IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO. D8220/2023

In the matter between:

STELLDIP 696 (PTY) LTD Applicant

and

ETHEKWINI MUNICIPALITY Respondent

ORDER

The following order shall issue:

1. The rule nisi which was issued by this court on 28 July 2023, is discharged.

2 The applicant is directed to pay the costs of the application on scale B.

JUDGMENT

Chithi J

The issue

[1] The crisp question in this matter is whether the applicant had lodged any disputes with the respondent as contemplated in terms of s102 of the Local Government Municipal Systems Act 32 of 2000 ('the Systems Act'). I will deal with the content of these provisions later in this judgment.

[2] The applicant had applied for condonation for the late delivery of its practice note and heads of argument. The respondent opposed this application. However, despite such opposition and what this court considered to be an unsatisfactory

explanation for the applicant's failure to file its practice note and heads of argument, I considered that it would serve no useful purpose to refuse the application as the matter was set down at the instance of the respondent on account of inordinate delays on the part of the applicant to set it down.

Background

[3] The applicant in the matter is an owner of a commercial shopping centre ('the shopping centre') situated at 3[...] M[...] Road, Escombe, Queensburgh within the respondent's jurisdiction. The applicant is leasing units of this property to 8 commercial entities, and this court considers it unnecessary to identify these entities by name as they are not part of these proceedings. It suffices to say that the applicant contends that except for 3 of these entities the remainder of these entities are owned and operated by previously disadvantaged individuals, who are completely dependent on the income generated from these businesses.

[4] What triggered this application is that on 25 July 2023, the respondent terminated the electricity supply to this shopping centre allegedly for municipal services which the applicant owed to the respondent. The amount which is alleged to have been owing on 30 June 2023 stood at R918 051.88 and on 28 October 2023 at R1 216 508.32 after this application had been instituted.

[5] On 28 July 2023, the applicant sought and was granted an order in the form of a rule nisi for the restoration of electricity supply to the shopping centre and for the respondent to be interdicted and restrained from disconnecting electricity supply to the shopping centre pending the finalisation of the disputes which the applicant had allegedly lodged with the respondent.

[6] The applicant contended that the respondent unlawfully terminated the electricity supply in circumstances where it had lodged 6 formal disputes with the respondent on 18 July 2023 as follows:

Query 1 under reference number CSM202307185678

(a) The respondent billed the applicant for meter number 0528599 which was not on the applicant's property.

Query 2 under reference number CSM202307185684

(b) The applicant contended that in respect of this query there was a dispute between the applicant and the respondent with regard to the consumption and meter reading in general. The applicant cited as an example the fact that when the respondent loaded meter number D792501M, it loaded a 6 digit reading which was incorrect. This meter only had 5 digits. Therefore, start reading should have been 98323 and end reading when meter was removed was 99597. Usage for the period 9 September 2020 14 December 2022 was only 1274. This reading was in line with the charges on the new meter. Notwithstanding the aforementioned, the respondent billed the applicant for 103636 usage which was simply impossible.

Query 3 under reference number CSM 2023078689

(c) The applicant contended that the respondent removed the old meter number 0792501M and replaced it with meter number 4570315248. The respondent even billed the applicant for this new meter on a statement dated 30 June 2023. In July 2023, the respondent harassed the applicant contending that this was not their meter as they did not install it. The respondent refused to charge the applicant according to the readings on the new meter which the respondent installed.

Query 4 under reference number CSM202307185690

(d) The applicant contended that it requested the respondent to install a meter for the ATM.

Query 5 under reference number CSM 202307185692

(e) The applicant contended that it requested the respondent to do a full meter investigation and check which meter belonged to which shops and then to remove all unnecessary meters. For example, meter number 2864760 and meter number 89297857 were on site but not on the statement.

Query 6 under reference number CSM202307

(f) The applicant contended that in respect of this query she requested the applicant to fix dangerous connections which connections constituted a huge fire hazard.

