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

CASE NO: 2024/004824

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED.

DATE 20 October 2025

SIGNATURE

In the matter between:

DAVID WALTER PHILLIPS

Applicant

and

**THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Respondent

JUDGMENT

INTRODUCTION

1. This is, as Wilson J expressed in Ordicode (Pty) Limited v The City of Johannesburg,¹ yet another billing dispute triggered by inaccurate municipal billing. But this application is perhaps more disconcerting

¹ Unreported judgment delivered on 9 September 2025 under case no: 2023/077080.

than the one dealt with by Wilson J in Ordicode. That is because in this application, the applicant is an 81 year old pensioner who has had no joy in attempting to resolve his billing disputes with the respondent. That he has had to seek recourse from this court is most unfortunate and an indictment on the respondent's constitutional duty and failure to timeously and properly address and resolve the dispute raised by him.

BACKGROUND

2. The applicant is the owner of the remaining extent of Erf 1[...] B[...] G[...], situate at [...] R[...] Street, B[...] G[...], Randburg.
3. He raises three disputes:
 - 3.1. the first is in relation to a pensioner rebate which he says he was entitled to but which the respondent had failed to implement thus resulting in an incorrect charge being levied by the respondent;
 - 3.2. the second relates to a complaint that he has been charged for water in terms of two water meters in circumstances where the second meter is not on his property or for his property;
 - 3.3. the third is a complaint relating to his application to obtain a prepaid meter so as to avoid the payment of network charges to the respondent.
4. I was informed from the Bar that the respondent had approximately a week ago, attended at the applicant's property and had finally installed a pre-paid meter. To that extent, the relief sought by the applicant in this regard has become academic.
5. I deal with the remaining two disputes below.

PENSIONER REBATE

6. It is common cause that the applicant is a pensioner and that he was entitled to a pensioner's rebate. The respondent, after much toing and froing recognised this and claims that it had subsequently credited the applicant's account with such rebate including interest that had been levied by it with the result that this dispute has now become moot.
7. But that does not appear to be the case. The amounts credited by the respondent subsequent to its acceptance that the applicant was entitled to a pensioner's rebate are inconsistent with what the applicant claims he was entitled to. Thus, for example:
 - 7.1. the respondent credited the applicant with R2,386.85 in respect of interest yet the total interest that the respondent levied was an amount of R8,823.00. There is no explanation by the respondent for this discrepancy;
 - 7.2. the respondent claims to have credited the applicant's account resulting in the applicant's account having a credit balance of R6,264.81. Yet the respondent's subsequent account dated 5 August 2024 only reflects a credit balance of R666.59;
 - 7.3. the respondent had charged the applicant R2,895.90 for four months from July to October 2023 based on an admittedly incorrect property valuation of R4,253,000.00. Despite the concession, the respondent has not reversed these charges.
8. It was for the respondent to address these issues in its answering affidavit. It failed to do so. It has not demonstrated that it properly and accurately reversed all of the charges which it had levied and which it subsequently admitted should not have been levied by it.

9. It follows that the applicant is entitled to the relief he seeks in respect of the pensioner rebate dispute.

THE WATER METER DISPUTE

10. During the period 5 June 2021 to 4 October 2021, the respondent charged the applicant for water from meter number: 3[...] as well as meter number: C[...].
11. The respondent contended that it had not charged the applicant under two meters but that what in fact occurred was that meter number: 3[...] had been removed on the 16th of July 2021 and presumably replaced with a new meter C[...] on the 17th of July 2021.
12. The difficulty with that allegation is that the applicant's account which was attached to his founding affidavit dated October 2021 reflects a reading period from 5 June 2021 to 4 October 2021 (being a period of 122 days) in respect of meter number: 3[...] and an estimated reading over that same period in respect of meter number C[...].
13. There is no explanation by the respondent in its answering affidavit why a reading period up until 4 October 2021 was done in respect of meter number: 3[...] in circumstances where that meter, on the respondent's own version, had been removed on the 16th of July 2021. One would have expected the reading period to have ended on the 16th of July 2021 even if the reading may have been taken later. There was equally no explanation of why the respondent would charge both for an actual reading and an estimated reading for the same period.
14. Mr Sithole who appeared on behalf of the respondent sought to furnish an explanation from the Bar as to what the statement meant and how it should be read. But this explanation had not been

tendered in the respondent's answering affidavit and was thus of little if any probative value and weight.

