



IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION: BHISHO)

CASE NO: 818/2024

In the matter between:

NOMANDLA DLOVA

APPLICANT

And

**BUFFALO CITY METROPOLITAN
MUNICIPALITY**

1ST RESPONDENT

**THE MUNICIPAL MANAGER, BUFFALO
CITY METROPOLITAN MUNICIPALITY**

2ND RESPONDENT

JUDGMENT

MHAMBI AJ

[1] The applicant filed an urgent application seeking the reinstatement or reconnection of electricity at this house at 1[...] NU 1[...] Mdantsane, East London.

[2] The urgent application was filed on 11 September 2024, and was to be heard on 08 October 2024. In the main, the applicant sought the reconnection of electricity on an interim basis, the rule nisi was to be returnable on 22 October 2024. On 08 October 2024, the matter was postponed to the 19 November 2024 and thereafter, the matter appeared before me as an opposed matter on 14 August 2025.

[3] The matter was opposed by the respondents, “**the municipality,**” and answering affidavit was filed on its behalf, with all sets of papers filed, including heads of arguments.

[4] During the hearing of this matter, I was advised by counsel for the applicant that the electricity was subsequently reconnected, but disconnected by the notice dated March 2025. I asked the parties to confirm that; it was not clear from the respondents whether the reconnection was still due to what extricated the launch of the application. On 19 August 2025, both parties advised me by agreement that electricity was reconnected, as it was according to the municipality, mistakenly disconnected.

[5] However, despite the reconnection of which the date, is unknown, according to the parties, the electricity was again subsequently disconnected as per notice of termination dated March 2025. Both parties, agree that there is no

rescission order in the matter. It is most probable that even though the date of reconnection is unknown, when the matter appeared in court on 08 October 2023, electricity was already reconnected.

[6] In such circumstances, I fail to understand why the matter proceeded to the opposed court whilst the cause of complaint was cured at the time of hearing of the application.

[7] It is now a matter of common cause that the electricity disconnection, the cause of the complaint that resulted in the application has been or was reconnected. The question that remains is whether this court has to make a determination on the matter that is not live at the time of hearing.

[8] This matter goes further than seeking electricity reconnection, but in paragraph 2.3 of the notice of motion, the applicant sought an order intending and instructing the respondents to refrain from charging the reconnection fee as a result of the alleged unlawful disconnection. During the hearing of this matter, I was advised that the electricity was reconnected without a charge of a reconnection fee; wherefore, this court need not make a finding on this aspect.

[9] Despite that, the applicant, through its attorneys, had filed a dispute on 07 February 2024, regarding its electricity account with the municipality. The applicant alleges, at the time the electricity was disconnected, mistakenly as the municipality advised the court, its dispute was not yet answered by the municipality. The applicant then sought an order in its 2.5 of the notice of

motion that the municipality be interdicted and restrained from terminating electricity supply until the dispute lodged is resolved.

[10] It is common cause that the electricity supply of the applicant was restored after service of the papers. The respondents do not dispute that the electricity of the applicant was blocked without notice but alleges that was done mistakenly.

[11] I now turn to deal with whether reconnection of the electricity by the respondents, as it was allegedly disconnected on 10 July 2024, should be determined or ordered.

[12] It is clear from the factual circumstances of this matter that the grant of the order of electricity reconnection is moot.

[13] In *POPCRU v SACOSWU*¹ mootness has been described by the Constitutional court as is when a matter ‘no longer presents an existing or live controversy.’ The court goes on to say, ‘The doctrine is based on the ration that judicial resources ought to be utilised efficiently and should not be dedicated advisory opinions or abstract proposition of laws, and that courts should avoid deciding matters that are abstract, academic, or hypothetical².’

¹ 2018 ZACC 24, 2019 (1) SA 73 (CC). See also *Sebola v Standard Bank of South Africa Ltd* (2012) ZACC 11, 2012 (5) SA 142 (CC)

² *ST Publishing (Pty) Ltd v Minister of Safety and Security* [1996] ZACC 23, 1997 (3) SA 514 (CC) at para 15, See also *Normadien Farms (Pty) Ltd v South African Agency for Promotion of Petroleum exportation and exploitation (SOC) Limited* [2020] ZACC 5 (CC); 2020 (4) SA 409 (CC) para 47

[14] In *Solidariteit Heperde Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs*³, the SCA held that:-

