

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 15119/2025

Date of Hearing:	23 July 2025
Date of Judgment?	3 September 2025
Reportable?	No
Of interest to other judges?	No

In the matter between:

CUPPO (PTY) LTD	Applicant
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and

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY	First Respondent
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CITY POWER (SOC) LTD	Second Respondent
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BRINK, FLOYD N.O.	Third Respondent
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JUDGMENT

Mc Aslin AJ:

1. In this matter the Applicant seeks to hold the First and Third Respondents liable for the contempt of two court orders, with varied relief being sought against all the respondents in the event of the Applicant succeeding in its contempt application.
2. The background to the application is not genuinely in dispute and can be set out, in brief terms, as follows:
 - 2.1. The Applicant owns property situated at 41 Central Road in Forsdburg, Johannesburg, which it rents out for use by a medical doctor and by the owner of a hair salon and beauty parlour.
 - 2.2. According to allegations in a pending action between *inter-alia* the Applicant and the First Respondent under case number 5812/2016, the software system used by the First Respondent to maintain its data and records of the consumption of water and electricity by consumers of those utilities, including the Applicant, was changed in 2009.
 - 2.3. In the process of that change the Applicant alleges that the meter reading for the consumption of water on its property was incorrectly recorded, which resulted in a vastly inflated account thereafter.
 - 2.4. The evidence shows that on 29 August 2009 the Applicant was billed an amount of R1 514 962.05 for the consumption of water on the property over the period 21 April to 5 August 2009.
 - 2.5. The amount of R1 514 962.05 is grossly disproportionate to the Applicant's water consumption on the property as reflected on the various municipal accounts annexed to the affidavits from both parties in this application and, on the face of it, the charge appears to be a glaring error.
 - 2.6. Indeed, on 2 September 2009, and shortly after levying the charge of R1 514 962.05, the First Respondent itself acknowledged the error in a letter to the Applicant wherein it stated that “ ... *we have analysed your statement for the month and we have noticed some discrepancy with regard to the water amount billed. We have requested an investigation into the discrepancy and a*

correct statement will be sent to you as soon as the data has been verified and corrected ... we apologise for the inconvenience. ... ”

- 2.7. The Applicant refers to this charge in its papers as “the Erroneous Debit”. I find the description appropriate and convenient, and so I adopt the same description in the balance of this judgment.
- 2.8. Despite its undertaking to correct the Erroneous Debit the First Respondent did not do so and continued to include the amount in its monthly accounts to the Applicant.
- 2.9. On 21 April 2015 the First Respondent terminated the supply of electricity to the Applicant’s property on the basis that its account was in arrears. However, but for the Erroneous Debit the Applicant’s account would not have been in arrears.
- 2.10. The Applicant approached the court for urgent relief and on 24 April 2015 an order was granted by Twala J and by agreement between the parties. The order directed the First Respondent to restore the supply of electricity to the property and interdicted the First Respondent *“from terminating the supply of municipal services ... to the property”* provided the Applicant continued to pay the current monthly charges on its account and pending the institution of an action by the Applicant for a declarator in relation to the Erroneous Debit.
- 2.11. The First Respondent restored the supply of electricity to the Applicant’s property after the issue of the order by Twala J.
- 2.12. The order of Twala J required the action for declaratory relief to be instituted within 15 court days, and it is common cause that the time period was not met and that the action was only instituted on 22 February 2016. In my view, nothing turns on this issue because the failure to institute the action within the stated time was subsequently negated by the order of Moorcroft J, to which I now turn.
- 2.13. I should add, as an aside, that the First Respondent’s defence in the action was struck out and that the Applicant has applied for default judgment in the action,

which I was told during argument had been enrolled for hearing on 4 August 2025. I do not know the outcome of that hearing.

