

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

Case Number: 2024-020546

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

26 September 2025

In the matter between:

SS PROTEA ESTATES	Applicant
and	
CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY	First Respondent
CITY POWER (SOC) LTD	Second Respondent

Date of Hearing: 1 September 2025
Date of Judgment: 26 September 2025

JUDGMENT

ESTERHUIZEN, AJ

NATURE OF APPLICATION

[1] This is an application brought by the Applicant in which it seeks to compel the First and Second Respondents to correctly bill the Applicant's account and an

interdict preventing the Respondents from terminating services to the Applicant's property based on the disputed billing.

POINTS IN LIMINE

[2] The First Respondent has raised a number of points *in limine* in its answering affidavit and the Applicant similarly in its replying affidavit. It has been argued that any one of these points *in limine* may be dispositive of the other party's case.

[3] I deal first with the points *in limine* raised by the Applicant in reply.

[4] A reference to the Respondent in this judgment is a reference to the First Respondent being the only party opposing the application. Where required express reference is made to the Second Respondent.

[5] The Applicant did not persist with its first *point in limine* that the late filing of the Respondent's answering affidavit should not be condoned and thus nothing further needs to be said about it.

The Applicant's second point in limine in reply - deponent to the answering affidavit has no personal knowledge.

[6] The Applicant argued that the deponent of the Respondent's answering affidavit, being the legal advisor employed in the Group Legal and Contracts

Department of the Respondent, had no personal knowledge prior to the matter being instituted. This is so, the Applicant argued, because:

[6.1] the deponent has no knowledge of the accounting on the accounts and how it is being generated and applied;

[6.2] the Respondent's answering affidavit contains no confirmatory affidavits from any person with knowledge of the workings of the accounting department;

[6.3] having no knowledge the deponent cannot be more than a conduit and therefore the evidence presented is hearsay and should not be considered in this matter;

[6.4] the deponent only has access to the system to view the disputed material and that does not support an argument that he deals with the systems on a daily basis nor does he deal with any accounting processes.

[7] At the outset it is relevant to state that insofar as the Applicant argues that evidence in relation to the Second Respondent must be struck out the Applicant cannot succeed. This is so because an application to strike must be brought in terms of rule 6(15) of the Uniform rules of Court which the Applicant did not follow in this instance.¹

¹ The applicant argued that :

[8] Notwithstanding this, where it is found that the deponent lacks the required knowledge those allegations would constitute hearsay and thus be inadmissible. The Applicant argued that the Respondent's answering affidavit in its entirety is hearsay.

[9] In argument the Respondent referred to *Dean Gillian Rees v Investec Bank Limited* (330/13) [2014] ZASCA 38 (28 March 2012) for its argument that the deponent need not have knowledge of all the allegations. In the *Investec* judgment the Supreme Court of Appeal ("SCA") considered the requirements of a deponent having personal knowledge within the context of a summary judgment application and in doing so held :

"[14] Ms Ackermann relied on the information at her disposal which she obtained in the course of her duties as the bank's recoveries officer, to swear positively to the contents of her affidavit. It is not in dispute that in the discharge of her duties as such she would have had access to the documents in question and upon a perusal of those documents she would acquire the necessary knowledge of the facts to which she deposed in her affidavit on behalf of Investec. Prior to the institution of the action Ms Ackermann had been corresponding with the appellant's attorney in regard to the principal debtors' delinquent accounts and had also addressed letters of demand to them, receiving letters in response which canvassed the appellants' defences. She could thus 'swear positively to the facts', 'verify the cause of action and the amount claimed' and assert that in her opinion the appellants did 'not have a bona fide defence to the action' and had entered an appearance to defend 'solely for the purposes of delay'. These factors show that the requirements set out in Maharaj are met.

"It is made clear by the attorneys that they act only on behalf of the First Respondent, and therefore any reference to the Second Respondent stands to be struck out as hearsay evidence."

[15] The fact that Ms Ackermann did not sign the certificates of indebtedness nor was present when the suretyship agreements were concluded is of no moment. Nor should these be elevated to essential requirements, the absence of which is fatal to the respondent's case. As stated in Maharaj, 'undue formalism in procedural matters is always to be eschewed' and must give way to commercial pragmatism. At the end of the day, whether or not to grant summary judgment is a fact-based enquiry. Many summary judgment applications are brought by financial institutions and large corporations. First-hand knowledge of every fact cannot and should not be required of the official who deposes to the affidavit on behalf of such financial institutions and large corporations. To insist on first-hand knowledge is not consistent with the principles espoused in Maharaj.

[16] The fact that leave to defend was granted in respect of Claim D does not mean as was suggested in argument that Ms Ackermann was untruthful and that her affidavit must be rejected in its entirety. It is clear that Ms Ackermann acquired her knowledge from documents under her control. She thus had the requisite knowledge as required by rule 32(2). In making such a finding Hutton AJ did not err." (emphases added)

[10] In the *Investec* judgment the court also had regard to the particular facts and how the deponent could have obtained sufficient knowledge to have deposed to the affidavit. This is aligned with what was held in *President of the Republic of South Africa and others v M & G Media LTD* 2012 (2) SA 50 (CC) where the Constitutional Court (CC) concluded that more is required by a deponent than the mere assertion that the information is within the deponent's personal knowledge. In this regard the CC held:

"[28] The Supreme Court of Appeal held that a deponent's assertion that information is within his or her personal knowledge 'is of little value without some indication, at least from the context, of how that knowledge was acquired'. I agree. An indication of how the alleged knowledge was acquired is necessary to determine the weight, if any, to be attached to the evidence set out in the affidavit. The key question is whether the deponent would, in the ordinary course of his or her duties or as a result of some other capacity described in the affidavit, have had the opportunity to acquire the information or knowledge alleged.

