

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2026-051129

DATE: 18 March 2026

In the matter between:

THANDO FAKU

First Applicant

PATISWA PATRICIA FAKU

Second Applicant

and

CITY OF EKURHULENI METROPLITAN MUNICIPALITY

Respondent

Neutral Citation: *Faku and Another v City of Ekurhuleni Metropolitan Municipality (2026-051129) [2026] ZAGPJHC --- (18 March 2026)*

Coram: Adams J

Heard: 11 March 2026

Delivered: 18 March 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 11:00 on 18 March 2026.

Summary: Civil procedure – *mandament van spolie* – urgent application for an anti-spoliation order – applicants seek an order directing and compelling the City to restore their ‘blocked electricity meter’ and the supply of electricity to their primary residence – they also apply for an order restoring full supply of water, which is being restricted / limited, to their premises – applicants claim squarely based on the *mandament van spolie* –

Held that the termination of the supply of electricity or water to residential premises does not, without more, amount to spoliation – an applicant would only be entitled to relief on the basis of the *mandament van spolie* if, in addition to making the allegation that the supply of the water and/or the electricity is an *incidence of the possession* of the residential property, she/he alleges facts in support of such an averment – In the absence of such an allegation and such supporting evidence, the applicant’s cause was held to be fatally defective – applicants’ cause of action both misplaced and insufficient to establish their right to an anti-spoliation order –

In any event, even if applicants were in ‘free and undisturbed possession’ of the supply of electricity and water, they were not unlawfully deprived of such possession – the respondent restricted and/or terminated the municipal services within the four corners of the legislative framework within which it operates – therefore, there was no unlawful deprivation of possession, as alleged by the applicants –

The Court also found no urgency – application should fail – Uniform Rules of Court 6(12) – any urgency self-created –

Urgent application struck from the roll for lack of urgency.

ORDER

- (1) The applicants' urgent application be and is hereby struck from the urgent court roll for lack of urgency.
- (2) The first and the second applicants, jointly and severally, the one paying the other to be absolved, shall pay the respondent's costs of this urgent application, such costs to include Counsel's charges on scale 'C' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.

JUDGMENT

Adams J:

[1]. This is an opposed Urgent Application by the first and the second applicants against the respondent ('the City of Ekurhuleni' or simply 'the City') for an anti-spoliation order. The applicants, in their notice of motion, applies, on an urgent basis, for an order directing and compelling the respondent to restore their 'blocked electricity meter number [...] and water that has been cut off' from their residential premises in Randhart, Alberton. Put another way, the applicants seek an order restoring to their residential premises the supply of electricity, which has been terminated by the City, as well as an order for the restoration of the full supply of water to the said premises, which supply is at present being restricted / limited by the City.

[2]. The application is opposed by the City of Ekurhuleni on the basis that: (a) The application is not urgent and any urgency that the Court may find is self-created; (b) The applicants have not made out a case for spoliation because they were not in 'undisturbed possession' of the electricity and the water supply as a matter of law; (c) The supply of electricity to the applicants' prepaid meter is being withheld lawfully, as is the restriction placed on the supply of water to

the residence of the applicants. The supply of electricity has been terminated and the supply of water restricted, so the City contends, in terms of and pursuant to its statutory powers and in compliance with its Credit Control and Debt Collection Policy, having given the requisite demand notices; (d) The applicants' municipal account is substantially in arrears (with an amount in excess of R210 000 as at January 2026), and they have failed to lodge a proper written dispute as required by section 102 of the Local Government: Municipal Systems Act 32 of 2000 ('the Systems Act') and the respondent's policies; and (e) If regard is had to the protracted litigation history between the parties, the applicants' present application is an abuse of the processes of this Court.

[3]. The first difficulty which the applicants face relates to the contention on behalf of the City that the applicants' cause of action based on the *mandament van spolie* is fatally defective. The applicants' right to receive electricity and water is personal, so the contention on behalf of the City goes, and does not constitute 'free and undisturbed possession' capable of being spoliated. In that regard, the case on behalf of the applicants, as per their founding papers, is that on 2 March 2026 they 'had undisturbed possession of the electricity and the respondent cut them off and blocked them unlawfully without the court order to do so'. Also, in their founding affidavit, it is alleged by the applicants that: -

'5.34 On the morning of 25 February 2026, the applicants had undisturbed possession of water services and the respondent disturbed them in the afternoon ..., without a court order.'