- 2.14. Returning to the historical narrative, on 1 October 2023 the First Respondent again terminated the supply of electricity to the Applicant's property because the Applicant's account was ostensibly in arrears.
 - 2.15. This prompted another urgent court application and on 23 October 2023 Moorcroft AJ ordered the First Respondent to comply with the order of Twala J and interdicted the First Respondent from "*threatening to terminate or suspend the municipal services ... to the property*" pending the finalisation of the action instituted for the declaratory relief under case number 5812/2016.
 - 2.16. The First Respondent restored the supply of electricity to the Applicant's property following the issue of the order of Moorcroft AJ, but it is not clear from the evidence when that was done.
 - 2.17. Be that as it may, the day after Moorcroft AJ issued his order the First Respondent terminated the supply of water to the Applicant's property, once again, for the reason that the Applicant's account was ostensibly in arrears.
 - 2.18. The Applicant was accordingly compelled to approach the urgent court for a third time, and on 27 October 2023 Adams J ordered the First Respondent to restore the supply of water to the property by 10h00 on 28 October 2023, but it was only done on 30 October 2023.
 - 2.19. On 11 August 2024 the supply of electricity to the Applicant's property was again terminated and the entire electrical meter was removed, which prompted the current application.
3. Prior to this matter being heard certain material events took place. Firstly, the supply of electricity to the Applicant's property was restored on 13 August 2024, but the meter to measure the consumption of electricity was not returned. That remained the position when the replying affidavit was deposed to on 2 September 2024. However, I was told during the argument of the matter that an electricity meter had in the interim been installed at the Applicant's property.

4. The second material event is that the Third Respondent was obliged to vacate the office of City Manager by an order of this court. The Applicant sought to address the event by giving notice on 2 July 2025 in terms of Uniform Rule 15(2) for the substitution of Mr Tshepo Makola, who is currently the acting City Manager of the First Respondent, as the Third Respondent in the application.
5. The substantive relief that the Applicant seeks can be summarised as follows:
 - 5.1. In the first instance, it asks that the First and Third Respondents be declared to be in contempt of the order of Twala J and the order of Moorcroft AJ.
 - 5.2. Then it asks that the First Respondent and/or the Second Respondent and/or the Third Respondent restore the supply of electricity forthwith, and if they fail to do so within 5 hours of an order compelling them so to do, that the First Respondent be ordered to pay a fine calculated at R10 000.00 per hour for every hour of delay or in an amount determined by the court.
 - 5.3. Lastly, the Applicant seeks the committal to imprisonment of the Third Respondent for a period of 14 days or a period determined by the court, which committal must be suspended pending the finalisation of the action concerning the Erroneous Debit and on condition that there is compliance with the order of Justices Twala and Moorcroft.
6. In my view most of the relief sought by the Applicant is not competent or it has been rendered academic by intervening events.
7. The Second Respondent seems to have been cited because it appears to be the entity that was responsible for returning the electricity meter. Since that has already taken place, there is no relief that can be granted against the Second Respondent.
8. In similar vein, because the supply of electricity has been restored to the Applicant's property the condition for the levying of a monetary fine against the First Respondent has fallen away, and so that relief is no longer competent.
9. As far as the committal of the Third Respondent to a term of imprisonment is concerned, that relief was not competent from the outset.

10. I say that because in the matter of Matjhabeng Local Municipality v Eskom Holdings Ltd and Others 2018 (1) SA 1 (CC) the Constitutional Court stated the following: “[103] *Bearing in mind that the persons targeted were the officials concerned – the municipal manager and Commissioner in their official capacities – the non-joinder in the circumstances of these cases is thus fatal. Both [the municipal manager] and [the Commissioner] should thus have been cited in their personal capacities – by name – and not in their nominal capacities.*”
11. Earlier in the judgment Nkabinde ADCJ explained that the necessity to join the individual in his/her personal capacity is “[92] ... *to ensure that the person in question knows of the complaint so that they can enlist counsel, gather evidence in support of their position, and prepare themselves adequately in the knowledge that there are personal consequences – including a penalty of committal – for their non-compliance. All of these entitlements are fundamental to ensuring that potential contemnors’ rights to freedom and security of the person are, in the end, not arbitrarily deprived.*”
12. In this matter both Mr Brink and Mr Makola were cited in their nominal capacities as the affected officials within the First Respondent, but they were never cited in their personal capacities. Consequently, their committal to a term of imprisonment would be incompetent in the absence of their joinder to the proceedings in their personal capacities.
13. As I see it the only substantive relief that remains alive for consideration is a portion of the order sought in prayer 2 viz. a declarator that the First Respondent was in contempt of the orders of Justices Twala and Moorcroft. That the electrical supply has been restored to the Applicant’s property since the institution of the application, does not preclude me from determining whether the First Respondent was in contempt of court prior to the institution of the application.
14. In that regard, it is now well established in our law that an applicant in contempt proceedings must prove the existence of the court order, service or notice of the order and the wilful and *mala fide* non-compliance with the order of court. However, “*once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to the wilfulness and mala fides*”.¹