[29] *In Barclays National Bank Ltd v Love* the court, in the context of summary judgment, held that '(a)lthough it is not necessary for the deponent to state reasons in the affidavit for his assertion that the facts are within his own knowledge he should . . . at least give some indication of his office or capacity which would show an opportunity to have acquired personal knowledge of the facts to which he deposes'. The principle articulated in *Love* is sound. It is about how knowledge, practically speaking, is acquired, and how a deponent lays the foundation for alleging personal knowledge of certain facts. It acknowledges that laying a foundation for personal knowledge of a fact cannot practically require a deponent to produce a paper trail of every knowledge-building action he or she has undertaken.

[30] *While the principle that Love and its progeny articulate applies generally in civil proceedings, the principle must be applied with caution in access to information cases...*²

[11] It is thus relevant for the deponent to at least show how the knowledge was acquired. In doing so it must be considered as to how the deponent lays the foundation for alleging personal knowledge of certain facts and whether the deponent would, in the ordinary course of his duties or as a result of some other capacity described, have had the opportunity to acquire the information or knowledge alleged.

[12] The Applicant relied on the judgment of Sutherland DJP in *Millu v City of Johannesburg Metropolitan Municipality and Another* (25039/2021) [2024] ZAGPJHC 419 (18 March 2024) paras 29, 30 and 45 where this court rebuked the City for their use of legal advisors to depose to affidavits on matters they have no knowledge and specifically accounting related matters. I do agree with counsel for the Respondent that the relief sought in *Millu* was

² See *M&G media LTD v President of the Republic of South Africa and others* 2013 (3) SA 591 (GNP) para 46 -47.

for the striking out of the City's defence for failure to comply with a court order compelling the City to file its heads of argument. It was an interlocutory application in terms of Rule 30A(1)(b) for the striking out of the defence and as such distinguishable from the current matter where the Applicant has not brought an application to strike any portion of the Respondent's affidavit.

- [13] As evident from the *Investec Bank supra* the SCA held that first-hand knowledge of every fact cannot and should not be required of an official who deposes to an affidavit on behalf of a financial institution or a large corporation. In his answering affidavit the deponent to the Respondent's affidavit says that:

"As Legal Advisor for the City of Johannesburg, I have access to the SAP system through which I can open, view and interact with customer accounts and analyse the debits and credits concerning amounts owing for rates, taxes, water, electricity and other municipal charges. My access to the SAP system also allows me access to information regarding meter readings for water and electricity consumption." (Emphases added)

- [14] The above formulation is no different to that which was the subject in the *Investec* matter. The Applicant argued that it is because the deponent only had access to the SAP system that he did not have the required knowledge. I do agree with counsel for the Respondent that because the deponent's answer contains his understanding and analysis of the relevant invoices, meter reading reports, account information, analysis of the Second Respondent's By-Laws and Policies, payment history report, chronology of the account report and customer query reports it aligns with the requirements as set out in the *Investec* Judgment. The deponent does not need to be the

person who compiles the accounts or have knowledge of every singly process followed to obtain he information. All of the reports relied on are accessible via the SAP system.

[15] Notwithstanding this, it is still for the court to determine, having regard to the evidence as a whole,³ how much weight it places on the evidence proffered and this is done in considering the relief being sought by the Applicant.

[16] In the circumstances the Applicant's special plea stands to be dismissed.

I now turn to consider the Respondent's various points *in limine*.

Respondent's first and second points in limine - locus standi alternatively non-joinder and no personal knowledge of deponent to the founding affidavit.

[17] The Respondent argues that the deponent to the Applicant's founding affidavit does not have any *locus standi* in so far as it relates to both the Protea Metering (Pty) Ltd ("the metering company") nor for the Applicant's purported claim on the metering account with number 2[...] in the name of the metering company ('the metering account). Alternatively, the Respondent argued, the metering company should have been joined to the proceedings.

³ *The Master v Slomowitz* 1961 (1) SA 669 (T) at 672 where the court held:

"Such basis may also emerge from the papers as a whole. The mere omission in the present case of an allegation that the facts are within the personal knowledge of the applicant is not conclusive - the petition and annexures must be approached as a whole."

[18] This is so, the Respondent argued, because the relationship between the Respondent and the metering company is contractual and no third party, including the Applicant, has any rights and/or obligations in respect thereof. The Respondent is not a party to that agreement. The Applicant, which is the body corporate for a residential estate has its own account with the Respondent.

[19] The Applicant and the metering company had entered into a service level agreement ("the SLA") regulating its relationship, which agreement came to an end due to the effluxion of time but which the Applicant argued is still being continued on the same terms and conditions. If it has been continued on the same terms, as being argued by the Applicant, then the terms thereof are relevant. The relevant provisions of the SLA, attached by the Applicant to its replying affidavit in support of the agreement, provide as follows:

"WHEREAS Protea undertakes to sell electricity for individual tenants of units located in the building known as Protea Estates and situated at Erf 7[...], Erand Gardens Ext 70, Midrand (hereinafter referred to as "the Property");

AND WHEREAS the Property as represented by The Body Corporate, owns, administers and controls fore mentioned property, appoints Protea to take responsibility of the bulk electricity account."

"3.1 The Body Corporate (at all times herein representing the Property) herewith specifically authorizes Protea to enter the Property to install and maintain electricity devices and water metering devices, which devices have been inspected by Protea and were found to be suitably, on the Property to enable Protea to meter the amount of electricity and water consumed by individual owners or tenants.

3.2 Protea is herewith further authorised by The Body Corporate and The Body Corporate consents thereto that Protea shall be entitled to sell fore mentioned electricity at a price as determined

by the prevailing tariff structure of the CITY OF JOHANNESBURG.

