



NOT REPORTED

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)**

CASE NO. 2025-161644

In the matter between:

NYANISO MAQINA

Applicant

and

BUFFALO CITY METROPOLITAN

MUNICIPALITY

First Respondent

THE MUNICIPAL MANAGER, BUFFALO

CITY METROPOLITAN MUNICIPALITY

Second Respondent

**JUDGMENT IN RESPECT OF URGENT
APPLICATION FOR INTERIM RELIEF
(ELECRCITY DISCONNECTION)**

HARTLE J

[1] In this application, among countless that this court is inundated with on an urgent basis weekly, the applicant seeks to make out a case that his rights of access to electricity and to fair and just administrative action have been violated because the first respondent (“*the municipality*”) has unprocedurally terminated or discontinued or blocked the service of the electricity supply to a property in Mdantsane (“*the premises*”) in respect of which he claims to have a personal interest.

[2] He seeks (by way of interim relief) a declarator that the disconnection be declared unlawful, a mandamus that the municipality reconnect the electricity supply to the premises within 4 hours after service of the court order, and an interdict restraining the municipality from charging him a reconnection fee as a result of the unlawful termination of the supply of electricity to the premises.

[3] Additionally, he seeks punitive costs on an attorney and client basis because the municipality audaciously purported to disconnect the electricity supply to the premises without notice well knowing that it may not do so without prior notification to consumers of electricity services.

[4] The municipality’s refusal to reconnect the electricity supply even after a demand served on it on 1 September 2025 to do so, provided the impetus for the applicant to come to this court on the basis of claimed urgency and is the pivot on which he claims he will not be afforded substantial redress in the ordinary course.

[5] The conduct that underpins the present vindication by the applicant is the claimed unlawful disconnection and the consequence thereby that the applicant has supposedly been denied access to the electricity services at the premises as a

consumer of such services. The applicant says that it is unlawful because it was not preceded by a lawful procedure that is supposed to ensue even for the benefit of consumers other than registered customers before the municipality can disconnect.

[6] There is of course no contention that the municipality can disconnect services to any premises if an account is in arrears but not before 14 days written notice is given of the intended termination to a consumer against whom a municipality intends to terminate the electricity supply.¹

[7] The jurisprudence that has developed on the subject clarifies that such notice must be provided not only to an owner who has a contractual relationship with the municipality concerned, but also to a consumer of such services entitled to receive them as well.²

[8] I do not for present purposes intend to go into the notice regime that is required neither do I address the issue whether the notice served in this instance meets the requirements of the Electricity By-Laws read with section 115 (1) of the Municipal Systems Act, No. 32 of 2000. The municipality claims it does because it was served to the owner corresponding to the account number in respect of the premises on a date in January 2025, some 7 months before it acted on the default of its customer. I also make no pronouncement on the question whether that constitutes effective notice.

[9] This is because my focus herein is on the preliminary objection raised by the municipality that the applicant has no *locus standi* to have brought this application.

¹ See section s 14 and 15 of the By-Laws of the first respondent published in Provincial Gazette Extraordinary under No. 5016 dated 24 November 2023 (“the By-Laws”).

² See *Joseph & Others v City of Johannesburg & Others* (CCT 43/09) [2009] ZACC 30; 2010 (3) BCLR 212 (CC); 2010 (4) SA 55 (CC) (9 October 2009) at [47]

[10] The applicant says the following in his founding affidavit:

7.1 He brings the application/action in his own interest in terms of section 38 (1)(a) of the Constitution.

7.2 He has a right to be supplied electricity, upon tender of payment, but is being restricted.

7.3 He does not have an account with the municipality.

7.4 Prior to the unlawful disconnection, he enjoyed the full and uninterrupted supply of electricity.

7.5 Prior to the disconnection, the municipality was required to provide him with written notice that would have afforded him the right to be advised of any amounts due to the municipality, to submit representations, and to make arrangements.