¹ Fakie NO v CCIL Systems (Pty) Ltd 2006 (4) SA 326 (SCA) at [42]

15. The Constitutional Court dealt with the applicable onus in the Matjh Beng matter and concluded that the “[67] ... *the standard of proof must be applied in accordance with the purpose sought to be achieved On the other hand, there are civil contempt remedies – for example, declaratory relief ... - that do not have the consequence of depriving an individual of their right to freedom and security of the person. ... Here, and I stress, the civil standard of proof – a balance of probabilities – applies.*” Consequently, I will apply the civil standard of proof in determining whether the Applicant is entitled to the declaratory order that it seeks.
16. In this matter the existence of the court orders is not in dispute. Nor is the fact that the First Respondent had notice or knew of the orders, since they were part of the application that was served on the First Respondent when Adams J handed down his order on 27 October 2023. There is an attempt by the First Respondent to dispute its non-compliance with the orders of Justices Twala and Moorcroft, but in my view no genuine dispute is raised.
17. In that regard, it is not disputed that the supply of electricity to the Applicant’s property was terminated on 11 August 2024, but the First Respondent argues *inter-alia* that it was not responsible for the termination, which immediately begs the question as to who else might have terminated the supply of electricity?
18. The founding affidavit sets out the observations of an eyewitness, Mr Ndumiso Khumalo, who deposed to a confirmatory affidavit and who is employed by a third party as a security guard at the Applicant’s property. Mr Khumalo says that on 11 August 2024 he observed that certain individuals arrived at the premises in an unmarked vehicle wearing clothing that bore no insignia. He says he saw how they used a key to access the metal box housing the electricity meter and cables, and how they proceeded to disconnect the cables and remove the meter, which they then placed in their vehicle when they left the property.
19. The First Respondent denies this evidence on the basis that its personnel do not drive around in unmarked vehicles whilst wearing clothing that does not carry the insignia of the Second Respondent. However, this denial is undermined by the fact that when the supply of electricity was restored to the premises on 13 August 2024, it was done by individuals driving in an unmarked vehicle and wearing clothing that did not identify them as being the personnel of the Second Respondent. Nevertheless, they identified

themselves to the same Mr Khumalo as being sent by the Second Respondent to reconnect the supply of electricity.

20. The First Respondent also relies on a communication which I was told in argument was written by a legal advisor in the employ of the First Respondent and who deposed to the answering affidavit viz. Mr Tuwani Ngwana. The communication is quoted in the answering affidavit as follows:

“Good day Mildred

Kindly note that the above account was not part of our disconnections, hence we did not disconnect and don’t know who disconnected the address. There is a court order to reconnect, however we have managed to do so but without an electricity meter. May you kindly assist and have the meter installed please.”