3.3 *Protea shall therefore be entitled to invoice individual tenants for the electricity so supplied to them and an authorised representative / employee / sub-contractor of Protea shall be entitled to all reasonable times enter the Property to :*

3.3.1 *take the readings on the electricity and water metering devices;*

3.3.2 *replace or repair metering devices;*

3.3.3 *distribute invoices and notices and implement credit control measures.*

3.4 *The Body Corporate acknowledges that Protea concludes, as principal, a separate agreement with each individual tenant for the sale and supply of electricity, which agreement is of a reciprocal nature and Protea shall therefore be entitled to, notwithstanding any other rights that Protea may have, suspend the supply of electricity to an individual tenant who is in default with payment for the service, water and electricity supplied to him/her/it."*

[20] Relevant from the provisions of the agreement are :

[20.1] the metering company is a separate legal entity to that of the Applicants, thus capable of suing and being sued in its own name;

[20.2] the metering company installs and maintains the electricity devices of the individual unit holders of which the Applicant is the body corporate;

[20.3] the metering company sells the electricity it receives from the Respondent at a price as determined by the tariff structure of the Second Respondent to the individual unit holders;

[20.4] the metering company acts as principal in every agreement it concludes with the individual unit holders;

[20.5] the metering company could suspend supply of the electricity, implement credit control procedures to ensure payment to it and to raise invoices in its own name and receive payment pursuant to its supply of the electricity.

[21] When faced with the defence of *locus standi* in its answering affidavit the Applicant was called upon to produce evidence that demonstrate its standing or to bring a joinder. Instead, the Applicant's only response is that:

"The Metering Company's account is for the electricity consumption and meters on the property of the Applicant in respect of the meters on the property of the service level agreement ("SLA") with the Metering Company....

The SLA has expired however, the Metering Company, and the Applicant have been continuing on the same terms and conditions as contained in the agreement.

Therefore, the Applicant denies that it does not have locus standi"

[22] The established principles of *locus standi* was restated in *Lebashe Financial Services (Pty) Ltd V Prudential Authority and Others* 2023 (2) SA 130 (SCA) with reference to the established authorities the SCA held:

"[23] As I have said, Lebashe had been granted leave to intervene in the liquidation applications by agreement and obtained leave from the High Court to appeal to this court. That, however, did

not relieve Lebashe of the duty to satisfy this court that it has locus standi to obtain the relief that it seeks on appeal. That is so for two main reasons. The first is that the respective tests are not identical. Germane to the second, are the oft-repeated dicta that the scarce resources of this court should not be expended on deciding abstract or academic issues.

[24] As Harms JA said in *Gross and Others v Pentz* 1996 (4) SA 617 (A) ([1996] 4 All SA 63) at 632C:

'The question of locus standi is in a sense a procedural matter, but it is also a matter of substance. It concerns the sufficiency and directness of interest in the litigation in order to be accepted as a litigating party.'

See also *Sandton Civic Precinct (Pty) Ltd v City of Jhb and Another* 2009 (1) SA 317 (SCA) ([2009] 1 All SA 291; [2008] ZASCA 104) para 19. Although there are no hard-and-fast rules in this regard, the general rule is that a direct and existing interest in the relief is required. A direct interest is one that is not too far removed and an existing interest is one that is not abstract, academic or hypothetical. See *Cabinet of the Transitional Government for the Territory of South West Africa v Eins* 1988 (3) SA 369 (A) at 388B – H; *Jacobs en 'n Ander v Waks en Andere* 1992 (1) SA 521 (A) ([1991] ZASCA 152) at 534A – E; and *Public Protector v Mail & Guardian Ltd and Others* 2011 (4) SA 420 (SCA) ([2011] ZASCA 108) para 29.

[25] The winding-up orders in respect of the insurers do not, of course, operate against Lebashe. What then is Lebashe's interest in having the liquidation orders overturned? Lebashe is a creditor of BIG. I accept that it is also the majority shareholder of BIG, which holds the shares in the insurers. These were the only factors referred to by counsel for Lebashe when this court raised this issue during argument. On this basis, however, Lebashe is only a creditor and shareholder of the holding company of the insurers. As such, there are no legal relationships between Lebashe and the insurers. Lebashe has no rights to a preferred legal process of dealing with the undisputed insolvency of the insurers, even though it may have an indirect financial or commercial interest therein. In my view, Lebashe's interest is too indirect and insufficient to clothe it with locus standi in the appeal."(Emphases added)

[23] In this instance it means that if the metering company has a direct and sufficient interest in the litigation to affirm its *locus standi* it must be a party.

The burden is on the person who alleges *locus standi* on behalf of another 'to

*allege in its pleadings facts sufficient to show that it has locus standi to bring an action*⁴. Although a court must not be overly technical it can still not bestow *locus* on a litigant where it has none.⁵

[24] The Applicant's argument in support of its *locus standi* is simply because the metering company is the reseller of electricity to the Applicant and thus it has a claim. This is compounded, the Applicant argued, by the fact that the Respondent elected to transfer the credit balance from the metering account to the Applicant's account, thus granting the Applicant *locus standi* by virtue of this action. This argument does not assist the Applicant. If anything, the fact that the metering company is a reseller of electricity supports the argument that it is in fact an entity separate from the Applicant. The argument that the credit balance was transferred is also of no assistance. On the Applicants own version the credit balance was transferred from the developers account who was the predecessor of the metering company. The developer is a party once removed from the metering company and the credit transfer from the developer does not bestow *locus standi* on the Applicant.

[25] The mere fact that the Applicant's members may have an interest in the outcome of the metering company's reconciliation does not bestow *locus* on them.

⁴ See *See South African Municipal Workers Union National Medical Scheme (SAMWUMed) v City of Ekurhuleni and others* [2022] 4 All SA 878 (GJ) at para 80.

⁵ See *See South African Municipal Workers Union National Medical Scheme supra* at para 79.

[26] In this instance the Applicant fails in its onus to provide sufficient facts to bestow it with *locus*. As stated, the Applicant does not have a contract with the Respondent regarding the metering account and, therefore, has no legal standing to sue or be sued in relation thereto. Put differently if it was to be assumed that a credit balance was held by the metering company in its metering account and the metering company refused to transfer it to the Applicant's Account, the Applicant would not be able to unilaterally transfer the credit balance but would have to institute action against the metering company and will need to show a cause of action bestowing it with some right to the credit balance. The Applicant has no right to deal with the metering account nor to any credit balance held by it as it pleases.