7.6 Such notice was not given to him.

7.7 Had he received such notice, he would have made further representations.

7.8 He is willing to make payment of the services being used.

7.9 The municipality has not followed the correct procedures before limiting his constitutional rights and has acted contrary to the By-Laws.

[11] He vaguely, speaks of a right “*to utilize the premises*” and that he “*attempted to purchase electricity*”, but was denied this service.

[12] He repeats, under the mantle of “*clear right*” that he approaches this court as the occupant of the property, and that, absent the municipality respecting fair procedures - since he was entitled to have received notice at the premises prior to the disconnection, his rights have been violated.

[13] He laments that that the anticipated notice would have informed him of any amounts outstanding and drawn attention to the provisions of any policy to make the necessary arrangements and/or to submit a dispute.

[14] He repeats, under the mantle of “*Fair Procedure*”, rather ambiguously, that he is “*the occupant and owner of the property*”.

[15] Under “*Conclusion*”, he avers that the unlawful disconnection of the supply of electricity is causing him irreparable harm but then, in the plural, adds that “*our right to occupy and utilize the premises has been prejudicially limited*”.

[16] Prior to concluding with what the applicant says in his founding affidavit, it is necessary to advert to the letter of demand. The demand references the account number which he says he did not open but he does not disclose who the accountholder is or what that person’s relationship is to him, if any.

[17] He is identified in the demand as a “*tenant*” of the premises.

[18] Whilst a tenant and an occupant may well be synonymous, he coincidentally goes on to reveal some history of a dispute with the municipality on the issue of arrears, which he has not at all addressed in his founding affidavit. A date in January 2022 is also flagged as relevant, but its significance is not foretold in the founding affidavit.

[19] The following extract creates the clear impression of an existing controversy with the municipality around the issue of the arrears owing to it in respect of the premises, which he has clear knowledge of:

“3. From the onset we wish to advise your office that our client instructed us that they have not been receiving consecutive monthly statements. Statements are

received intermittently and reflects exorbitant unexplanatory amounts owed to BCM by our client.

4. In view of the fact that our client has not been receiving regular statement of accounts, we formally request-
 - a. A detailed statement of account and reconciliation in respect of the applicant's rates, services and utility account for the period from 1 January 2022 to date. This request being in respect of the above property.
 - b. The monthly statement of accounts rendered by BCM to the applicant in respect of rates, services and utilities for the period from 1 January 2022 to date in respect of the above property.

...”

[20] The demand goes to five pages and asks for a host of documentation that a co-incidental tenant would certainly not need to press in on, indiscriminately flips pronouns, and suggests that a person(s) other than the applicant, is/are affected by the account controversy.

[21] Not surprisingly the municipality opposed the application and raised as a preliminary issue, amongst others, that the applicant lacks *locus standi* to bring the present application. Not unfairly, the municipality accuses the applicant of failing to demonstrate why he claims an interest as opposed to the owner and why the owner cannot approach the court on his own. To use the second respondent's quaint expression in the answering affidavit, the applicant has failed to put this court “*into confidence of his occupation*”. For example, the question begs itself when and under what circumstances he come to occupy the premises. Has he purchased electricity before and has he been paying some if not for all of the municipal services rendered at the premises?

[22] The municipality further, quite fairly so, criticizes the applicant for the ambiguity around the issue of his own unique relationship with the municipality

and/or responsibility for the arrears in respect of the premises and why he claims to be a person who should have received the disconnection notice as a “*consumer*”.

[23] The deponent raises two aspects that would point to a developing relationship with the applicant as a person in the know of the arrears relative to the premises by the account holder. Firstly he says that the applicant was made aware of the process to follow a change of account holder, but instead of ensuring compliance he approached his attorney of record. He also reveals the following:

“... the Applicant avers in the founding affidavit that he has a right to the supply of electricity. Accepting for a moment that he has such right, such right bears a duty upon the applicant for the payment of services rendered by the 1st Respondent. It is common cause that the deceased account which is a subject of this litigation with the 1st Respondents is in arrears, and the fact that the account has fallen into arrears and without any payment arrangement in place, a recognized debt recovery process becomes implementable.”

