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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

CASE NO: 2640/2025

In the matter between:

SIYABULELA MAPOMPO

Applicant

and

**KING SABATA DALINDYEBO LOCAL
MUNICIPALITY**

1st Respondent

**THE MUNICIPAL MANAGER: NGAMELA PAKADE
KING SABATA DALINDYEBO LOCAL MUNICIPALITY**

2nd Respondent

REASONS FOR THE URGENT INTERIM ORDER

RUSI J

[1] This matter served before me on 03 June 2025 as one of thirteen urgent applications that were on the Motion Court roll of that day. In it the applicant sought, on urgent basis, a rule nisi in which the respondents were called upon to show cause why their conduct of terminating the electricity supply to the premises situated at No. [...] Q[...] Place, Mdlekeza in Ngangelizwe Township, Mthatha (the premises), on 26 May 2025, should not be declared unlawful.

[2] As an adjunct to the rule nisi, the applicant sought an interim order directing the respondents to restore the electricity supply to the premises forthwith and interdicting them from charging the reconnection fee, and other ancillary relief.

[3] The respondents having opposed the application, the applicant sought and was granted an indulgence to file his replying affidavit by no later than 05 June 2025 at noon. I directed that I would hear counsel 06 June 2025.

[4] When the matter served before me on 06 June 2025, it had become a fully opposed application. An application was also made to strike out a portion of the applicant's founding affidavit, but that application was abandoned on the date of hearing. Even though the application was fully opposed, I directed that I would only determine the interim relief that the applicant sought.

[5] After reading the papers and documents filed of record and hearing submissions by counsel, I granted the rule nisi sought by the applicant, returnable on 24 June 2025 with the adjunct of the aforementioned interim order. On 10 June 2025, a request was made on behalf of the respondents, for written reasons for the order that I made. What follows are those reasons.

The applicant's case

[6] The applicant stated, in his founding papers, as the basis for bringing the application on urgent basis, that the supply of electricity to the premises was unlawfully

terminated on 26 May 2025 by the respondents without a pre-termination notice. He further stated that in so doing, the first respondent breached its Credit Control and Debt Collection Policy (the Policy) which provides, in clause 19, as follows:

19. Disconnection or discontinuation of supply

- (1) An account rendered to a customer by the municipality in respect of rates or municipal services, including the collection and disposal of refuse, shall be paid by the due date.
- (2) The municipality must permit the customer to make representations prior to the disconnection or discontinuation of the supply of electricity, unless -
 - (a) other users will be prejudiced;
 - (b) there is an emergency situation; or
 - (c) the customer has interfered with a limited, disconnected or discontinued electricity supply.
- (3) If the customer fails to pay any account within a period of fourteen (14) days after the expiry of the due date, then -
 - (a) without further notice, the municipality may disconnect or discontinue the supply of electricity to the immovable property in question; and
 - (b) the chief financial officer or any duly authorized person may instruct attorneys to recover the outstanding amounts.
- (4) The disconnection or discontinuation of the supply of electricity shall be effected in the manner that is customarily used or by taking such reasonable and lawful steps as may be necessary.

[7] As a background to the alleged unlawful termination, the applicant confirmed that he owes the first respondent a debt in the sum of R44 034.65 for municipal rates and services. A portion of this debt is in respect of an alleged illegal connection. On arrival at the premises on 26 May 2025, he found a disconnection order dated 23 May 2025 and the supply of electricity to the property had been terminated. In the disconnection order he was informed of the first respondent's decision to terminate the electricity supply to

the premises following his failure to pay the arrears on his account. It further called him upon to pay the debt together with the reconnection fee of R1 067.17.

[8] The applicant further stated that he has been making sporadic payments towards his debt. He denied any illegal connection of electricity but stated that he has been making payments towards the said illegal connection bill too under protest. He further contended that the first respondents' unlawful termination of the supply of electricity to the premises was done despite his endeavours to settle his debt from his monthly emoluments of R6 000.00.