[27] It is not possible from the pleadings to conclude that the Applicant has a sufficient direct interest in managing the metering company's account as it pleases and without direct participation of the metering company. As such I agree with the Respondent's point *in limine*, in so far as it relates to the Applicant's *locus standi* in relation to the metering company. It is thus concluded that the Applicant lacks the necessary *locus standi* in relation to the metering company's account and the metering company.

[28] Notwithstanding this there can also be no doubt that the metering company should have been joined to these proceedings. Having raised the non-joinder as an alternative to the *locus* point the Applicant simply elected to ignore it and not deal with it at all. Therefore, if the Applicant had been able to show that it had *locus standi* to act on behalf of the metering company and the

metering account, which it had not, the Applicant would in any event have come unstuck on the non-joinder argument in so far as it relates to the metering company and the metering account.

[29] I turn now to the argument that the Applicant's deponent lack the personal knowledge to act on behalf of the Applicant in relation to its own metering account no 9[...] ("the Applicant's Account").

[30] The deponent to the founding affidavit's position is a trustee and he is also the chairman of the Applicant, thus he has personal knowledge of the Applicant's Account. He is also kept abreast of the Applicant's Account. In terms of the First Respondent's Credit Control and Debt Collection Policy ("Credit Control Policy") the person liable for an account is, amongst others, '*the account holder liable for payment of the municipal account.*' In this instance it is undoubtably the Applicant whom the deponent represents and the deponent would, in the ordinary course of his duties and in his capacity of chairman of the Applicant have had the opportunity to acquire the information and knowledge alleged in the founding affidavit. Thus, Mr Singh has the requisite personal knowledge in order to depose to the affidavit in so far as it relates to the Applicant's Account.

Applicants third point in limine – The applicant's claim on the metering account has prescribed.

[31] Because the Applicant has no *locus standi* to claim on the metering company or the metering account and because this issue is raised in relation to the metering account it has become irrelevant and need not be considered further.

Respondents fourth point in limine - non-compliance with statutory requirements.

[32] The Respondent argued that the Applicant has not alleged nor proven compliance with the provisions of section 3 read with section 4 of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2000 (Institution Act).

[33] I agree with the Applicant that the Respondent's point *in limine* is misplaced as it is reliant on the fact that the relief sought is a debt which it is not. Section 3 of the Institution Act requires the notice in respect of debts, and more specifically damages claims, but the request for the rebilling of the Applicant's Account is not a debt and as such notice need not have been given.⁶

[34] This point *in limine* is thus dismissed.

Respondents fifth point in limine - Has the Applicant's affidavit been properly commissioned.

⁶ See *Director General, Department of Public Works v Kovac Investments* 2010 (6) SA 646 (GNP) at para 12 where it was held:

"Having found that the plaintiff's claim against the defendant is not for damages, I find that the plaintiff's claim is not a 'debt' as defined in the Act, and therefore the provisions of s 3 of the Act do not apply to the plaintiff's claim. I therefore find that the exception based on the absence of jurisdiction must fail with costs."

[35] The First Respondent's final point *in limine* is a purely technical error where the commissioner who commissioned the founding affidavit has attested to a confirmatory affidavit in this regard. The Respondent did not persist with this point during argument, and correctly so, as it had no longer had any merit and stands to be dismissed.

[36] Having dealt with the points – *in limine* I now turn to the relief sought by the Applicant in so far as it has not been impacted by the points *in limine* raised. Prior to doing so I deal first with the relevant background to this matter.

BACKGROUND

[37] The Applicant is the body corporate in respect of the property known as erf 7[...] Erand Gardens x 70 ("the property"). The property consists of 219 residential units.

[38] The property was initially developed by Quick Leap Investments (Pty) ("Quick Leap") Ltd and it was appointed as the reseller of electricity to the Applicant. Quick Leap appointed Protea Metering (Pty) Ltd ("metering company") to be the reseller as the development had concluded. The metering company therefore became the main electricity account holder with account number 2[...] ("the metering account"). It is not disputed that the metering company became the reseller of the electricity. The reseller agreement was concluded between the Applicant and metering company and has been dealt with above.

[39] The Respondent transferred the electricity usage to the Applicant's Account during 2018. From this date onwards the respondents for some inexplicable reason, says the Applicant, charged the Applicant's Account, for the consumption of electricity on an electricity meter number 6[...], which meter is nowhere to be found on the property ("phantom meter") and therefore there has never been a basis on which the Applicant could have been billed for it. The Respondent in answer argues that this meter is now inactive which is not denied by the Applicant. The Applicant's claim is historical when the phantom account was still being actively charged on the Applicant's Account. The Applicant therefore argues that when considered with the fact that the incorrect tariff was being billed all of the charges, on the phantom meter, amount to double billing on the Applicant's Account.

[40] The Applicant has made numerous attempts to get the Respondent to rebill the Applicant's Account to reflect the correct amounts which exclude the charges for the phantom meter, the estimates and the corrected tariff without success. It is for this reason that the Applicant instituted these proceedings.

[41] In considering the relief sought and seeing that the Applicant has requested multiple orders it is best considered in relation to each prayer prayed for by the Applicant in its notice of motion.

[42] **Prayer 1:** *The Respondent is declared to have the onus to prove its charges in relation to the electricity consumed on the property known as ERF 7[...] RE*

OF ERAND GARDENS (“the property”) rendered by the First Respondent under account number 9[...] (“the account”).