[7] The respondent is resisting the application and seeks for the discharge of the rule nisi on the basis that the applicant has failed to make out a case. The respondent contends that what the applicant had raised with the respondent were merely queries and not disputes as contemplated in s 102 of the Systems Act. Further and in any event, each of the queries were resolved.

[8] The respondent responded to the queries in terms by way of a customer service and investigation report marked as EM3.1 and 3.2 to its answering affidavit. It responded as follows:

Ad query 1

(a) The meter in respect of which this query was raised is on site and was used for shop 10. The applicant acknowledged in its replying affidavit that this meter was on site.

Ad query 2

(b) The respondent contended that meter number 0792501M was installed on 15 May 2002 and was always been a 6-dial meter up to the date of its removal from site on 14 December 2022. The respondent further pointed out that it could not get accurate readings from this meter as far back as 8 February 2021. Prior to the replacement of meter number 0792501M on 14 December 2022, the respondent captured and accepted disconnection reading of 99597 on the system which gave electricity consumption of 103636 KWH over a period of 665 days. This electricity usage was billed and charges for estimated readings credited accordingly on the statement dated 29 November 2011. The electricity consumption for the period from 6 January 2021 to 22 November 2022 was 103636 kWh = [99597 - 995961]. To resolve this query, the respondent installed new meter number 45703124185 on 28 August 2023 and then the respondent would then determine a 'fair electricity usage' based on the readings that would be obtained from the new meter. The customer's account would then be adjusted for the period from 6 January 2021 to 21 August 2023, based on the daily average obtained from there new meter readings, and this adjustment would rectify charges for electricity consumption for this period. The respondent noted the claim that usage for the period 9 September 2020 to 14 December 2022 was 1274. The respondent therefore suggested that the applicant's claim that electricity usage was 1274 kWh over a period of 826 days was incorrect.

Ad query 3

(c) The respondent contended that there was a meter change which was done by eThekwini electricity on 14 December 2022. The new meter 45703152483 was installed replacing the old meter number 0792501M. This meter was replaced with 45703124185 on 22 August 2023, after its terminal burnt. Terminals are used for connection or termination of wires safely to the meter and these were burnt; that meter was bypassed by an unknown person (this means that the consumer had direct supply without being the metered as the meter was not connected) as per the technical investigation which was carried out by the respondent.

Ad query 4

(d) In respect of this query, the respondent contended that any meter that is to be installed on any premises, it is installed on the instruction of the consumer. This process is initiated by the consumer by submitting a request to eThekwini electricity for the installation of the new meter on site by using a form titled 'Application for electrical connection'. This application form has to be submitted to the eThekwini electricity customer service for approval. eThekwini electricity would then instal the meter upon payment of the prescribed fee as determined by the engineer. The customer may, if he or she desires enlist the services of a registered electrical contract to assist with the process.

Ad query 5

(e) In respect of this query, the respondent contended that it was the responsibility of the consumer to do the full meter investigation and check. The respondent further pointed out that any meter that is to be installed on any premises, it is installed on the instruction of a customer. Likewise, any meter that is to be removed from the premises, it must also be removed on the instruction of the customer. The customer may request the removal of unnecessary meters from the site using the 'disconnection and removal of electrical equipment' form which, after completion must be submitted to eThekwini electricity customer services. The respondent further pointed out that it should be noted that any meter that is installed on the customer's premises and it is not used, attracts service charges which the customer is liable for. This charge is applied irrespective of the electricity which is consumed on the premises and the account holder is liable for payment of the service charge, if the meter remains on site.

Ad query 6

(f) In respect of this query, the respondent contended that it was responsible for the electricity infrastructure up to the meter point. The municipality electricity infrastructure (meters and service cable up to the consumer's main circuit breaker) complies with the code of practice and the regulations to the Occupational Health and Safety Act 1993. The consumer was responsible for electricity infrastructure from the point of supply (from the meter and beyond).

[9] In conclusion, the respondent stated that after scrutinizing account number 8[...] for Stelldip (Pty) Ltd it was found that there were discrepancies in the electricity meter readings for reference number E9623882 and E9623888 which resulted in incorrect charges for electricity usage to the account. The customer's account would be adjusted accordingly as per the provisions of section 17 (5) of the eThekwini electricity bylaws. The adjustments to be made would be reflected in the October statement.

