quasi possession of electricity supply that is driven from a contract. The Court, notes in Masinda *Supra* a confirmation that "certain rights, although incorporeal, may be the subject of quasi-possession for purposes of spoliatory relief. Although in spoliation proceedings a court is not concerned with whether or not the right has been established, the facts must show that prior to the alleged spoliation the claimant enjoyed undisturbed quasi-possession of the alleged right, in the sense of performing acts demonstrating the exercise thereof."

[25] A distinction therefore needs to be made on whether the right to the supply of electricity by the Respondent was of pure personal nature or incorporeal property capable of quasi-possession and worthy of protection.

[26] In First Rand Ltd t/a Rand Merchant Bank and Another v Scholtz NO and Others [15], Malan AJA held as follows:

"The *mandement van spolie* does not have a 'catch-all function' to protect the *quasi possessio* of all kinds of rights irrespective of their nature. In cases such as where a purported servitude is concerned the *mandement* is obviously the appropriate remedy, but not where contractual rights are in dispute or specific performance of contractual obligations is claimed: its purpose is the protection of *quasi possessio* of certain rights. It follows that the nature of the professed right, even if it need not be proved, must be determined or the right characterized to establish whether its *quasi*

[12] 2019 (5) SA 386 (SCA).
[13] 1992 (1) SA 181 (DC) at 186E-190G.
[14] 2020 (5) SA 538 (WCC) (25 May 2020).
[15] (373/06) [2006] ZASCA 99; [2006] SCA 98 (RSA); 2008 (2) SA 503 (SCA); [2007] 1 All SA 436 (SCA) (9 September 2006).

possessio is deserving of protection by the *mandement*. ... The right held in *quasi possessio* must be a 'gebruiksreg' or an incident of the possession or control of the property."

[27] Although Respondent avers that a right of supply of electricity ought to flow from a contract, I pause to mention that as it appears from the papers, no contract exists [16] between the parties therefore, consideration of no contractual rights being in dispute or specific performance of contractual obligations being claimed is made.

[28] Since 2014, Applicant has held a professed right to the use of the property for business purposes. And this case ought to be premised on purported servitude and I am of the view that *mandement* is the appropriate remedy. *Gebruiksreg* is held in *quasi possessio* arising as an incident of possession of corporeal property.

[29] Respondent has been supplying electricity to the property from which Applicant runs a business. A distinction is therefore drawn that, this is not a personal right, but a right bestowed by servitude and that spoliation finds application.

[30] In concurring with Rogers and Cloete JJ in Makeshift *Supra*, quasi possession of electricity supply was indeed held, despite in that matter having been contractual in nature, however still enjoying possessed protection. The court ruled that electricity supply used on land is an incident of possession and therefore enjoys possessory protection.

[31] Indeed, this, electricity is a basic right and it is one of the cardinal functions of the Respondent to supply it to the consumer, such as the Applicant. At the center of it all, nowhere in the papers does it appear that Applicant is refusing to pay. Applicant attempted to resolve the dispute of the invoices, but was unsuccessful. Moreover, Applicant went as far as to make arrangements to pay.

[32] Applicant approached the officials of Eskom to inquire about the increase of the invoices, but with not much assistance. There is no doubt that the service ought to be paid for, otherwise Respondent will find itself in financial trouble. However, where an end user wants clarity on his or her account, such information should be provided. And where an end

[16] Respondent's Answering Affidavit, page 72 at paragraph 40.

user wishes to make arrangements to pay, he or she should not be assisted. Applicant offered to pay R40 000, 00 (forty thousand rand) towards the account in order for the electricity to be reconnected, however this offer was denied.

The Notices

[33] Respondent contents that electronic notices were sent to the Applicant on 11 October 2024 and 14 October 2024. The Short Message Service (hereafter referred to as the SMS) of 11 October 2024 [17] was as follows:

"... To ensure accurate billing you are requested to submit your Eskom meter reading through our self-service channels. ..."

[34] Applicant indicated that he was not able to open the electricity meter, nor could he send the readings. In the above SMS, Respondent indicated that "self-readings should only be done when it is safe to do so". Respondent could therefore not have expected the Applicant to send the meter readings if such warning is made.

[35] The SMS of a 14 October 2024 [18] is as follows:

"... Please remit an amount of 197,585 .23 to avoid disconnection. NB, recon fee R1100. ..."

[36] Applicant disputes that the above were adequate notices. Respondent did not indicate as to the method to be used when sending notice nor did it indicate in its answering affidavit as to how notices must be sent, except that the notices were given electronically, and it was within 14 days. I am not satisfied that this was a proper notice of termination given to the Applicant. Respondent failed to prove that the SMS notices were sent as per the agreement or in terms of its own regulations, or in terms of the Electricity Regulations [19].

[17] Amended Index, annexure "FA13", page 58.
[18] Amended Index, annexure "FA14", page 59.
[19] Act 4 of 2006.

[37] Applicant was therefore not given proper notice. The SMSs sent were inadequate notice. Applicant was entitled to proper notice before disconnection of the electricity was done.

[38] Furthermore, the dispute involving Applicant and Respondent regarding the billing also needs to be resolved. It was submitted that the Applicant had been paying the current invoice, except the invoices that were in dispute. The duty to pay is indeed mutual and which Applicant has honored in terms of the prior invoices before the new meter was installed in 2023.

Conclusion

[39] I am satisfied that the Applicant has shown that he was *quasi possessio* to which electricity was supplied and was indeed deprived of possession unlawfully, and has therefore met the requirements of *mandament* and ought to be granted the relief sought.

[40] The order requiring Respondent to restore the supply of electricity is, in my view, an order which can properly be made as spoliatory relief. To the extent that the order by necessary implication requires of the Respondent to re-establish its supply contract with the Applicant, and there is nothing to suggest that Applicant is unwilling to do so.

[41] The issue of the notices was indeed inadequate, and the Respondent ought to have proven that the method of issuing the notices was in terms of the Electricity Regulations Act.

Costs

[42] The general rule of costs applies that, costs follow the event. Applicant attempted to resolve the issue without approaching court. Applicant has been attempting to resolve the dispute of the invoices with the Respondent since March 2023. Applicant went to the offices of the Respondent, but was not assisted. Applicant's legal representatives sent communication to the Respondent with little success. Had the Respondent resolved the issue, Applicant would not have approached court on an urgent basis. Thus, the Respondent ought to be ordered to pay the costs of the application.

[43] I considered attorney client costs. However, there is no particular ground that qualifies a punitive cost order. Respondent was entitled to oppose the matter. Respondent is an entity that deals with public funds and cannot be burdened with a punitive cost order.

Order

[44] In the result, the following order is made:

The Rule Nisi is confirmed with costs on scale B.

[redacted]

CHESIWE J

Appearances

On behalf of the Plaintiff: W J Groenewald

Instructed by: Bezuidenhouts Inc.

On behalf of the Defendant: T M Ngubeni

Instructed by: Raynardt & Associates