[42.1] This order is of no assistance as a declaration of onus is not competent relief. In the present matter being motion proceedings, the issue of onus does not arise. The Applicant is required to prove its case on affidavit. The approach to the assessment of the evidence in motion proceedings was summarised in *National Director of Public Prosecutions v Zuma* (573/08) [2009] ZASCA 1 (12 Jan 2009) by the SCA as follows:

“Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched, or so clearly untenable that the Court is justified in rejecting them merely on the papers. The Court below did not have regard to these propositions and instead decided the case on probabilities without rejecting the NDPP's version.... In motion proceedings the question of onus does not arise and the approach set out in the preceding paragraph governs irrespective of where the legal or evidential onus lies...” (emphases added)⁷

⁷ Also see In *MEDIA 24 Books (Pty) Ltd v Oxford University Press Southern Africa (Pty) Ltd* 2017(2) SA 1 (SCA) at p17 para 36.

[42.2] Therefore to make an order in terms of prayer 1 would be in direct conflict with the aforementioned judgment. This being so the relief sought in prayer 1 of the notice of motion is refused.

[43] I turn now to deal with each sub-prayer as prayed for in prayer 2 of the Applicant's amended notice of motion.

[44] The reference to account in these prayers is a reference to the Applicant's Account only as is evident from the Applicant's founding affidavit in which it has been defined as such.⁸

[45] **Prayer 2.1.2.1:** *The Respondent is ordered to rebuild the account, in relation to the consumption of electricity, by charging the Applicant for the consumption of electricity based on the actual readings for the consumption of electricity on the Applicant's Account.*

[45.1] The Second Respondent was required to charge the Applicant for actual consumption of electricity on the property. The Second Respondent ordinarily charges an estimate of consumption when they do not obtain an actual reading of the electricity from the meter

⁸ At para 27 of the Founding affidavit is stated:

*"27. The City renders an account with account number 9[...] ("**the account**") for the consumption of electricity and other charges on the property known as ERF 7[...] RE OF ERAND GARDENS EXT. 70 physically located at **105 FORTEENTH STREET, ERAND GARDENS EXT 70 ("the property")**."*

installed on the property. This is done in terms of section 9.3 of the Second Respondent's Credit Control Policy which state:

"9.3 Where, for any reason whatsoever readings cannot be obtained, interim readings (estimates) shall be utilised. Interim readings will be based on the average monthly consumption of services registered over the 12 preceding months. As soon as an actual reading is obtained, the account will be adjusted accordingly."⁹ (Own emphases)

[45.2] Evident from this is that as soon as the actual meter reading on the property is obtained the account must be adjusted to reflect the actual reading based on an annual tariff published by the Second Respondent.

[45.3] What this however does not mean is that the consumer can simply cease making payments of the estimate even if they are of the view that it is wrong. This so because, firstly, the account delivered is deemed to be *prima facie* proof of the amount due¹⁰ and secondly

⁹ An account is defined as:

*"2.2. **"Account"** means a notification by means of a statement of account held with the City by a customer who is liable for payments of any amount to the City or any municipal service provider in respect of the following :*

a. Electricity consumption based on a meter reading or estimated consumption or availability fees;"

¹⁰ See Section 27 of the Respondent's Credit Control Policy which states the following:

"Prima facie evidence of documentation

For the purposes of the recovery of any amount due and payable to the Council in terms of these By-laws –

(a) a copy of any relevant account; and

because section 10.9 of the Second Respondent's Credit Control Policy provides that:

"In the event of estimated accounts being rendered for any reason, including delays in changing of meters or obtaining of actual meter readings, the customer must pay and remains liable for the payment of estimates charged to the account."
(own emphases)

[45.4] The Applicant has been making payments based on the estimates however the Applicant argued that the estimates being billed to the Applicant's Account was not based on the average billing of the actual charges of the preceeding 12 months. This is so because of the high number of consecutive estimate charges which were being billed by the Respondent.

[45.5] In its answer the First Respondent attached a metering report for the electricity meter charged on the Applicant's Account for the period June 2021 until May 2024. Evident from this is that estimates were being billed for the periods July 2021 – July 2023 and actuals from July 2023 until April 2024. The Respondent argued that the Applicant has been charged on the Applicant's Account from December 2018. The metering report provided however only commenced almost three years later in 2021. There is thus no evidence as to how the charges

(b) *an extract from the Council's records relating to the quantity of consumption or provision of any municipal service and the period of provision of such service,*

certified by an authorised official as being correct, constitute prima facie evidence of the information contained in such documents."

where being determined, whether on estimates or actuals and if on estimates, whether it had been adjusted as required in terms of the Second Respondent's own Credit Control Policy, and if so, when were these adjustments made on the Applicant's Account.

[45.6] What is also not evident is whether the Respondent was making estimates on actual meter readings in the preceding 12 months or estimates upon estimates which is not what is provided for in section 9.3 of the Second Respondent's Credit Control Policy. The wording of this section is unambiguous in that an *estimate will be based on the average monthly consumption of services registered over the 12 preceding months*. This can only be a reference to the actual average monthly consumption if not the section would have provided for *average monthly estimates* to be used to determine estimates, which it does not.

[45.7] The relief being sought by the Applicant is thus no different to what the Credit Control Policy requires the Respondents to do and that is that at some point in time the estimates should be removed and the Applicant's Account adjusted to reflect the actual consumption of electricity based on the actual electricity readings for each month billed.

[46] Therefore the relief sought in this prayer must be granted.

[47] **Prayer 2.1.2.2:** *The Respondent is ordered to rebuild the account, in relation to the consumption of electricity, by removing all estimated charges on the account in relation to the consumption of electricity on the property from inception or where the Respondents cannot prove the consumption on the property.*

[47.1] The substance of this prayer has been discussed under prayer 2.1.2.1. above. The Applicant in this prayer is requesting the removal of all estimates which should follow the relief granted in 2.1.2.1. and where the Respondent is not able to provide actuals for a specific period the Applicant cannot be billed for that period.

[47.2] The Applicant is correct in that it is the Respondent's obligation to bill its consumers which billing must be accurate. This requires that the estimates must be replaced by actual readings at some point in time. This is evidenced by the Credit Control Policy which requires that estimates be replaced with actual readings. It is stating the obvious as to why estimates must be replaced with actual readings. If not either the consumer is paying more than required or the respondents are collecting less than what they are entitled to.