21. A copy of the communication is not annexed to the answering affidavit. However it is annexed to the replying affidavit, which shows it to have been an e-mail written by Mr Allister Carelse of the Second Respondent, and not Mr Ngwana as I was told in argument. I have not been able to establish who the named “Mildred” is, but it seems the e-mail was a response to a request to reconnect the supply of electricity to the Applicant’s property.
22. Taking the communication in isolation as the First Respondent does, makes it difficult for me to make any sense of it. The process of disconnecting electricity from a consumer’s premises is not explained by the First Respondent and so I do not know, for example, whether there are separate teams within the Second Respondent that attend to disconnections and so Mr Carelse was only speaking for his team. It is also not known whether the Second Respondent uses sub-contractors to disconnect electricity and perhaps one of them was responsible for the disconnection.
23. Mr Sithole, who appeared for the First and Second Respondents, was alive to this lacuna in the evidence and so tried to introduce evidence of the disconnection process during argument. That, of course, is not the way to adduce evidence in a court and I cannot have regard to such evidence.
24. Not only has the First Respondent addressed this important issue in a vague manner, but it has also done so in a contradictory fashion. Despite denying that the First

Respondent was responsible for the termination of the electricity supply, Mr Ngwana also says the following in his answering affidavit:

“99.3 I repeat the fact that the Municipality and its companies have attended to the Applicant’s property to disconnect the services applied to the Applicant.”

and

“99.10 Save for the confirmation that the Municipality terminated the services, it cannot be contended that the Applicant has made out a case for the granting of the relief sought.”

25. Cause for further disquiet with how the First Respondent addresses this important issue is the fact that a central theme running throughout Mr Ngwana’s answering affidavit is that the First Respondent is empowered through its by-laws to terminate the supply of electricity where a consumer does not pay for its consumption. Mr Ngwana, quite surprisingly, denies the existence of the Erroneous Debit and all the annexures to his answering affidavit are intended to establish that the Applicant’s account is in arrears with the result that the First Respondent was justified in terminating the supply of electricity to the Applicant’s property.
26. I will address Mr Ngwana’s views on the status of the Applicant’s account in due course. For present purposes, however, it should readily be appreciated that if the First Respondent was not responsible for the termination of the electricity on 11 August 2024, then there would be no reason for Mr Ngwana to justify the termination of the service and all the evidence on the status of the Applicant’s account should be wholly irrelevant. The fact that Mr Ngwana dedicates a substantial portion of his answering affidavit to the issue of whether the First Respondent was justified in terms of its by-laws to terminate the supply of electricity to the Applicant’s property, suggests quite strongly that the First Respondent was responsible for the termination.
27. In my view this is not a matter where a dispute of fact has arisen in the traditional sense i.e. where an allegation by the applicant is disputed by the respondent on a credible basis. Rather, I am presented with a situation where the allegation by the Applicant that the termination of the supply of electricity was done by the First Respondent is both admitted and denied by the First Respondent. In that event, there cannot be a *bona fide*

dispute of fact and the allegation by the Applicant must be accepted. Once that is so, the First Respondent's failure to comply with the orders of Justices Twala and Moorcroft is established.

28. I turn now to consider whether the First Respondent has dispelled the evidential burden on it of establishing that its non-compliance with the orders of Justices Twala and Moorcroft was not wilful and *mala fide*.
29. The first point to consider flows from what I have just addressed viz. the fact that the First Respondent has seen fit to both admit and deny its failure to comply with the orders of court. Such contradictory behaviour tends to suggest that the First Respondent cannot be *bona fide* in its approach to the matter.
30. As I have already mentioned, Mr Ngwana attempts to justify the termination of the electricity supply to the Applicant's property on the basis that the Applicant's account was in arrears and so the First Respondent was entitled, in terms of its by-laws, to terminate the supply of electricity.
31. On a plain reading thereof, the orders of Twala J and Moorcroft AJ interdicted the First Respondent from terminating the supply of electricity to the Applicant's property pending the finalisation of the action that will decide the validity of the Erroneous Debit, and provided the Applicant continues to pay the current monthly charges on its account.
32. The account that was issued to the Applicant before the termination of the electricity supply on 11 August 2024 was the account for July 2024. That account shows an outstanding amount of R1 424 505.40. However, if the amount of R1 514 962.05 for the Erroneous Debit is taken into account, then it is clear that the Applicant is not in arrears with its account. If anything, the Applicant's account with the First Respondent is in credit.
33. In what can only be described as somewhat of a farce, Mr Ngwana attempts to show in his answering affidavit that "*the Applicant pays what it perceives to be [an] appropriate amount*" and does not pay for all the service utilities that it consumes, with the result that "*the Municipality is therefore authorised to implement its by-laws as the Applicant remains liable and indebted to the Municipality*".