[24] What the municipality in effect says in its answering affidavit is that the applicant is known to it as a person with an interest in the premises, but not in his capacity as an unrelated occupant or tenant that would establish a basis for him to have been served with the disconnection notice as a “*consumer*”.

[25] The second respondent put up a copy of the notice which it claims was properly served to the registered customer, namely Mr. S K Maqina. That final notice incidentally reflects an amount owing to the municipality in a sum of R57 182.94 which is the reason why the municipality claims that it was entitled to disconnect services to the premises after giving notice to the customer by service of the notice affixed to a gate of the premises.

[26] In his replying affidavit, the applicant raises a number of technical reasons why this court should reject the disconnection notice as valid but interestingly does not clarify the suggestion raised in the municipality's answering affidavit that he is not an unknown person as far as the municipality is concerned in relation to the premises and in respect of the arrears. Indeed it would be an abuse of process to claim that he is entitled as an occupant to notice if in fact he has been dealing with the municipality as a known person all along on behalf of the account holder who the municipality claims was indeed served with a disconnection notice as the latter ought to have been.

[27] What renders the issue especially obfuscated by rhetoric is the applicant stating as follows in his replying affidavit:

“... I am not the owner of the property and I am merely an occupant. I am advised that
the occupant passed away, but that my attorneys will now address correspondence to the Respondents to this effect. Still this does not indemnify them from complying with the Electricity Supply By-Laws as debt collection steps have been initiated before the prescriptive legal requirements were met.”

[28] Mr. Du Plessis in arguing the matter revealed from the Bar that the named owner of the premises is the applicant's father.

[29] Why this has not been disclosed by the applicant is a matter of great concern. It is also not understood how he could allege as if he were an independent occupant that he bears no knowledge of his father's passing neither does he say when he passed or in what capacity he had been negotiating with the municipality before concerning the issue of the arrears. Reading between

the lines his interests appear to relate to his representation of his late father's estate rather than as a tenant or occupant in the usual sense of those words.

[30] One looks in vain to appreciate unequivocally what his true interest is. What he does not say is that he lives at the premises or that he has personally bought electricity before or how he accesses the service, the discontinuation of which he now seeks to vindicate as an independent tenant/occupant.

[31] Mr. Du Plessis continued to try and prevail upon the court that as a “consumer” the applicant has his rights but with respect his client has a duty to make a full disclosure of the relevant facts to establish that right. What we are left with is a mis-mash of averments that do not collide and/or leave more questions begging than answers.

[32] Whether it is because of a copy and paste gremlin, or deliberate I cannot say, but the thought occurs to me that it may well be a stratagem to create an impression that as an occupier the applicant claims to be nescient and innocent of the arrear situation whereas in fact his interest ought to be confined to representing the late estate only that is self-evidently in arrears with the account.

[33] I believe there is merit in Mr. Mdzanga's argument that the applicant has not stated unequivocally what his interests are or how he stands to be impacted by not having been served with a notice of the intended termination of services as a consumer.

[34] I am not satisfied on the papers before me that the applicant has clearly established the basis upon which his right in respect of the premises is derived.

[35] In the result the preliminary objection is upheld and the application is dismissed, with costs on Scale A.

B HARTLE
JUDGE OF THE HIGH COURT

DATE OF APPLICATION : 23 September 2025

DATE OF JUDGMENT : 25 September 2025

Appearances:

For the applicant : Mr. N Du Plessis of N J Du Plessis & Associates Incorporated, East London (ref. Mr. N Du Plessis).

For the respondents: Mr. K Mdzanga instructed by Jolwana Mgidlana Incorporated, East London (ref. Jolwana).