[47.3] It is not for the consumer to prove the actual consumption on its account and in any event the actual consumption falls within the peculiar knowledge and is under the control of the respondents (See

Euphobia (Pty) Ltd t/a Gallagher Estates v City of Johannesburg
[2016] ZA GPPHC (17 June 2016)).

[47.4] Therefore, if the Respondent is unable to provide the actual consumption for a particular monthly billing cycle it cannot rely on an estimate for that cycle as that would not only be against its own Credit Control Policy but it will not suffice as proof of the amount claimed for that cycle.

[47.5] Therefore the relief in this prayer is granted.

[48] **Prayer 2.1.2.3:** *The Respondents are ordered to rebuild the account, in relation to the consumption of electricity, by applying the re-seller tariffs to the account for 219 Units from 2017 to date.*

[48.1] The Respondent, in its answering affidavit, argued that it is already charging the Applicant's account on the re-seller tariff and had been doing so since 7 December 2018 when the metering account was closed. The Applicant only replies with a bare denial. Therefore, being a factual dispute and being motion proceedings, I must find in favour of the Respondent pursuant to *Plascon Evans*.

[48.2] As already concluded the period prior to 7 December 2018 relates to the metering account and the Applicant has no *locus* to claim it.

[48.3] In the circumstances this relief must be refused.

[49] ***Prayer 2.1.2.4*** : *The Respondent is ordered to rebuild the account, in relation to the consumption of electricity, by removing the LPU business tariffs and applying residential tariffs to the proved consumption charges from 2017 to date.*

[49.1] The Respondent pleaded that the Applicant is a Large Power User (“LPU”) and explained how this was determined. The estate with its 219 units is described as a high-density residential development and thus justifies the LPU rates. The Applicant’s argues that it is entitled to residential tariffs being applied to the Applicant’s Account. The Respondent is correct in arguing that consequently there exists a factual dispute on the tariff to be applied.

[49.2] Therefore, being a factual dispute and the fact that the Applicant elected to proceed with motion proceedings, and because there is no reason to find that the Respondent’s version is so far-fetched or clearly untenable that there is justification in rejecting it merely on the papers, the Respondent’s version must be accepted.

[49.3] In the circumstances this relief must be refused.

[50] **Prayer 2.1.2.5** : *The Respondent is ordered to rebuild the account, in relation to the consumption of electricity, by removing all charges for phantom meter number [...] for electricity consumption from the account.*

[50.1] It is not disputed that the Applicant's Account had charges relating to the phantom meter. It is also not disputed that the charges in relation to the phantom meter ceased to be allocated to the Applicant's Account when closed by the Respondent, but those which had been charged until then have not been removed.

[50.2] The Respondent admits that the phantom meter was a registered device on the Applicants Account from December 2018 – June 2021. Therefore, the Respondent argued the phantom meter was correctly billed first to the metering account and thereafter to the Applicant's Account. This is however not supported by the evidence.

[50.3] In a query report prepared by the respondents dated 24 October 2023, they conclude that :

“Meter numbers 6[...]# [the phantom meter] was erroneously linked to the account number above [Applicant's Account], the correct meter was eventually linked 63192793 and reflect on the account since August however the billing of the old meter was not corrected it was estimating the monthly billing, was charged on the incorrect meter and on estimations. The account needs to be rebilled and without interest. The Meter is off line we received download an (sic) check meter and the readings don't correspond.” (Own Emphases)

[50.4] The Respondent thus admit that the phantom account was erroneously linked to the Applicant's Account. Furthermore, no evidence was made available which would support a conclusion that the phantom meter, being billed on the Applicant's Account, was correctly done so.

[50.5] In so far as the Respondent argued that because the phantom account was linked to the metering account therefore it should follow that it must be allocated to the Applicant's Account, does not assist them in relation to the Applicant's Account. When arguing the point *in limine* on the Applicant's *locus standi* to claim any relief relating to the metering company or its account, it was the Respondent who argued that the metering account and Applicant's Accounts are unrelated and distinct from each other. It cannot now argue the opposite that because the phantom account was linked to the metering account it follows that it must be linked to the Applicant's Account.

[50.6] Had the phantom meter been installed on the Applicant's site and had they been liable to make payment then the question arises why it was removed from the Applicant's billing and more importantly why did the Respondent's own internal investigation conclude that it was erroneously linked to the Applicant's Account. The only inference is that the consumption billed on readings from the phantom meter were never due to be allocated to the Applicant's Account.

[50.7] Therefore, all and any reference to the phantom meter readings which appeared on the Applicant's Account at any point in time stands to be removed from the Applicant's Account during the rebilling process. This will include any related penalties and/or interest charges levied pursuant to the phantom meter. The latter is in any event what the Respondent's own internal report concluded should be done.

[51] ***Prayer 2.1.2.6: The Respondent is ordered to rebuild the account, in relation to the consumption of electricity, by applying 30-day scales for the rebilled accounts.***

[51.1] That the electricity must be billed monthly on step tariffs is admitted by the Respondent. In this regard the Respondent stated that *"[W]hen the system calculates the charges, it splits the months into thirty (30) or thirty-one (31) days as a standard and then applies the tariff. There are three markers for calculating charges, which apply depending on the use levels of a customer. The markers also determine whether a customer is a large power user. These markers are:*

"152.1 Kilowatt per hour (kWh) (based on actual use). The Tariff, which is published annually, determines the use thresholds that affect how a customer is charged for actual use.

152.2 Reactive energy charge. This marker is based on how far out of the use threshold a customer has gone, irrespective of the category or zoning of the property, and then determines the next applicable rate a customer will be charged based on actual use.