34. I say that the exercise conducted by Mr Ngwana is farcical because it fails to take into account the very documents that are relied on by Mr Ngwana. For example, Mr Ngwana claims that the Applicant currently consumes utility services in an amount of R13 000.00 to R17 000.00 per month but only pays less than R10 000.00 per month. However, the tax invoices that are annexed to Mr Ngwana's answering affidavit demonstrate that the Applicant never paid less than R10 000.00 per month. In addition, the payment history going back to 2022, which is also annexed to the answering affidavit, shows that the Applicant paid an average amount in excess of R17 500.00 per month. Accordingly, the very documents relied on by Mr Ngwana belie his assertion that the Applicant fails to pay the current monthly charges for the utilities that it consumes.

35. Mr Ngwana also makes startling statements in his answering affidavit. For example, he claims that the Erroneous Debit was contrived by the Applicant and, despite there being a pending court action in regard thereto, that the dispute is being used by the Applicant to abuse the court process and prevent the First Respondent from implementing its by-laws in the collection of debts owed to it by the Applicant. According to Mr Ngwana, the Applicant must pay the Erroneous Debit under protest and then sue the First Respondent to recover whatever might be due to the Applicant. The answering affidavit is replete with such sentiments, and they can only be described as the ramblings of a man that has absolutely no appreciation for, or understanding of, the objective facts of the matter.

36. The position then is that the First Respondent has sought to explain its termination of the electrical supply on 11 August 2024 on a basis that is far-fetched and entirely divorced from the facts. As a result, the First Respondent cannot be taken to have acquitted itself of the evidential burden to rebut the inference that its non-compliance with the orders of Justices Twala and Moorcroft was both wilful and *mala fide*.

37. It was argued by the First Respondent that the fact that the electrical supply was reinstated negates any inference of wilfulness and *mala fides*. To my mind, however, the reinstatement confirms the *mala fides* of the First Respondent. If the First Respondent is sincere in its belief of what is stated by Mr Ngwana, then it should not have reinstated the supply of electricity. The Applicant's account was in arrears, and the First respondent was entitled through its by-laws to disconnect the electricity. The fact that First Respondent simply reinstated the electricity demonstrates that it had no belief in what Mr Ngwana now claims to have been the position. The disconnection was simply arbitrary and done in bad faith.

38. It should be apparent from what I have set out above that the First Respondent has conducted itself poorly in the conduct of this litigation. It has filed an answering affidavit by a deponent that has no personal knowledge of many of the facts that are set out therein, and which confuses rather than elucidates the essential issues. The affidavit is also replete with argument rather than the facts of the matter. In addition, many of the allegations in the answering affidavit are made recklessly and without any apparent regard for their veracity by Mr Ngwana. Some of the allegations simply defy common sense, whilst others are deeply perplexing. The answering affidavit demonstrates a measure of ineptitude in its preparation that is hardly fitting for the legal advisor of a metropolitan municipality such as the First Respondent.
39. The Applicant asks that costs be awarded on the scale as between attorney and client, and in my view such an order is warranted.
40. In light of the above I make the following order:
- (i) It is declared that the First Respondent was in contempt of the order of Twala J dated 24 April 2015 and Moorcroft AJ dated 23 October 2023 when the First Respondent terminated the supply of electricity to the Applicant's property on 11 August 2024.
 - (ii) The First Respondent is to pay the costs of the application on the scale as between attorney and client.

 C J Mc Aslin
 Acting Judge of the High Court
 3 September 2025

On behalf of the Applicant:

Adv. E Venter

Instructed by:

Dasoo Attorneys

On behalf of the First & Second Respondent:

Adv. E Sithole

Instructed by:

Madhlopa Tenga Inc