[10] The respondent had attached to its founding affidavit, the relevant application which it contended the applicant ought to have used in lodging a complaint.

[11] In reply, the applicant contended that the respondent had a duty to provide the applicant and its tenants with a 14 days' notice of the intended termination of

services reiterating and bolstering the initial point which it made fleetingly in its founding affidavit. Additionally, the applicant contended that in its answering affidavit, the respondent was elevating form over substance It pointed out that the outcomes from the two reports from the investigations the respondent commissioned, confirmed disputes as opposed to merely queries. Save for the first query, the applicant essentially merely joined issue with regard to the other queries reiterating its version and contending that all the other queries remained outstanding. Lastly, the applicant contended that on its own version the respondent conceded that there were discrepancies regarding the incorrect billing of the applicant's account which the respondent undertook to rectify in the future.

[12] In a further affidavit which the respondent delivered, it contended that an onsite inspection which it conducted after the delivery of the applicant's replying affidavit, revealed the following:

(a) That the ATM was operational notwithstanding, that there were no records of a meter for the ATM in the premises.

(b) In respect of query 6, there were different wires compared to the wires appearing in the photographs attached as RA1 to the applicant's affidavit. The respondent contended that this suggested that the wires were stripped and connected in a temporary or illegal manner.

The parties' submissions

[13] At the outset of her argument, Ms *Moodley* abandoned the applicant's reliance on spoliation in these proceedings. Ms *Moodley* relying on the case of *Joseph and Others v City of Johannesburg and Others* [1] argued that the respondent's failure to provide the applicant and its tenants with 14 days' pre-termination notice in terms of by-law 10 (1) (b) was dispositive of the matter. However, she never went so far as to suggest that on this ground alone this court should confirm the rule nisi which this court issued on 28 July 2023.

[1] *Joseph and Others v City of Johannesburg and Others* 2010 (4) SA 55 para 61 ('Joseph')

[14] Ms *Moodley* went on to argue that the applicant substantially complied with bylaw 16 (1) which required a person who was challenging the correctness or accuracy of any amount due and payable by such person to lodge it in writing. Relying on *Akani Casiono (Pty) Ltd*[2], she pointed out that the respondent's policy which required a person who wished to lodge a dispute in respect of an account to submit it in writing on the prescribed form to the authorised official, could not be allowed to override by-law 16 (1) which merely required disputes in respect of an account to be in writing.

[15] Furthermore, Ms *Moodley* relying on *Regona Properties (Pty) Ltd and Another v City of Johannesburg*[3] , argued that as the applicant had raised the issue of possible inaccurate readings of the meter, the onus was on the respondent to show that the meter readings were correct.

[16] Moreover, Ms *Moodley* argued that the applicant's disputes did not merely raise generalised complaints. The applicant challenged the correctness and accuracy of specific charges, meter readings, consumption figures, the safety and legality of electrical infrastructure. She pointed out that the respondent's own investigation report confirmed the discrepancies in meter readings and billing. This on its own validated the existence of disputes as contemplated in s 102 of the Systems Act.

[17] Conversely, Mr *Broster* for the respondent sought to distinguish Joseph to this case. He pointed out that in *Joseph* the applicants were tenants and not an account holder like in this case, who had the benefit of receiving a tax invoice on every month basis. He argued that the tax invoice from the respondent specifically drew the applicant's attention to its account being in arrears and that should payment not be made, the respondent would institute legal proceedings.

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[2] *Akani Casiono (Pty) Ltd* (252/1999) [2001] ZASCA 59 (17 May 2001) para 17.
[3] *Regona Properties (Pty) Ltd and Another v City of Johannesburg* (2023-074510) [2023] ZAGPJHC 877 (4 August 2023) para 53 (Regona Properties').