152.3 *The third marker is Apparent Power (kVa), which determines the rate at which a customer consumes electricity. Here, for example, customers A and B would be consuming the same amount of electricity per measured period, but customer A may be arriving at that use level much quicker than customer B, so customer A will be charged differently. This aspect of the charges is also affected by things such as time of day, time of month, time of year, etc.”*

[51.2] No more needs to be said because the Respondent admits that the system splits the months into 30 or 31 days and during each cycle three markers are used, dependant on usage during that cycle, to bill for that 30- or 31- days cycle. The Applicant is seeking no more than compliance by the Respondent of what it has stated. Therefore, in the rebilling proses the Respondent must split the total period into 30- or 31-day cycles and during each cycle determine the actual electrical usage by applying its markers for each cycle.

[51.3] In the circumstances the Applicant is entitled to the relief sought in terms of this prayer.

[52] **Prayer 2.1.2.7:** *The Respondent is ordered to rebuild the account, in relation to the consumption of electricity, by removing all penalty charges from the account including interest charges and pre-termination fees.*

[52.1] The Respondent argued because the Applicant's account is in arrears it is entitled to charge penalty interest and any levies which may arise pursuant to the issuing of the pre-termination notice. This

the Respondent can do in terms of section 15.1 of the Credit Control Policy which provides that:

“15.1 Simple interest will be charged on all overdue accounts from due date at the current prime rate which the City’s banker charges its clients from time to time”

[52.2] However, the Respondent cannot pre-determine that interest is due on an account which has not been billed correctly. Section 15.4 of the Credit Control Policy provides:

“15.4 Interest on arrear debt will be raised for each month for which such payment remains outstanding and part of the month shall be deemed to be a month.”

[52.3] Interest can thus only be raised on each month for which such payment remains outstanding. Before it can be argued that an amount is outstanding, an amount must be in arrears and the latter presupposes that the billing has been correctly done, which, as already concluded, it has not been.

[52.4] Until the billing on the Applicant’s Account has been rebilled in the manner ordered herein no interest can justifiably be levied. If after the rebilling has been completed and if there are any outstanding amounts the Applicant must be provided the normal cycle, as it would for any bill, to make payment of an amount due, and only if the Applicant fails to do so will the Respondent be permitted to raise interest. This can best be illustrated by the following : Assuming, that

following the rebill ordered herein, it is determined that the actual reading for March 2021 is higher than what the estimate was which the Applicant paid. The Respondent will then be required to allow the Applicant the normal billing cycle to make payment, thus within 30 days, and only if it fails can interest be levied. The interest can then not be levied from April 2021 but only from date of the rebilling. This is obviously only applicable to the period of rebilling which is from inception of the Applicant's Account in 2018 until date of issuing of this application and not for any billing made thereafter. The Applicant during argument indicated that currently the billing is correct and up to date.

[52.5] Pre-termination charges will only be levied once such notice is provided which will only be in *"the event that the customer fails to pay the full amount due on or before the due date, the unpaid amount is deemed to be in arrears"* (section 14.1.1 of the Credit Control Policy). Therefore, this relief cannot be granted as it is not known whether it will arise and it can only follow if the Applicant fails to make timeous payment after the rebilling has been completed. If the latter does occur the Respondent is empowered to raise the said fee and the Applicant cannot be protected against its own future default, if it was to occur.

[53] **Prayer 2.1.2.8:** *The Respondent is ordered to rebuild the account, in relation to the consumption of electricity, by all credits due to the Applicant on the*

developers account of 2[...] in the amount of R699 096.38 be transferred to the Applicant's account.

[53.1] This amount has in the interim been transferred from Quick Leap to the Applicant's Account and therefore the Applicant did not persist with this relief.

[54] **Prayer 2.1.2.9:** *That all credits on the Applicant's water account of 9[...] be transferred to the Applicant's account as is described in prayer 1 above.*

[54.1] The Respondent argued that this application is not related at all to water charges. In fact, the Respondent argued, the relief sought under the heading of prayer 2 is that *"the Respondent is ordered to rebuild the account, in relation to the consumption of electricity, by ... 2.1.2.9."*

[54.2] I agree with the Respondent that the relief being requested is not aligned with the Applicant's own notice of motion.¹¹ Furthermore, no case is made out as to why the credit balance is to be transferred, when and how it was built up and who contributed to the build-up etc. The Respondent is correct that there are simply insufficient allegations to which an answer could be provided.

¹¹ In *Betlane v Shelly Court* CC 2011 (1) SA 388 (CC) it is confirmed that:

"[29] It is trite that one ought to stand or fall by one's notice of motion and the averments made in one's founding affidavit"

[54.3] There is thus simply no case made out for the relief claimed and it is thus refused.

[55] **Prayer 2.1.2.10:** *That the overbilling on the metering company's account in the sums of R 1 092 478.13 and R 1 995 908.91 be removed and/or credited from the Applicant's account.*

[55.1] For the reasons already stated the Applicant does not have *locus standi* to claim against the metering account and therefore this relief is refused.

[56] **Prayer 2.1.2.11:** *That the credit made to the metering company's account of 2[...] reversals be credited to the Applicant's account.*

[56.1] For the reasons already stated the Applicant does not have *locus standi* to claim against the metering account and therefore this relief is refused.

[57] **Prayer 2.1.2.12** *That sewerage and sanitation be rebilled on multi-dwelling tariff from inception to June 2020.*

[57.1] The Applicant has not made out a case in support of this relief. Making mention of a sewerage having been billed on two different accounts is the only basis on which the Applicant seeks this relief. It

is trite that in motion proceedings the affidavits are the evidence in support of the relief sought. The Applicant has woefully failed to provide sufficient evidence for the relief sought and therefor it is refused.

[58] ***Prayer 3: That the Respondents shall provide the Applicant with a rebuilt account within twenty (20) business days from the granting of this order.***

[58.1] There was no dispute raised regarding the period and therefore this relief is granted in relation to the prayers granted in favour of the Applicant.