[9] According to the applicant, he never received the pre-termination notice that clause 19(2) of the first respondent's credit policy requires. For this reason, so the applicant said, the termination of the electricity supply to the premises was unlawful. He further alleged that this caused him and his family harm in the form of exposing them to health and security risk; and also affected his two minor children's schooling at the crucial time of examinations and it violated his right to be supplied with electricity. He sought legal assistance on 27 May 2025, and that culminated in the present application.

[10] It was the applicant's evidence further, that, if the harm that the termination of electricity caused is allowed to continue, he would not obtain substantial redress at the hearing of the matter in due course.

[11] In seeking the interim interdict, he alleged that the continued deprivation of his right to electricity and the applicant's disregard of the pre-termination notice requirement grounded his entitlement to the relief he sought as the unlawful termination adversely affects his livelihood and the minor child's schooling. He further alleged that the continuous harm caused to him (as at the time of the application) could only be brought to an end through this Court's intervention, hence the application was his last resort to protect his rights and those of the other occupants of the property.

[12] The applicant further stated that he has been in peaceful undisturbed enjoyment and possession of the electricity until it was disconnected on 26 May 2025 and the respondents resorted to self-help by unlawfully terminating the electricity supply to the premises.

The respondents' case

[13] In countering the applicant's case, first on urgency, the respondents stated that the urgency with which the application was brought was self-created in that the dispute regarding his municipal services account has continued for a period of two years.

[14] On the merits of the application, the respondents denied that the electricity supply to the applicant's residential property was unlawfully terminated, stating that he was duly served with a pre-termination notice dated 29 April 2025 (the notice) in the same way that the disconnection order that he received was served on him. While admitting the payments that the applicant had previously made towards his debt, the respondents simultaneously stated that the said debt resulted from the applicant's act of illegally connecting electricity after it was terminated.

[15] The respondents further alleged that the disconnection order was issued and served on the applicant upon the expiry of the 14-day period that he was afforded in the notice to pay his debt or make representations or payment arrangements. In this regard, the respondents filed an affidavit deposed to by Sive Kamba in which the latter confirmed service of the pre-termination notice by placing it in the mailbox which was 'just near the gate of the property.' The respondents further contended that the hardship that the applicant suffered was 'an obvious' consequence of not having electricity supply and that he had an option of paying the debt owed in order to prevent that harm.

[16] According to the respondents, the applicant failed to establish a prima facie right that would entitle him to the interdict that he sought. It was the respondents' evidence further that the applicant had alternative remedies at his disposal in the form of using

other sources of energy and paying the arrears on his account. They went on to state that the hardship that he complains of is not sufficient to ground the interdict that he seeks, and that it was in fact 'a reward that he earned for his failure over the years to pay his debt.' It further contended that the applicant's failure to pay for services and rates caused it financial harm.

[17] In his replying affidavit, the applicant denied that he was served with the pre-termination notice at all or in the manner alleged by the respondents, and annexed photographs depicting the outer parameters of his residential property, which on the face of them evinced that no mailbox is affixed to the property. He further denied that there was no one at the property which, on the respondents' version, necessitated the placing of the notice in the said mailbox. Further according to the applicant, his cousin Mr Lizweletu Matiya, was present on the property on 26 May 2025, and no attempt was made to hand the notice to him personally. A confirmatory affidavit deposed to by Mr Lizweletu Matiya was filed together with the applicant's replying affidavit, in which he confirms what the applicant stated concerning him.

The parties' submissions

[18] Mr *Matotie* who appeared for the applicant submitted, principally, that the application is founded on the conduct of the municipality in terminating the electricity supply without the requisite pre-termination notice, in violation of its Policy. He further submitted that the application was further impelled by the adverse effects that the said conduct had on the right of the applicant to be supplied with the electricity and his right to be given notice before the adverse decision was taken.

[19] It was Mr *Matotie's* submission further, that the applicant cannot be expected to continuously suffer as a result of the first respondent's unlawful conduct. On these bases, so the submission went, the applicant has made out a case for this Court's intervention on urgent basis, he has established a prima facie right, that he has no other

alternative relief in the circumstances, and that the balance of convenience favoured the grant of the interdict sought.