[4]. I find myself in agreement with these contentions on behalf of the respondent. As was held by the Supreme Court of Appeal in *Eskom Holdings SOC Limited v Masinda*¹, the *mandament van spolie* protects rights which are an incident of the possession of property, meaning rights which attach to property. It does not protect personal rights which arise from contract.

[5]. The SCA furthermore held that: -

¹ *Eskom Holdings SOC Limited v Masinda* 2019 (5) SA (SCA); (1225/2018) [2019] ZASCA 98 (18 June 2019).

‘Depending upon the circumstances, the supply of electricity or water may be recognised as being an incorporeal right, the possession of which is capable of protection under the mandament. That this is so is apparent from the decision of this court in *Impala Water Users Association v Lourens NO and Others* 2008 (2) SA 495 (SCA) ([2004] 2 All SA 476), in which the respondents sought and obtained a spoliation order directing the appellant, a supplier of water, to restore the flow of water to reservoirs on their farms. There had been a dispute concerning the legality of certain water charges levied by the appellant and, although proceedings to recover these charges were pending, the appellant exercised its powers under the National Water Act 36 of 1998 to restrict the flow of water to the respondents by closing certain sluices. The respondents' rights to receive water were not mere personal rights but were linked to and registered in respect of certain portions of each of the respondents' farms that were dependent on the supply of the water. This court, in dismissing an appeal against an order that the appellant restore the flow, held that *such rights were an incident of the possession of each farm, and that the mandament was therefore available.*’ (Emphasis added).

[6]. The Court then went on to say the following at para [22]:

‘[22] As was pointed out in *Zulu*, the occupier of immovable property usually has the benefit of a host of services rendered at the property. However, the cases that I have dealt with above graphically illustrate how, in the context of a disconnection of the supply of such a service, spoliation *should be refused where the right to receive it is purely personal in nature. The mere existence of such a supply is, in itself, insufficient to establish a right constituting an incident of possession of the property to which it is delivered.* In order to justify a spoliation order the right must be of such a nature that it vests in the person in possession of the property as an incident of their possession. Rights bestowed by servitude, registration or statute are obvious examples of this. On the other hand, rights that flow from a contractual nexus between the parties are insufficient as they are purely personal, and a spoliation order, in effect, would amount to an order of specific performance in proceedings in which a respondent is precluded from disproving the merits of the applicant's claim for possession. Consequently, insofar as previous cases may be construed as holding that such a supply is in itself an incident of the possession of property to which it is delivered, they must be regarded as having been wrongly decided.’

[7]. The principle to be extracted from the above authority is simply that, in order for the supply of electricity and/or water to be protectable under the *mandament van spolie*, it has to be an incidence of the possession of the property to which it is supplied. Spoliation should be refused where the right to receive the supply of electricity and/or water is purely personal in nature. And, importantly, the mere existence of such a supply is, in itself, insufficient to establish a right constituting an incident of possession of the property to which it is delivered. The simple point is that termination of the supply of electricity or water to residential premises does not, without more, amount to spoliation. An applicant would only be entitled to relief on the basis of the *mandament van spolie* if, in addition to making the allegation that the supply of the water and/or the electricity is an incidence of the possession of the residential property, she/he alleges facts in support of such an averment. In the absence of such an allegation, an applicant's cause is fatally defective.

[8]. The SCA in *Masindi*, on the basis of the authority in *Naidoo v Moodley*² and *Froman v Herbmores Timber and Hardware (Pty) Ltd*³, also laid down the principle that if the electricity was cut off with a view to forcing the applicants to vacate immovable property, it was, as with *Nienaber v Stuckey*⁴, where the complaint was of interference with access to a property, the possession of that immovable property that was being protected by the *mandament van spolie*.

[9]. Coming back to the facts *in casu*, the applicants, in seeking restoration of their electricity and water supply, say no more than that they were in free and undisturbed possession of the electricity and the water, which were unlawfully respectively disconnected to their house and a prepaid meter, and restricted by officials of the City. They therefore ask that the supply of electricity be reconnected to their house and the prepaid meter and that the supply of water to the said premises be fully restored. There is no allegation nor any attempt to show that the supply of the electricity and the water was an incident of their

² *Naidoo v Moodley* 1982 (4) SA 82 (T) at 84A – E.