15. To complicate matters, the applicant, in his replying affidavit, reaffirmed that in the respondent's October 2021 statement, the respondent had reflected the number of two meters, namely meter number: 3[...] and meter number: C[...] which the applicant said was not on his property and never has been. He was told by the respondent that meter number: C[...] had been "*routed*" to a different account number in a letter dated 18 May 2024. That letter reads as follows, in relevant part:

"Account number 5[...] routed to Johannesburg Water for duplicated meter number C[...]."

16. In the course of argument, Mr Sithole sought to explain from the Bar that there was in fact a confusion on the applicant's part in that there were two different meters distinguished only by a hyphen between the letters C and V. The argument from the Bar, so it went, was that the applicant's meter is identified as C[...] whereas the applicant's neighbour's meter is simply C[...]. There was of course no attempt by the respondent to provide this explanation in an affidavit even in rebuttal by way of a further supplementary affidavit of what was said by the applicant in his replying affidavit so that the correct understanding on its version may have been conveyed. It is an explanation that does not even feature in Mr Sithole's heads of argument.

17. The applicant went one step further. He attached to his founding papers, photographs of the relevant meter. Once again, there was no attempt by the respondent to engage with the applicant on his apparent misunderstanding. During the course of the argument, Mr Sithole suggested that an inspection *in loco* be conducted

immediately so as to confirm which meter was on the applicant's property. The argument went further to suggest that the relief that the applicant seeks would result in him having received water services for free. But that would be the result only because of the respondent's failure to have properly addressed the dispute in its answering affidavit.

18. Quite why the respondent did not take a photograph (as the applicant had done) and to have explained its position in an answering affidavit, was self-evidently not considered by the respondent.
19. In motion proceedings, the Plascon-Evans² rule applies. This rule to restate the trite principle is that a court should only grant relief in motion proceedings where final relief is being claimed, if the facts presented by a respondent, together with any facts admitted by an applicant, justify the order being sought. If the respondent's version is not so farfetched that it can be rejected, then a court must accept that version.
20. In this case however, the respondent has not provided any explanation in its answering affidavit let alone a reasonable one.³ Its only version is that the meter had been replaced with one that services the applicant's property. But its own municipal statements belie that version. It is thus not a version that this court can readily accept. This is particularly so given that the respondent's answering affidavit was deposed to by its legal advisor who had a responsibility to ascertain and engage with the facts which the applicant had raised and to accurately and comprehensively deal with them in his answering affidavit.
21. Having regard to what is said by the respondent in its answering

² Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A).

³ Wightman t/a JW Construction v Headfour (Pty) Ltd 2008 (3) SA 371 (SCA).

affidavit, the order sought by the applicant in relation to the water dispute is justified.

THE RESPONDENT'S OVERALL CONDUCT

22. The respondent's answering affidavit was deposed to by Mr Tuwani Ngwana. He is, as pointed out earlier, a legal advisor at the respondent. It was quite apparent from the answering affidavit that he had no personal knowledge of the engagements between the applicant and various representatives of the respondent.

23. In Millu v City of Johannesburg Metropolitan Municipality and another,⁴ the same Mr Ngwana deposed to the respondent's answering affidavit. In that regard, Sutherland DJP said the following:

"The practice of requiring a legal advisor to depose to the affidavits is both a clue to the cause of the debacle and a manifestation of the City's reckless attitude. It should be self-evident that the City's legal advisor has no personal knowledge of the accounting. He cannot ever be more than a conduit. His affidavit craftily states that he makes it based on the information available to him, deafly evading the typical formula that the deponent has access to and control over the documents qua evidence ... If Mr Ngwana is ever to be cross examined on his affidavits it seems likely that embarrassment would soon follow. It must be stated bluntly that the affidavits in litigation should be from persons who administer the accounts. The practice of a legal advisor being a deponent to facts of which he has no personal knowledge must stop."

24. The respondent would have been aware of this judgment which had been delivered prior to the launching of this application by the applicant. Despite that, it would appear that the respondent had

ignored Sutherland DJP's remarks and Mr Ngwana continues to depose to affidavits on the respondent's behalf in circumstances where he has no personal knowledge of the allegations contained in his affidavit.