[20] On behalf of the respondents, Mr *Madokwe* persisted with the contention that no case has been made for the urgency with which the application was brought as the applicant had always known of his debt to the municipality. In his view the urgency was self-created. With reference to the unreported decision of Nepgen J dated July 1999 in *Sean Harold Rivers v The Municipality of the City of Port Elizabeth*,¹ Mr *Madokwe* further persisted with the respondents' contention that the applicant has failed to establish his entitlement to the interdict that he sought as he had always had the option of paying the debt owed to the municipality and thereby avert the adverse effects that he now complains of. In *Rivers*, the learned Judge dismissed the application that the applicant had brought having found that there was no basis for the court's intervention on urgent basis and that the application was an abuse of court process.

[21] Mr *Madokwe* submitted that this application ought to suffer the same fate. He took the view that the first respondent is entitled to implement its Policy as it did in the present case. He made an assertion that instead of making payments towards his debt to the first respondent, the applicant employed two counsel to present his case in court. This, Mr *Madokwe* said in circumstances where the respondents themselves were represented by two counsel, and despite the fact that the Constitution of the land allows a litigant the right to approach courts of law for appropriate relief and to have legal representation in order to vindicate a right that is alleged to have been infringed. I can only add that this was a misguided and rather unfortunate assertion by an officer of the court.

[22] Issue was also taken by Mr *Madokwe* with the fact that the applicant demanded the restoration of the electricity supply by way of mandament van spolie. In this regard

¹ *Sean Harold Rivers v The Municipality of the City of Port Elizabeth*, unreported decision dated 21 July 1999, under case number 1943/99 in the then South Eastern Cape Local Division ('Rivers').

he submitted that on the authority of *Eskom Holdings SOC Limited v Masinda*,² such a cause of action is bad in law particularly since in the present case it is used to assert a mere personal right having nothing to do with the incident of possession of property.

[23] In reply, Mr *Matotie* submitted that the applicant's cause of action was not founded on spoliation, but principally on the first respondent's failure to give him 14 days' notice before the termination of the electricity supply to the premises, together with the adverse effects that the respondents' conduct in so doing had on his rights.

[24] I must state that in his founding affidavit, the applicant pleaded, without more, that he had previously been in peaceful and undisturbed possession of the electricity until the termination of its supply on 26 May 2025. His cause of action as pleaded would indeed not be sufficient to found the possessory relief of mandament van spolie to the extent that he sought to assert a personal right flowing from the agreement he has with the first respondent to be supplied with electricity.

[25] It is unsurprising that Mr *Matotie* made no submissions in relation to the applicant's cause of action based on it and only persisted with the applicant's contention that the supply of electricity to the premises was terminated without the requisite notice resulting in his several other already mentioned rights being violated. Therefore, I need not deal with the applicant's attempt to assert his rights of possession in relation to the supply of electricity to the premises by pleading, without more, the elements of mandament van spolie.

The law

[26] First, on the issue of urgency, it is trite that a determination of urgency in application proceedings entails the question whether the applicant will be afforded

² *Eskom Holdings SOC Limited v Masinda* (1225/2018) [2019] ZASCA 98; 2019 (5) SA 386 (SCA) (18 June 2019).

substantial redress at the hearing of the matter in due course.³ The facts of each case determine whether the applicant will be afforded substantial redress at the hearing in due course. Uniform Rule 6(12) provides:

“(a) In urgent applications the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as to it seems meet.

(b) In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.”

[27] It has been held that where a matter is of such a nature that the court is required to address allegations pertaining to irregularities and illegality within the realms of local, provincial or national governance, but specific allegations relating to urgency are not made in the founding affidavit, it remains open to a court to assess the facts placed before it in the founding affidavit to determine whether or not the matter indeed is urgent. The court has a wide discretion.⁴

[28] An applicant for an interim interdict must establish a prima facie right which he seeks to protect by means of the interdict; actual injury or a well-grounded apprehension of injury if the interdict sought is not granted; that there is no other alternative appropriate relief available to him; and that the balance of convenience favours the granting of the interim relief. This is settled law.⁵ While the applicant is not required to prove that on a balance of probabilities of undisputed facts he will suffer

³*Luna Meubels Vevaardigers (Edms) BPK v Makin (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W); *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

⁴ *Oliver Reginald Tambo District Municipality v Independent Electoral Commission and Others* (1995/2021) [2021] ZAECHMHC 31 (24 August 2021), para 11.