³ *Froman v Herbmores Timber and Hardware (Pty) Ltd* 1984 (3) SA 609 (W) at 610G – 611D.

⁴ *Nienaber v Stuckey* 1946 AD 1049.

possession of the property. They seemingly rely solely on the existence of the electrical and the water supply to their house to justify a spoliation order. There is also not a single thread of evidence in support of any such averments, which, as I have indicated, are absent from the case pleaded on behalf of applicants. In the light of the *ratio* in *Eskom Holdings SOC Limited v Masinda*, this was both misplaced and insufficient to establish the applicants' right to such an anti-spoliation order.

[10]. Moreover, and as was the case in *Masinde*, there is the common cause fact that the applicants purchased their electricity on credit through the prepaid system. In these circumstances, as was held by the SCA, their right to receive what they had bought flowed not from the possession of their property but was a personal right flowing from the sale. Similar to the case in *Telkom SA Ltd v Xsinet (Pty) Ltd*⁵, the applicants' claim was essentially no more than one for specific performance (and to the limited extent of a supply worth no more than the unused credit still due after their last purchase). This personal, purely contractual right, cannot be construed as an incident of possession of the property. The *mandament* does not protect such a contractual right.

[11]. For these reasons alone, the applicants' application should fail.

[12]. Secondly, the case on behalf of the respondent that it did not unlawfully terminate either the supply of water or the supply of electricity to their residence, also presents an insurmountable obstacle to the applicants

[13]. As regards the supply of water, it is so, as conceded by the respondent, that the applicants have a Constitutional and Statutory Right to receive sufficient water, in terms of Section 27(1)(b) of the Constitution of the Republic of South Africa, which is defined by the Water Services Act as a 'basic water supply'. being the prescribed minimum standard of water supply services necessary for

⁵ *Telkom SA Ltd v Xsinet (Pty) Ltd* 2003 (5) SA 309 (SCA).

the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene.

[14]. The respondent, who is the water service provider, adopted its Water By-Laws in accordance with the provisions as set out in Section 21(1) read with Section 4(3) of the Water Services Act, which specifically state that every person who uses water services provided by a water services provider does so subject to any applicable condition set by that water services provider and that every water service authority must make by-laws which contains conditions for the provision of water services and which must provide for the payment and collection of money due for water services and the circumstances under which water services may be limited.

[15]. Clause 11(1)(b) of the respondent's water supply by-laws provides that if a consumer before the expiry of the last day does not pay an account rendered by the Council in respect of the supply of water for such payment specified in the account, the Council may forthwith restrict the supply of water to such domestic consumer, until the amount due is paid by the consumer, together with the applicable charges referred to in subsection 11(3).

[16]. This means that any water supplied by the service provider to a consumer, above a basic water supply, is based on a personal and purely contractual right, with a reciprocal obligation to pay for such water supply, in accordance with the respondent's tariff's set for water supply services, and which cannot be construed as an incident of possession of the property.

[17]. The applicants' water supply has not been terminated altogether, but had only been restricted. The applicants are currently receiving the basic water supply which as defined in the respondent's Water Services By-law.

[18]. The applicants' Constitutional and statutory right to receive a basic water supply has therefore not been infringed. And it therefore cannot be said with any conviction that the restriction on the water supply to the applicants'

residence is unlawful. The applicants' personal and purely contractual right to receive an unrestricted water supply was however limited in terms of the Water Services Act, read with the Respondent's Water Supply By-Laws, read with the Respondent's Credit Control and Debt Collection Policy. This was due to and solely attributable to the applicants' failure to pay for the water supplied by the respondent, after due notice in terms of the pre-termination notice issued and served on 29 January 2026.

[19]. As regards the termination of both the supply of electricity and the supply of water, the respondent contends that it derives its right to restrict and/or terminate municipal services from legislation and its by-laws – the legislative framework within which the respondent operates, notably its Credit Control and Debt Collection Policy (adopted and approved in terms of the Systems Act). This legislative framework entitles the respondent to terminate the provision of services to a consumer in the event of non-payment by such consumer of municipal accounts, after due notice is given to such consumer.

[20]. In that regard, the respondent's case rests principally on the following legislative provisions, its credit control policies and By-laws and a number of case authorities.