‘[12] **The general principle is that a matter is moot when a court’s judgment will have no practical effect on the parties.** (footnote: Section 16(2) (a) (i) of the Superior Courts Act 10 of 2013; *A B and Another v Pridwin* where there is no longer an existing or live controversy between the parties. (footnote: *Pridwin* para 50.) A court should refrain from making rulings on such matters, as the court’s decision will merely amount to an advisory opinion of on the identified legal questions, which are abstract, academic or hypothetical and have no direct effect; (footnote: *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* [1999] ZACC 17; 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (CC) para 21 fn 18.) one of the reasons for that rule being that a court’s purpose is to adjudicate existing legal disputes and its scarce resources should not be wasted away on abstract questions of law. (footnote: *Police and Prisons Civil Rights Union v South African Correctional Services Workers’ Union and Others* [2018] ZACC 24; 2018 (11) BCLR 1411 (CC); 2019 (1) SA (cc) para 43.) In *President of the Republic of South Africa v Democratic Alliance and Others* [2019] ZACC 35; 2019 (11) BCLR 1403 (CC); 2020 (1) SA 428 (CC) para 35.) the Constitutional Court cautioned that ‘courts should be loath to fulfil an advisory role, particularly for the benefit of those who have dependable advice abundantly available to them and in circumstances where no actual purpose would be served by that decision, now’.

[15] Recently, the Constitutional Court in *Minister of Tourism v Afriforum NPC*⁴ a matter dealing with effects of Covid 19 pandemic, the court stated that:-

‘A case is moot when there is no live dispute or controversy between the parties which would practically be attested in one way or another by court’s decision or which would be resolved

³ [104/2022] [2023] ZASCA 35 at para 12 and 15

⁴ [2023] ZACC 7 (CC) para 23

by court's decision. A case is also moot when a court's decision would be of academic interest only.'

[16] In this matter prayers relating to reconnection of electricity to the applicant's house have become moot by the reasons I have stated above. That only relates to the disconnection that occurred on 10 July 2024, further, disconnections, if any, are not for this court to determine as per this application.

[17] I share same sentiments with Stretch J, in the matter of *Nomsa Yali and Others v Buffalo City Municipality and Another*⁵, she remarked and said:-

'This court is inundated with similar applications and has made its best endeavours to explain to the respondents the obvious procedure to follow to avoid this type of litigation on countless occasions, but to no avail. The applicant's cause of complaint is failure on the part of the respondents to comply with their own bylaws in affording customers the requisite days' notice prior to disconnection. The respondents consistently remain in default of procedural bylaws which are by no means onerous to comply with. I say this, because clause 6 of the respondent's by laws provides for a bouquet of simple, easy steps to take for the respondents not only to comply with their own bylaws, but more importantly to promote and accelerate outstanding debt collection, which funds could and should be used to provide essential services rather than pay punitive costs orders in court over and over again. Clause 6 reads as follows:

Service of notice

- 1) Any notice or other document that is served on my person in terms of this by-law is regarded as having been served-
 - a) when it has been delivered to that person personally;

⁵ Judgment of this court in Case Numbers, 1317/22, 1356/22. 695/23 and 251/24 delivered on 14 January 2025.

- b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of 16 years;
 - c) when it has been posted by registered or certified mail to that person's last known residential address in the Republic and an acknowledgment of the posting thereof from the postal service is obtainable;
 - d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b), or (c); or
 - e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates.
- 2) When any notice to or other document must be authorised or served on the owner, occupier or holder of any property or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier or holder of the property or right in question, and it is not necessary to name that person.

[10] What could possibly be simpler? Yet the respondents persistently fail to comply with clause 6 of their own bylaws at the expense of law-abiding taxpayers and with flagrant disregard to the epic depletion of public funds when it comes to litigation and costs orders.'

[18] What the municipality has left unabated is the dispute lodged by the applicant per letter dated 05 February 2025; the dispute by the applicant dated from 2015 until 2023, the grounds of the delay have not been explained.

[19] In respect of the dispute, clause 16 of the municipality 2023 electricity Bylaw provides an answer as follows: -

[9] Section 102 of the Municipality Systems Act provides as follows:

102. Accounts

(1) A municipality may-

(a) consolidate any separate accounts of persons liable for payments to the municipality;

(b) Credit a payment by such a person against any account of that person; and

(c) implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person.