[18] Mr *Broster* went on to argue that all the queries which the applicant made do not refer to a 'specified amount' or 'portion of a debt' as contemplated in section 102 (2) of the Systems Act. To this end, he relied on what is set out in paragraphs 22 and 28 of *Body Corporate Croftdene Mall v Ethekwini Municipality*.[4] I do not propose to repeat verbatim what is set out in those paragraphs, except to paraphrase what the Supreme Court of Appeal said namely that the dispute must relate to a 'specific amount' claimed by the municipality.

[19] Moreover, Mr *Broster* argued that the fact that the respondent discovered problems and corrected them does not elevate those queries to disputes. Lastly, Mr Broster argued that if this court had regard to the applicant's conduct it was demonstrative of a ratepayer who was intent on not paying its account. He cited the following as examples from which this can be inferred:

(a) Despite being directed by an order of this court to make payment of R1 5 000 per month on or before the 30th of every month and every consecutive month thereafter, until the final order was made in this matter, according to the tax invoice dated 29 August 2023, the applicant only made payment of R 12 795.00.

(b) Despite bringing the application on urgent basis, it failed to set it down for a hearing.

(c) The applicant failed to deliver its practice note and heads of argument timeously.

[20] The question whether the queries as raised by the applicant constitute a dispute as contemplated in terms of s 102 of the Systems Act, will be considered against the relevant legislative framework. This question is what both parties in broad terms agree was the issue that this court must determine. However, during argument, Ms *Moodley* for the applicant argued that the further issue which this court was required to determine, was whether the respondent was required to give the applicant a pretermination notice.

[4] *Body Corporate Croftdene Mall v Ethekwini Municipality* 2012 (4) SA 169 (SCA) ('Croftderie Mall')

[21] The legislative framework which is applicable to this case is common cause between the parties. I will therefore restrict myself only to portions of such framework which have a bearing to this case.

[22] Section 102 of the System Act provides that:

'Accounts

(1) A municipality may—

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

(b)credit a payment by such 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 there 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.'

[23] The respondent as it is required in terms of s 96(b) of the Systems Act adopted, maintained and implemented a credit control and debt collection policy. Additionally, in terms of s 98(1) of the Systems Act the respondent also adopted by-laws to give effect to such policy, its implementation and enforcement.

[24] The relevant excerpts from the respondent's credit control and debt collection policy which are pertinent to the determination of this matter are various sub-clauses of clause 24 which are as follows:

'DISPUTES

241 Should any dispute arise with respect to the amount owing, the debtor must continue to make regular payments based on the average charges for the preceding three (3) months prior to the dispute, plus interest where applicable.

24.3 A Person who wishes to lodge a dispute in respect of an account must submit the dispute in writing, on the prescribed form, to the Authorised Official as defined in this Policy stating the reasons for such dispute and any relevant facts, information or representation which the Authorised Official should consider to resolve the dispute.

24.4 The dispute must be submitted within twenty-one (21) days of the account. If a dispute is raised after this period, it will be treated as an enquiry, the account will not be suspended, and normal credit control procedures will apply.

24.5 The dispute must relate to a specific amount on the account. Amounts not in dispute must be paid in full. If the amounts not in dispute remain unpaid, services may be disconnected.

24.6 A query is not regarded as a dispute. A query is a verbal inquiry whereas a dispute must be in writing and lodged with the relevant municipal department or section.

24.8 The person contemplated in Clause 24.1, must provide the Authorised Official with the account alleged to be in dispute, which includes incorrect readings, misallocation of payments, incorrect tariffs charged and incorrect property values used and any other relevant information that may be required.

24.9 The Authorised Official:

(a) May investigate or cause the dispute to be investigated within thirty (30) days, or as soon as possible after such dispute is received;

(b) May call for additional information [documentation from a customer who disputes an account;

(c) Must inform the person in question, promptly, in writing, of his or her finding after conclusion of the investigation; and (d) Must take a decision, based on the spirit of the Policy.

24.10 A dispute submitted above shall not stop or defer the continuation of any credit control and legal procedure already instituted for the recovery of arrear payments relating to such dispute.