[21]. In terms of s 102(1)(c), read with s 97(1)(g), of the Systems Act), the respondent may terminate services or restrict the provision of services for purposes of credit control. They do not need a court order to exercise this right, provided they have followed due process. Moreover, the effective sanction of cutting off the supply of electricity may be used for securing payment of property rates and other taxes. See *Body Corporate Croftdene Mall v eThekweni Municipality*⁶.

⁶ *Body Corporate Croftdene Mall v eThekweni Municipality* 2012 (4) SA 169 (SCA) at paras 19 and 20.

[22]. In support of the foregoing, Ms Potgieter, Counsel for the respondent, also referred me the Constitutional Court decision of *Rademan v Moqhaka Local Municipality*⁷, which held at paras 34 and 39 as follows: -

‘[34] In the light of all the above, it seems to me that, in paying the various components of her account but not paying the rates, Ms Rademan elected how she was to settle her account, which is precluded by s 18(3) of the bylaws, and placed herself in default. This was in breach of her obligations towards the respondent. This constituted a contravention by Ms Rademan of the respondent's conditions of payment of an account consisting of various components. This also means that the contention that, since Ms Rademan did not owe anything on electricity, the respondent was not entitled to cut her electricity off, falls to be rejected.

... ..

[39] One of the municipality's conditions of payment is that a resident or ratepayer has no right to decide on the manner of settlement of his or her account for municipal services if he or she does not settle his or her account in full or is in arrears. Another one is that, when the municipality has consolidated a resident's accounts for various services, the various accounts become one consolidated account and the resident is obliged to pay the whole consolidated debt. If a resident pays for one component of the account and not others or pays for some components but not another one, he or she contravenes the municipality's conditions of payment. This, then, entitles the municipality to cut off the resident's electricity supply or the supply of any other service. The municipality is not confined to cutting off the supply of a particular service but may cut off the supply of any service to the resident. In this case Ms Rademan failed to pay her rates account and the municipality cut her electricity supply off. It was entitled to do so in the circumstances of this case.’

[23]. Section 97 of the Systems Act ‘empowers a municipality to terminate the provision of any service to a consumer if the municipal services account of such a resident consumer is in arrears’. The section does not make any distinction between the electricity component of municipal services and other services. Effective measures are essential to enable a municipality to meet its service obligations.

⁷ *Rademan v Moqhaka Local Municipality* 2013 (4) SA 225 (CC); (CCT 41/12) [2013] ZACC 11; 2013 (7) BCLR 791 (CC) (26 April 2013).

[24]. Section 95(a) of the Systems Act provides that, in the light of the reciprocal relationship between a municipality and a resident, the equitable treatment of all members of the community (s 74(2)(a) of the Systems Act), the cultivation of a culture of social justice (s 97(1)(e) of the Systems Act), a municipality is obligated and responsible to devise procedures and mechanisms in order to implement an effective debt collection and a credit control policy. The right of a consumer to demand the provision of a municipal service must be considered with his/her corresponding duty. Such right is implicitly limited by the reciprocal and equitable obligations to pay the municipal service account in an unfragmented manner.

[25]. The Credit Control and Debt Collection Policy, adopted and approved by the respondent, and the final municipal action taken pursuant to and in terms thereof against the applicants, were therefore lawful, permissible and justified.

[26]. That brings me back to the matter before me, in which it is contended on behalf of the respondent that, due to the applicants' non-payment of the arrears on their account with the City, it strictly, and within the limits of the Constitution, read with the Local Government: Municipal Systems Act, the Water Services Act, the Respondent's Water and Electricity Supply By-Laws and the its Credit Control and Debt Collection Policy, proceeded to withhold the selling of electricity to the applicants in respect of their pre-paid meter on 18 February 2026 and restricted the water supply to the Applicants' property on 25 February 2026.

[27]. This means, so the respondent argues, that, even if it is found that the applicants have a valid cause of action based on the *mandament van spolie*, it cannot be said that they have been unlawfully deprived possession.

[28]. I agree with this contention. The respondent acted fully within its rights and powers. By all accounts, the applicants, at the relevant time, was in arrears with their municipal account with the respondent to the tune of an amount in excess of R200 000. Since October 2022 to date of this application, the

applicants have only made four payments to the municipality in respect of its arrears and/or current charges, namely R10 000 during April 2023, R15 000 during December 2023, R2500.00 during January 2026 and R2500 during February 2026. During this period, the outstanding balance on the account has increased from R17 581 in October 2022 to R210 836 in January 2026.

