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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)
CASE NO: EL937/2025**

In the matter between:

LINDELWA SIGENU- SIMANI

Applicant

And

BUFFALO METROPOLITAN MUNICIPALITY

1st Respondent

THE MUNICIPAL MANAGER:

BUFFALO CITY METROPOLITAN

MUNICIPALITY

2nd Respondent

**JUDGMENT
ON APPLICATION FOR LEAVE TO APPEAL**

Zono AJ:

Introduction

[1] This is an application for leave to appeal against the judgment delivered on 05th June 2025. Aggrieved by the judgment aforesaid, the applicant launched an application for leave to appeal, grounds of which are recorded as follows:

- “1.1 At paragraph 14 this Honourable Court found that as a result of the opposition raised by the Respondents, that a dispute of fact is present on the versions proffered by the parties.*
- 1.2. This Honourable Court misdirected itself, with all due respect, in accepting the version of the Respondents that the purported notice was delivered in accordance with the by-laws. This Honourable Court failed to take into consideration that the by-laws read with the Municipal Systems Act prescribes a specific manner of service of the notice before accepting a notice had been delivered.*
- 1.3 Section 115(1) of the Municipal Systems Act clearly states that-
Any notice or other document that is served on a person in terms of this Act or by a municipality in terms of any other legislation is regarded as having been served, when ...*
- 1.4. The Respondents did not rely on any provision as governed by the Municipal Systems Act and as such, the Respondents failed to prove compliance with the provisions of the Municipal Systems Act, and by failing to do so, failed to show delivery of the notice.*
- 1.5 This Honourable Court incorrectly found that this constitutes a “dispute of fact”, but rather ought to have found that there is a legal issue for determination, in that the validity of Section 14(4)(c) is placed in question as it is in direct conflict with the Respondents very own by- law and it is in conflict with Section 115(1) of the Municipal Systems Act.*

- 1.6. *Furthermore, this Honourable Court has recently ruled in the matter of Babalwa Ntwanambi v Buffalo City Municipality and Another that Yande Engineering did not have the necessary authority to deliver notices*
- 1.7 *This Honourable Court also found in the Judgment of Ntwanambi that the notice, itself, did not contain the requisite required information to constitute a proper notice.*
- 1.8. *As a result, this Honourable Court ought to have accepted the version of the Applicant in that the Respondents have failed to show compliance with the Electricity Supply By-Laws read with the Municipal Systems Act” (sic).*

[2] During the hearing of this application both Counsels were asked if the electricity supply has not been reconnected. Both Mr Mati and Mr Du Plessis submitted that they had no instructions to that effect and undertook to take instructions. It was agreed that they would prepare brief written submissions in that regard and deal with how their instructions affect the provisions of section 17(1)(b) and section 16(2)(a) of the Superior Court Act 10 of 2013. A decision in this application and in the appeal would be of no practical effect if the electricity supply is reconnected or reinstated. None of the parties delivered its written submissions and no explanation had been proffered for such failure. I pen this judgment without the benefit of their instructions and written submissions in this regard.

Legal Principle

[3] An application for leave to appeal is governed by Section 17(1) of the Superior Court Act which provides as follows:

- “(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—
- (a) (i) the appeal would have a reasonable prospect of success; or

- (ii) *there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;*
- (b) *the decision sought on appeal does not fall within the ambit of section 16(2)(a); and*
- (c) *where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.”*

[4] In *Smith*¹Plasket AJA (as he then was) held that:

“7. *What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”*²

[5] These sentiments were shared by Schippers AJA in *Mkhitha*³ where the following was said:

“17. *An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.”*

[6] Paragraph 2 and 3 of the main judgment are incorporated as herein set out. Both section 115(1)(b) of the Local Government: Municipal Systems Act 32 of 2000 (the Act) and section 13(1)(b) of the

¹ *Smith v S* 2012 (1) SACR 567 (SCA) Para 7.

² *S v Mabena & Another* 2007 (1) SACR 482 (SCA) Para 22.