24.11 A person whose rights are affected by the decision of the Authorised Official, may request the CFO to review the decision of the Authorised Official as contemplated in Clause 24.2 of this Policy. The decision of the CFO shall be subject to the right of appeal in terms of Section 62 of the Systems Act. A written

notice of the appeal and reasons must be lodged with the City Manager in a prescribed form, within twenty-one (21) days of the date of notification of the decision by the CFO.

2414 An account must be paid in full regardless of any query that may be raised in respect of the account Once the query is resolved and a decision is reached, such account will be credited or debited accordingly.

[25] In the respondent's by-laws the relevant clauses which are pertinent to the determination of this matter are clauses 10(1)(b), and 16. Clause 10(1)(b) reads:

'Termination of service agreements

(1) Subject to sections 17 and 26, the Municipality may terminate a service agreement if—

(b) the Municipality has given written notice of not less than 14 days to the customer, if the customer concerned has breached or failed to comply with any specific term or condition of the service agreement, and has failed to remedy such breach or rectify such failure after service on such customer of a notice to do so in terms of section 11 of this By-law.'

[26] Clause 16 on the other hand reads:

'16. Disputes in respect of accounts rendered by the Municipality

(1) A person must lodge a written dispute with the Municipality to challenge the correctness or accuracy of any amount due and payable by such person reflected in an account rendered by the Municipality in terms of this By-law: Provided that such dispute must be lodged with the Municipality before or on the due date for payment specified in the account concerned.

(2) A person must, pending resolution of the dispute, continue to make regular monthly payments in respect of rates, if applicable, or in respect of any municipal service, as the case may be, based on the average

monthly fees for the preceding three months prior to the dispute arising, plus interest if applicable, until the dispute is resolved.

(3) Where a person fails to lodge a dispute within the period mentioned in subsection

(1), any correspondence received from the person after such period concerning the correctness or accuracy of an account, will be treated as an enquiry and—

(a) the account will not be suspended; and

(b) such enquiry must be accompanied by the payment of at least an amount equal to the average amount per month that was due and payable in respect of the municipal service concerned during the preceding three months.

(4)…….

(5) Any amount not in dispute must be paid in full by the person concerned and municipal services may be disconnected or restricted where such amounts remain unpaid.

(6) The Municipality must register the dispute or enquiry and take reasonable steps to ensure that the dispute or enquiry is addressed within a reasonable period.

(7) The Municipality must—

(a) investigate or cause the dispute to be investigated within 30 days, or as soon as possible after such dispute is received; and

(b) inform the person, in writing, of his or her finding as soon as possible after conclusion of the investigation, instructing that either such person's account will be credited with an amount found to have been overpaid or, alternatively, that any amount found to be due and payable must, subject to section 23, be paid within a reasonable period from the date on which the person concerned is notified thereof, unless an appeal is lodged within that period in terms of subsection (8).

(8) Except for instances where the right of appeal is specifically afforded to a person in terms of any other law, a person may, subject to section 35, lodge an appeal in writing with the municipal manager in terms of

section 62 of the Systems Act against a decision referred to in subsection (7), within 21 days of the date of notification of the decision.

(9) The Municipality must inform the person concerned in writing of the decision on the appeal, instructing that any amount found to be overpaid will be credited to such person's account or, alternatively, that any amount found to be due and payable must be paid within seven days from the date on which the person is notified thereof.

Was the respondent required to give the applicant 14 days pre-termination notice

[27] Before terminating the services to the applicant's shopping centre, the respondent was required to give the applicant 14 days' pre-termination notice in terms of by-law 10 (1) (b). While the applicant had raised this issue in its papers albeit tersely it is unnecessary for this court to pronounce on this issue, either on its own or collectively with other issues. This is so for three reasons. First, the applicant's case was always anchored on the respondent's unlawful termination of the applicant's electricity supply on the face of what the applicant considered to be disputes, which it allegedly raised with the respondent This is also apparent from the order of this court which was granted on 28 July 2023. Second, while the applicant has tersely raised this issue in its papers, when the respondent delivered a statement of common cause issues and issues in dispute, in terms of practice directive 9.4.2, excluding this as an issue, the applicant never delivered a countervailing statement identifying it as one of the issues to be determined by this court. Third, and most importantly, in its heads of argument which were only delivered on 3 February 2025, the applicant also never raised it as an issue for determination by this court. It seems to me that the applicant's belated attempt to resuscitate this point is aimed at preventing the inevitable, the discharge of the rule nisi.