[29]. Importantly, the applicants' indebtedness to the respondent as aforesaid is not, in my view, disputed on *bona fide* grounds. What is more is that the applicants do not even pay the current charges levied by the respondent on a monthly basis and, in respect of which there can be no dispute. All of this translates into a conclusion that the respondents acted lawfully in terminating the supply of services to the residence of the applicants.

[30]. Moreover, the Supreme Court of Appeal has found that a requirement, that a municipality needs to seek a court order before terminating municipal services, would be both 'unrealistic and untenable'. Given the extent of service delivery protests and demonstrations across the country and ratepayers withholding rates, the Court observed that it would be impractical to approach a court before every termination of a service. (See *Rademan v Moqhaka Local Municipality and Others*⁸).

[31]. The foregoing are therefore further reasons why the applicants' application should fail.

[32]. There is, however, a further reason why the applicants' application should not succeed and that relates to the issue of urgency.

[33]. The applicants' case for urgency rests largely on the following allegations: (a) The first and second applicants are both dependent on the supply of electricity for business purposes; (b) Their two children are also dependent on the uninterrupted supply of electricity for educational and employment purposes; (c) Their home requires electricity for security systems,

⁸ *Rademan v Moqhaka Local Municipality and Others* (CCT 41/12) [2013] ZACC 11 at para 16.

lighting, warm water and warm meals due to unspecified chronic illnesses; and
(d) Refrigerated food and medication will spoil without electricity.

[34]. The respondent disputes the urgency and submits that the applicants' electricity was first blocked on 19 February 2026, and their water supply restricted on 25 February 2026, pursuant to a pre-termination notice served on 29 January 2026. Despite this, the applicants only launched the present application on 5 March 2026, after their contempt application (filed on 24 February 2026) was struck from the roll on 3 March 2026. The delay between 25 February and 5 March is unexplained and militates against a finding of genuine urgency.

[35]. I agree with the contention by the respondent. I am not persuaded that the applicants made out a case for the extreme urgency they contend for. Importantly, they should not have wasted time with the aborted urgent application to hold officials of the respondent in contempt of court.

[36]. Any urgency that does exist, was self-created. Moreover, the applicants' predicament arises from their own conduct. They have allowed their municipal account to fall into substantial arrears (now exceeding R210,000). Despite numerous invitations from the respondent to formalise any dispute in writing, they have failed to do so. They have not entered into any formal payment arrangement. They have made only sporadic payments.

[37]. In these circumstances, any urgency they now face is of their own making. The applicants should have launched this application sooner than they did. If they did so, urgency would not have been an issue now. I am not convinced that the applicants have passed the threshold prescribed in Rule 6(12)(b) and I am of the view that the application ought to be struck from the roll for reasons given above.

[38]. In *Dynamic Sisters Trading (Pty) Limited and Another v Nedbank Limited*⁹, this court held as follows: -

‘This Court has consistently refused urgent applications in cases when the urgency relied-upon was clearly self-created. Consistency is important in this context as it informs the public and legal practitioners that Rules of Court and Practice Directives can only be ignored at a litigant’s peril. Legal certainty is one of the cornerstones of a legal system based on the Rule of Law.’

[39]. Accordingly, the application should be struck from the roll with costs.

Order

[40]. In the result, I make the following order:

- (1) The applicants’ urgent application be and is hereby struck from the urgent court roll for lack of urgency.
- (2) The first and the second applicants, jointly and severally, the one paying the other to be absolved, shall pay the respondent’s costs of this urgent application, such costs to include Counsel’s charges on scale ‘C’ of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.



L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

⁹ *Dynamic Sisters Trading (Pty) Limited and Another v Nedbank Limited* 2023 JDR 3204 (GP).

HEARD ON:	11 March 2026
JUDGMENT DATE:	18 March 2026 – Judgment handed down electronically
FOR THE FIRST AND THE SECOND APPLICANTS:	Z Feni
INSTRUCTED BY:	T Faku Incorporated Attorneys, Johannesburg
FOR THE RESPONDENT:	K Potgieter
INSTRUCTED BY:	Klopper Jonker Incorporated, Alberton