(2) Subsection (1) does not apply where is a dispute between the municipality and a person referred to in that subsection concerning any specific amount claimed by the municipality from that person.'

[20] I agree with my brother Zono AJ as he state that in *Magqazana*⁶:-

‘Where a statute confers rights, privilege or immunity, such provisions are peremptory. Similarly, where a statute provided time limits and restrictions, such provisions are peremptory. Non-compliance with the preremptory provisions is faithful and result in actuality.’

[21] It is the applicant’s case that, the municipality disconnected electricity despite a dispute raised. The municipality refutes that the applicant has shown that it has a dispute in terms of Section 102 of the Local Government Municipal Systems Act 32 of 2000, and that the disconnection followed, a notice even though the respondent admits the notice was outdated, sent some time ago.

⁶Magqazana v Buffalo City Municipality and Another [2024] ZAECELL 7 at para 43

[22] The question this court has to answer is whether there is a dispute by the applicant in terms of Section 102 of the Systems Act.

[23] In order to understand whether Section 102 dispute exists, the court in 39 *Van der Merwe Street Hillbrow v City of Johannesburg*⁷ held as follows:-

23.1 In the contextual approach, the judgment requires the following: -

23.1.1 The requirements in Croftdene were summarised in 39 *Van der Merwe Street Hillbrow v City of Johannesburg* as follows:-

- ‘(a) There must be a dispute, in the sense of a consumer, on the one hand, and the municipality on the other, advancing irreconcilable contentions;
- (b) The dispute must be properly raised, which would require, at least, that it be properly communicated to the appropriate authorities at the municipality and that this be done in accordance with any mechanism and appeal procedure provided in terms of section 95(f) of the Systems Act for the querying of accounts;
- (c) The dispute must relate to a specific amount or amounts or specific item or items on an account or accounts, with the corollary that it is insufficient to raise a dispute in general terms;
- (d) The consumer must put up enough facts to enable the municipality to identify the disputed item or items and the basis of the ratepayer’s objection to them;
- (e) It must be apparent from the founding affidavit that the foregoing requirements have been satisfied.’

[24] It is clear that the Municipality has not addressed the dispute lodged by the applicant either it is compliant of Section 102 or not, the municipality is

⁷ Unreported judgment, Case No: 23/7784

obliged to answer the dispute lodged before it. It appears *ex facie* the papers that there is insurmountable problem confronting the applicant's account with municipality is obliged to answer to that.

[25] Hoexter describes the importance of procedural fairness as follows: -

‘Procedural fairness,..... is concerned with giving people an opportunity to participate in decisions affecting them, and crucially- a chance of influencing the outcome of those decisions. Such participation is a safeguard that only signals respect for the dignity and work of the participants, but is also likely to improve the quality and rationality of the administrative decision –making and enhance legitimacy⁸.’

[26] In *MEC for health, Eastern Cape and Another v O. Kirland Investments (Pty) Ltd*⁹, the court held that:-

‘...there is a higher duty on the State to respect the law, to fulfil procedural requirements and to tread respectfully when it comes to rights. Government is not independent or bewildered litigant adreft or see of litigious uncertainty to whom the courts must extend a procedural – circumventing lifeline. It is a Constitution’s primary agent. It must do right and do it properly.’

[27] In my view, procedurally, the decision by the municipality not to answer the dispute lodged by the applicant is unfair and does not enhance legitimacy.

[28] Consequently, the application should succeed in so far as prayer 2.4 of the applicant's notice of motion, even though the rest of the prayers, in my view, are moot.

⁸ Para 19, see also Nomsa Yalu, Supra at para 49

⁹ 2014 (3) SA 481 at para 82

[29] In the result, the following order issues: -

Order: -

1. The municipality is directed to answer to the applicant's dispute of its electricity account, within 60 (sixty) days from date of service of this order.
2. The Municipality is directed to pay applicant's costs of this application of Scale A.

M. MHAMBI

Judge of the High Court (Acting)

Appearances:

Mr L. Mati : Counsel for the Applicant

Instructed by : Niehaus McMahon Inc.
East London

Ms Z. Zitho : Counsel for the Respondents

Instructed by : Jolwana Mgidlana Inc.
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NB. This judgment has been delivered by circulation to the parties email addresses. The date of delivery is deemed to be 02 October 2025.

Date Heard : 14 August 2025

Date Delivered : 02 October 2025