[28] Based on what then prevailed as a potential threat on the applicant's rights and interests, this court intervened and as it is apparent from the court order itself it did not intervene based on the respondent's failure to give the applicant the pre-termination notice. There is therefore no reason why this court should confirm or discharge the rule nisi based on an ancillary issue which was not the basis upon

which the order was granted. Even if I am wrong on this point, I take solace on the fact that in the event that the respondent in future got tempted to terminate services to the applicant's shopping centre without giving the requisite notice, I have no doubt that this court when called upon, would not hesitate to intervene.

Whether the applicant had lodged any dispute

[29] The question of what constitutes a dispute was authoritatively resolved in *Croftdene Mall*. The Supreme Court of Appeal stated that s 102 (2) of the Systems Act required that the dispute must relate to a 'specified amount' claimed by a municipality. I agree with Mr *Broster* that none of the queries which the applicant made refer to a 'specified amount' or a 'portion of a debt' as contemplated in s 102 (2) of the Systems Act. For this reason, the rule nisi which was issued by this court on 28 July 2023, falls to be dismissed.

[30] The lodgment of a written dispute with the municipality in the prescribed form as contemplated in clause 24.3 of the respondent's credit control and debt collection policy is not without significance. Once the dispute has been lodged, there are several steps which kick in and those steps are as follows:

(a) The municipality is required to register the dispute or enquiry.

(b) The municipality is required to take reasonable steps to ensure that the dispute or enquiry is addressed within a reasonable time.

(c) The municipality must investigate or cause the dispute to be investigated within 30 days, or as soon as possible after such dispute is received; and

(d) The municipality must inform the person, in writing, of his or her finding as soon as possible after conclusion of the investigation, instructing that either such person's account will be credited with an amount found to have been overpaid or, alternatively, that any amount found to be due and payable must, subject to section 23, be paid within a reasonable period from the date on which the person concerned is notified thereof, unless an appeal is lodged within that period in terms of subsection (8).

[31] The refusal by a party to lodge the dispute even when armed with a court order such as the applicant has done, is self-defeating in that it prevents the

resolution of what might not just be queries but, genuine disputes if they were fully motivated as required in terms of the respondent's policy. In addition, it prevents the resolution of what might be disputes in a cost-effective manner.

[32] A party cannot bypass and simply refuse to use a mechanism which is designed to resolve disputes expeditiously and co-effectively in the hope that the court will find in its favour especially when it is armed with a court order which prevents immediate harm in the intervening period. In my view, there is no reason why the applicant should not exhaust the internal remedies provided in the relevant legislative framework of the respondent, if it genuinely has disputes as contemplated in s 102 (2) of the Systems Act.

[33] One last point which warrants mention is the applicant's reliance on *Regona Properties*. This case is distinguishable to this one. In *Regona Properties*, the applicants had raised disputes in the prescribed form with the municipality. Additionally, the respondent had stated in its affidavit in that matter that the tax invoices which were supplied to the applicant constituted the actual reading of the consumption. The respondent in this case has not made any positive statement along those lines and therefore, did not attract any onus. For all these reasons the applicant had not satisfied the necessary requisites entitling it to a final interdict. Accordingly, the applicants' application must fail.

Costs

[34] The general rule is that costs should follow the event. I do not see any reason why I should deviate from this rule.

[35] In the result I grant the following order:

1. The rule nisi which was issued by this court on 28 July 2023, is discharged.
2. The applicant is directed to pay the costs of the application on scale B.

Chithi, J

APPEARANCES

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Date of hearing	:	09 February 2026
Date of judgment	:	10 February 2026