³ *MEC for Health, Eastern Cape v Mkhitha and another* (1225) [2016] ZASCA 176 (25 November 2016) Para 17.

Municipality's Electricity Supply By-Law published in Provincial Gazette Extra Ordinary No 5016 on 24 November 2023 (the By-Law) provide for service that affect directly this matter. Section 115(1) (b) of the Act Provides thus:

“Any notice or other document that is served on a person in terms of this Act, is regarded as having been served-

(a)

(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 sixteen years.

Whereas section 13(1)(b) of the By-Law is an exact replica of section 115(1)(b) of the Act, save for reference to the By-Law instead of the Act. Another relevant provision of the By-Law is section 14(4)(b) which provides as follows:

“14. If delivered by hand, the pre-termination notice shall be deemed to have been effectively and sufficiently served on the consumer-

(a)

(b) When it has been left at their place of residence... with a person apparently above the age of sixteen (16) years old”.

[7] The gist of applicant's case is simple that she did not receive the requisite notice or no notice was given to him prior to the alleged disconnection. Accordingly, the applicant consequently contends that such failure rendered the disconnection unlawful. Whilst the notice is attached to the respondents' papers, Phumlani Mthiyane deposed to both service and supporting affidavits. In the service affidavit Mthiyane alleges as follows:

“On 09 April 2025 I delivered the 14-day pre-termination letter to 3[...] J[...] Road Morning Side, East London. There was nobody at home so I left the letter in the post mail and took a photo for evidence that I delivered to the correct place” (sic).

In the supporting affidavit he alleges as follows:

“9. The applicant was not at home on 09 April 2025 and so I left the pretermination letter in the mailbox” (sic).

- [8] The legislative framework adverted above does not provide for a service by leaving a notice in the post box or mailbox. The legislative material aforesaid provides, in so far as it relates to this matter, for personal service or

“Leaving a copy at consumer’s place of residence with a person apparently over the age of sixteen (16) years”.

Another relevant service for purposes hereof is by posting the notice by registered or certified mail⁴. Nothing is said about leaving a copy in the postbox or mail box.

- [9] Valid exercise of the public power must have a source in law. That is the requirement of the principle of legality⁵. Service of the pre-termination notice otherwise than in terms of the applicable Municipality’s electricity By-Laws and the Act is without lawful basis⁶. A maxim of interpretation “*Unius est exclusio alterius*” applies to the facts of this case. It means express mention of one thing is an exclusion of the other⁷. Express mention of the methods of service of the pretermination notice in the Act and the By-Law is an exclusion

⁴ Section 115(1) (c) of Local Government : Municipal Systems Act 32 of 2000; Section 13(!)(c) and 14(5) of Municipality’s By-Law- Provincial Gazette Extraordinary.

⁵ *Lester v Ndlambe Municipality and Another* 2015 (6) 283 (SCA) para 26.

⁶ *Buffalo City Municipality and another v Mgqazana* (EL1386/2023) [2024] ZAECLLC 29 (2 May 2024) para 13.

⁷ *Ndaba v Ndaba* 2017 (1) ALL SA 33 (SCA); 2017 (1) SA 342 SCA para 51.

of any other form or method that is not specifically mentioned therein⁸. I agree with Mr Du Plessis that the service referred to in the respondents' papers are not in compliance with the law, and therefore unlawful. The termination of the electricity supply to the applicant's premises was tainted with illegality or unlawfulness.

[10] I am accordingly of the view that the appeal would have a reasonable prospect of success. Another court would come to a different conclusion. The full court of this Division would perfectly deal with this appeal.

[11] In the result the following order is made:

- 1. The leave to appeal is granted to the full court of Eastern Cape Division, Makhanda.**
- 2. Costs of this application shall be costs in the appeal.**

A.S ZONO
JUDGE OF THE HIGH COURT (ACTING)

⁸ *Magqazana v Buffalo City Municipality and another* (EL1386/2023) [2024] ZAECLLC 7 (5 March2024) para 29.

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