⁵ *Setlogelo v Setlogelo* 1914 AD 221 at 227; see also *Dyalo v Mnquma Local Municipality and Another* (8490/2016) [2016] ZAECHMHC 36.

harm, he must show that objectively his fear of harm is well grounded in the sense that it is reasonable to apprehend that injury will result.⁶

[29] In *Webster v Mitchell*⁷ the following was said:

‘In the grant of a temporary interdict, apart from prejudice involved, the first question for the Court ... is whether, if interim protection is given, the applicant could ever obtain the rights he seeks to protect. Prima facie that has to be shown. The use of the phrase “prima facie established though open to some doubt” indicates...that more is required than merely to look at the allegations of the applicant, but something short of a weighing up of the probabilities of conflicting versions is required. The proper manner of approach...is to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief...The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown on the case of the applicant he could not succeed in obtaining temporary relief...But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief...the position of the respondent is protected because...the test whether or not temporary relief is to be granted is the harm which will be done...’

[30] More recently, in *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and Others*⁸, it was held that proof of the existence of a certain

⁶ *Free State Gold Areas Ltd v Merriespruit (Orange Free State) Gold Mining Co Ltd* 1961 (2) SA 505 (W) at 515; *Minister of Law and Order and Others v Nordien and Another* 1987 (2) 894 (AD) at 896F-I and all authorities cited therein; *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* (462/07) [2008] ZASCA 78; [2008] 4 All SA 225 (SCA); 2008 (5) SA 339 (SCA) (30 May 2008), para 21.

⁷ *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189-1190.

right though subject to some doubt is sufficient to ground an interim interdict. I turn to apply these principles to the facts of this application.

Discussion

[31] I must first deal with the issue of urgency that the applicant contends for. The adverse effects that the applicant has suffered as a result of the termination of the electricity by the first respondent have not been disputed except for the respondents' contention that they are not sufficient in and by themselves to ground urgency and the interim relief that the applicant seeks and are in fact 'his reward for failing to pay the arrears on his account'. Quite tellingly, this is the respondents' debt collection strategy. Subject to what I say below, the first is entitled to implement it.

[32] It is my finding, however, that the applicant made out a case for the hearing of the application on urgent basis, for he could not be expected to continue suffering the adverse effects of the first respondent's alleged unlawful conduct while the matter awaits determination at a hearing in due course.

[33] On the merits of the application, it is convenient to first dispose of Mr *Madokwe's* reliance on the unreported judgement of Neppen J in *Rivers* as authority for the contention that the applicant did not make out a case for the mandamus that he sought. The facts of the present case are distinguishable from those in *Rivers*. Neppen J said the following regarding the complaint of the applicant in that case about the respondent's failure to give her the required pre-termination notice:

'For the purposes of this judgment I am prepared to accept that the respondent was not entitled to disconnect the electricity without giving the applicant 14 days' notice. The position is, however, that the very relief that the applicant seeks in this application could be obtained by him paying the amount of the arrears and

⁸ *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and Others* (CCT 44/22) [2022] ZACC 44; 2023 (5) BCLR 527 (CC); 2023 (4) SA 325 (CC) (23 December 2022) ('Vaal River Development'), at para 293.

thereby having his electricity supply reconnected. . . . Nowhere in the papers is it even suggested in any way that he is not able to pay the amount due or that he would have any difficulty in doing so. . . .'⁹

[34] In the present case, it is common cause between the parties that the applicant has been making sporadic payments towards his debt to the first respondent, even though according to the first respondent those payments were in respect of a debt that resulted from an act of illegal connection of electricity that he previously committed. Furthermore, the applicant has stated that due to limited resources (a salary of R6 000.00 on his version), he is unable to settle the debt he owes to the first respondent in full.