[59] ***Prayer 4: That the Respondents are ordered to remove all prescribed charges once the rebuilt account has been done.***

[59.1] The relief sought requires the court to make an assumption on the outcome of the rebilling and to make a finding on whether prescription arises or not. Whether or not any fees have prescribed can only be determined after the re-billing has been complete. The rebilling may cause some defences to arise which are currently not known. It will thus be premature to grant this relief in circumstances where the outcome is not known.

[59.2] The consideration of this argument will thus be purely academic and thus not necessary to consider at this stage. (See *De Vries and others v S* [2012] 1 ALL SA 13 (SCA) at para 52).

[59.3] Therefore, this relief is refused.

[60] **Prayer 5:** *That the Respondent is interdicted and restrained from terminating the supply of basic municipal services to the property, based on disputed amounts allegedly accruing during the period up until the date of this order.*

[60.1] Both parties argued the requirements needed to grant an interdict. I do not even need to consider those arguments because the relief being sought in prayer 5 lacks specificity as to what is actually being prayed for. All orders of court must be formulated in a clear manner and be capable of execution. Inchoate and impermissibly vague orders violate the rule of law, which is a founding principle of our Constitution. In *Minister of Water and Environmental Affairs v Kloof Conservancy* [2016] 1 All SA 676 (SCA) the SCA held:

“[14] *An order or decision of a court binds all those to whom, and all organs of State to which, it applies. All laws must be written in a clear and accessible manner. Impermissibly vague provisions violate the rule of law, which is a founding principle of our Constitution. Orders of court must comply with this standard. In Mazibuko NO v Sisulu NO and others 2013 (6) SA 249 (CC) [also reported at 2013 (11) BCLR 1297 (CC) – Ed], which concerned the right of a Member of Parliament to move a motion of no confidence in the President, the Constitutional Court, in its consideration of a similarly*

worded prayer to paragraph (c) of the order of the High Court, stated (in paragraph 24) that:

“the prayer in the applicant’s notice of motion that the Speaker personally take whatever steps are necessary to vindicate the applicant’s constitutional right, is so open-ended and vague as to render the relief incompetent.”

[60.2] The Applicant is seeking an order interdicting the Respondent based on disputed amounts accruing during the period. It is unclear

- what the ‘*disputed amount*’ has reference to;
- whether, after the rebilling, the ‘*disputed amount*’ would be different to what it may be deemed to be now;
- who determines what the ‘*disputed amount*’ is and for how long will it be disputed;
- does it cease to be disputed when the Applicant says so or when the Respondent provides the rebilling. It cannot remain disputed *ad infinitum*.
- does the term ‘*disputed amount*’ refer to the estimates made by the Respondent, the phantom meter allocations, the sewerage or water readings or a combination thereof.

- if it is a combination of the tariffs what does it mean if the relief to some of the tariffs is not granted, as is indeed the case.
- when reference is made to this period, which period is being referred to, is it the period before or the period after the rebilling.

[60.3] This prayer is so open-ended and vague as to render the relief incompetent and must thus be refused.

Because the Applicant has been partially successful on the main relief, the relief claimed for in the alternative need not be considered.

COSTS

[61] The Applicant seeks that the Respondent be held liable on a punitive scale due to their conduct in this matter. I agree that this case calls for a punitive cost order when regard is had to the manner in which the Respondent's approached it. The Respondent from the outset failed to comply with the Uniform Rules of Court. It commenced with the filing of its answering affidavit the day before the matter was enrolled on the unopposed roll. Thereafter when the pleadings were closed the Applicant filed its heads of argument in December 2024. Instead of filing its heads within the time period provided for to do so the Respondent filed its heads of argument 1 court day prior to the hearing of this matter. Having been invited to provide its input on the Joint Practice note instead of doing so the Respondent simply did nothing. These

actions or rather inactions of the Respondent are a complete abuse of the court procedure and a punitive cost order is warranted.

Therefore, I make the following order:

ORDER

Points In Limine

1. Applicant's Point *in limine* that the deponent to the answering affidavit has no personal knowledge is dismissed.
2. The Respondent's Point of *Limine* that the Applicant has no *locus standi* to deal with the account of Protea Metering (Pty) Ltd ("the metering company") is upheld.
3. The Respondent's Point of *Limine* that the deponent to the Applicant's founding affidavit has no personal knowledge is dismissed.
4. The Respondent's Point of *Limine* that the Applicant has failed to comply with precursor statutory requirements is dismissed.
5. The Respondent's Point in *Limine* that the Applicant's founding affidavit had not been properly commissioned is dismissed.

Main Relief

1. The First Respondent is ordered to rebuild the Applicant's Account no 9[...], in relation to the consumption of electricity, by charging the Applicant for the consumption of electricity based on the actual readings for the consumption of electricity on the meter linked to the Applicant's Account from inception up to the date of the issuing of this application.
2. The First Respondent is ordered to rebuild the Applicant's Account no 9[...] by removing all estimated charges on the Applicant's Account in relation to the consumption of electricity on the property from inception up to the date of the issuing of this application.
3. The First Respondent is ordered to rebuild the Applicant's Account no 9[...] by removing all charges for phantom meter number 6[...]for electricity consumption from the Applicant's Account no 9[...].
4. The First Respondent is ordered to rebuild the Applicant's Account no 9[...] applying the step tariffs for the rebilled accounts from inception up to the date of the issuing of this application.
5. The First Respondent is ordered to rebuild the Applicant's Account no 9[...], in relation to the consumption of electricity, by removing all penalty charges from the Applicant's Account including interest charges from inception up to the date of the issuing of this application.

6. The First Respondent is to provide the Applicant with a rebuilt account within twenty (20) business days from the granting of this order.
7. The First Respondent is ordered to pay the costs of this application on a scale as between attorney-and-client.

**ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

For the Applicant:

Adv M Rodrigues
Instructed by
TNS Incorporated

For the Respondent:

Adv L Mokwena
Instructed by
Patel Inc Attorneys