25. In Ordicode, Wilson J likewise rebuked the respondent for having Mr Ngwana depose to its answering affidavit. The learned judge said the following in this regard:

“12. For their part, the respondent's raise no genuine dispute that Ordicode has been incorrectly billed. In the first place, I do not think that the deponent to the answering affidavit could have the personal knowledge he claims of the facts necessary to meet Ordicode's case. Ordicode's case concerns meter malfunctions and accounting errors dating back 3 years from the date on which the application was launched. The deponent to the answering affidavit is a Mr Tuwani Ngwana, a legal advisor to the City of Johannesburg who says nothing to ground the inference that he has personal knowledge of the state of the meters at the property or of the way that Ordicode's accounts have been calculated. There are no affidavits from any of City Power's functionaries and certainly nothing from anyone who has dealt directly with Ordicode's account. This court has in the past strongly disapproved of City legal advisors attesting to facts of which they can have no personal knowledge, or purporting to answer a case based on facts clearly beyond their ken (see Millu v City of Johannesburg Metropolitan Municipality and another [2024] ZAGPJHC 419 (18 March 2024)(paragraph 45). It appears that this disapproval has yet to filter through to those responsible for drawing papers on the City's behalf.”

26. A further worrying aspect was the uploading of various documents and attachments onto caselines without any affidavit to explain the documents being uploaded. The respondent saw fit to upload a number of its tax invoices onto caselines but without any supplementary affidavit seeking leave to introduce these invoices into the record or to explain their significance. They were consequently not considered and carried no admissible or probative value.
27. If this is the practice being adopted by practitioners, then it should not be countenanced.

CONCLUSION

28. Mr Sithole sought to impress upon me that the relief sought by the applicant was inappropriate and should not and cannot be granted. He relied on the judgment by Wilson J in Ordicode. But that judgment is distinguishable. In that matter, Wilson J concluded that the relief that was being sought was one in respect of which he had no power to grant. That is because what was being sought by Ordicode was a recalculation of Ordicode's account in a particular way outlined in Ordicode's notice of motion. That is not what is being sought by the applicant in this application. Here, the applicant merely seeks that his account reflect his pensioner's status and rebate and that all charges including interest, that were erroneously levied by the respondent, be set aside. Similarly, insofar as the charges in respect of water is concerned, the applicant merely seeks that he is not charged for water in terms of a meter which he has illustrated is not on his property and not for his property.
29. The applicant sought that the respondent pay the costs on an attorney and own client scale. He does so because he says he should not have had to launch this application in the first place had the respondent acted diligently and responsibly. There is

considerable merit in this submission. The respondent, instead of dealing with the applicant's complaints and addressing them foursquarely, resorted to technical defences such as that the applicant should have sought to review the respondent's decisions or failure to make decisions rather than seek the setting aside of its erroneous billing. Coincidentally, it too sought that the application be dismissed with attorney and client costs. It would therefore seem that both parties were of the view that the application warranted an attorney client costs scale.

ORDER

30. In the result, I make the following order:

- 30.1. the property rates charges levied on the municipal account number: 5[...] ("the Municipal account") in respect of the applicant's property, being the remaining extent of Erf 1[...] B[...] G[...], [...] R[...] Street, B[...] G[...], Randburg ("the property"), for the period January 2019 to December 2023 be set aside;
- 30.2. the respondent is directed to apply the applicable pensioner's rebate to the Municipal account for the period January 2019 to December 2023 and to credit the Municipal account accordingly;
- 30.3. the water consumption charges levied by the respondent in respect of the Municipal account on the property for the period November 2021 to December 2023, based on a meter number: C[...] be set aside;
- 30.4. all interest debited by the respondent in the Municipal account in respect of the property from July 2021 to date of this order be reversed and set aside;
- 30.5. the respondent is to pay the costs of this application on the scale as between attorney and client.

M A CHOHAN

ACTING JUDGE OF THE GAUTENG LOCAL DIVISION

20 October 2025

DATE OF HEARING:

8 October 2025

DATE OF JUDGMENT:

20 October 2025

APPEARANCES:

FOR THE APPLICANT:

Adv. Q. du Plessis

Instructed by: Nochumsohn Pretorius
Inc. Attorneys

FOR THE RESPONDENT:

Adv. E. Sithole

Instructed by: Ncube Incorporated
Attorneys