[35] Therefore, Mr *Madokwe's* reliance on *Rivers* was misplaced. In any event, the Constitutional Court, in *Vaal River Development*,¹⁰ emphasized the importance of notice and an opportunity to make representations, which it held must not be denied even where it is thought the affected person cannot possibly have anything to say or that whatever they may say is not likely to influence the decision. As already mentioned, the applicant stated that the respondents' conduct adversely affected his livelihood, and security. In so far as the applicant's minor child's schooling is concerned, it adversely affected the right to education which the Constitution equally protects.

[36] Furthermore, the applicant asserted his right to a fair procedure, viz, being afforded notice before a decision is taken which adversely affects his rights. That he has such a right was not disputed by the respondents. Their contention was that the applicant was served with the said notice in the manner aforesaid. Since on the face of the notice there is no proof of its service, I have no reason to reject the applicant's version which suggests that as there is no mailbox affixed next to the property, and there could not have been service of the notice in the manner alleged by the respondents.

⁹ Id, at para 20.

¹⁰ Id para 207.

[38] Proof of a right (as opposed to proof of the existence of a certain right)¹¹, though at the level of interim relief it may be “open to some doubt”, is sufficient to ground an interim interdict pending the determination of the final relief. This was affirmed by the Constitutional Court in *Vaal River Development*.¹² The applicant established a prima facie right which is worthy of preservation pending the finalization of the application. He established that the respondents’ conduct caused him harm which had been continuing at the time of the application and that he reasonably apprehended that such harm will continue if not brought to an end by means of an interdict.

[39] Lastly, I did not understand the first respondent’s case to be that the financial hardship that is caused by the applicant’s non-payment of the amounts due for services would, pending the final determination of the application, cause its total collapse. On the respondents’ own version, the applicant had the option, inter alia, to make acceptable arrangements for the payment of his debt for the supply of electricity to the premises to be restored. Put another way, on its own showing, the first respondent did not absolutely require full payment of the debt for it to restore the supply of electricity to the premises. Therefore, the balance of convenience favoured the grant of the interim interdict pending a full ventilation of the issues at the hearing in due course.

[40] The applicant’s version, which the respondents did not seriously dispute, was that in as much as he has been making sporadic payments towards the debt he owes to the first respondent, he is unable to pay the full amount of the debt due to the insufficiency of his income. If I accept this version, as I must, it cannot, therefore, be said that the applicant had an alternative satisfactory remedy available to protect the rights that he asserted in the present application.

[41] For all the foregoing reasons, I granted the following order:

¹¹ Emphasis intended.

¹² At para 293.

1. The applicant is hereby granted leave to bring this application as one of urgency, and the normal Rules as to form and service are dispensed with.
2. A rule nisi is hereby issued calling upon the respondents to show cause, if any, on Tuesday 24 June 2025, at 09h30 am, or soon thereafter as the matter may be heard, why the following order should not be made final:
 - 2.1 Declaring the respondents' conduct of terminating or disconnecting the electricity supply to the premises situated at No. [...] Q[...] Place, Mdlekeza, Ngangelizwe Township, Mthatha on 26 May 2025, unlawful.
 - 2.2 That the respondents be ordered to reconnect the electricity supply to the premises referred to in paragraph 2.1 forthwith.
 - 2.3 Interdicting and restraining the respondents from charging the reconnection fee.
 - 2.4 That the respondents be ordered to pay the costs of the application on scale B, jointly and severally, the one paying the other to be absolved.
3. That paragraph 2.2 and 2.3 shall operate as interim relief pending the finalization of this application.

L. RUSI
JUDGE OF THE HIGH COURT

Appearances:

For the applicants : *Adv. L Matotie*
Adv. N Gwele
Instructed by : L Tyali Attorneys
c/o Majokweni Attorneys, Mthatha

For the first and second

respondents : *Adv. V Madokwe*
Adv. H Miya

Instructed by : T. L. Luzipho Attorneys Mthatha

Date heard : 06 June 2025

Date reasons requested : 10 June 2025

Date reasons provided : 27 June 2025