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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2025/048967

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE **1 April 2026**

SIGNATURE

In the matter between:

AFRICAN SPIRIT TRADING 71 (PTY) LIMITED

APPLICANT

and

EMFULENI LOCAL MUNICIPALITY

FIRST RESPONDENT

MUNICIPAL MANAGER,

SOTSHENGANI APRIL NTULI

SECOND RESPONDENT

TSIETSI RAFUBE

THIRD RESPONDENT

JUDGMENT

HINRICHSEN, AJ

Introduction

- [1] This matter serves before me on the return date of a *rule nisi* granted by Kooverjie J on 15 April 2025, directing the restoration of electricity supply to the Applicant's premises and interdicting the Respondents from effecting any further disconnection pending the finalisation of a dispute. The Applicant seeks confirmation of that order.
- [2] In addition, the Applicant seeks an order declaring the Municipal Manager, the Second Respondent, as well as Tsietsi Rafube ("*Rafube*"), the Revenue Manager and Third Respondent, to be in contempt of court arising from their failure to comply with that order.
- [3] The matter accordingly requires determination of two distinct but related enquiries:
- a. Whether the *rule nisi* should be confirmed, which in turn requires consideration of whether the initial disconnection of electricity was unlawful; and
 - b. Whether the Second and Third Respondents' non-compliance with the order of Kooverjie J constitutes contempt of court.

Background

- [4] The relevant facts are largely common cause.

- [5] The Applicant is the owner of Erf 3[...] V[...] C[...] E[...] No. [...], also known as 2[...] J[...] Street, Vanderbijlpark, Gauteng (*'the property'*), which it holds under Account Number 1[...] with the First Respondent.
- [6] On 23 May 2023, the Applicant lodged a formal written dispute with the First Respondent concerning miscellaneous charges levied against its municipal account. The dispute was accepted by the First Respondent and allocated reference number E[...] 1[...].
- [7] It is common cause that as at the date of this judgment, a period approaching three years, the dispute has not been investigated, determined, or finalised.
- [8] Notwithstanding the existence of the pending dispute, the First Respondent disconnected the electricity supply to the property on 2 April 2025. The First Respondent contends that accumulated arrears, inclusive of the disputed amounts, stood at R227,899.36 and that the disconnection was lawfully effected under Clauses 28.1 to 28.3 of its Credit Control and Debt Collection By-Laws (*'the By-Laws'*), following the issuing of final demand notices.
- [9] It is common cause that the Applicant had throughout this period been making monthly payments of R20,000 to the First Respondent, explicitly reserving its position with respect to the disputed miscellaneous charges.
- [10] The Applicant approached this Court on an urgent basis. On 15 April 2025, Kooverjie J granted a *rule nisi* returnable on 18 August 2025, together with an interim order interdicting the Respondents from disconnecting the water and/or electricity supply to the property pending finalisation of the dispute and pending the return date (*'the April Order'*). No opposing papers were filed by the first return date.

- [11] When the matter served before Nyathi J on 18 August 2025, the answering affidavit had only been served on the Applicant's attorneys on 29 July 2025. The *rule nisi* was extended to 24 November 2025.
- [12] Notwithstanding the April Order, the Respondents disconnected the electricity supply on 12 September 2025. Following urgent correspondence from the Applicant's attorneys, the electricity was restored.
- [13] On 29 September 2025, the Respondents again disconnected the supply. It was restored on the same date following further urgent intervention by the Applicant's attorneys.
- [14] Both incidents occurred after the Applicant's attorneys had explicitly warned in writing, on 16 April 2025, that further disconnections would constitute contempt of court.
- [15] On 6 October 2025, the Applicant launched a contempt application founding upon these post-order disconnections. The matter now serves before me on the return date and on the contempt application.

The legal framework

The municipal obligation to provide services

- [16] The obligation borne by local government to provide basic municipal services is sourced in both the Constitution and legislation. Section 152(1) of the Constitution sets out the objects of local government and creates an overarching framework of constitutional obligation.
- [17] Section 4(2)(f) of the Local Government: Municipal Systems Act 32 of 2000 (*'the Systems Act'*) provides that the council of a municipality must give members of the local community equitable access to the municipal services to which they are entitled.

- [18] Section 73 of the Systems Act gives further content to this obligation. A municipality must give effect to the provisions of the Constitution and: (a) give priority to the basic needs of the local community; (b) promote the development of the local community; and (c) ensure that all members of the local community have access to at least the minimum level of basic municipal services.
- [19] Section 95 of the Systems Act obliges a municipality to provide consumers with accurate accounts, a proper opportunity to object to incorrect assessments, and accessible mechanisms for dealing with complaints, together with prompt replies and corrective action.

The municipality's duty to prove its accounts

- [20] Of particular importance in this matter is the principle that the evidentiary burden in respect of the correctness of a municipal account rest upon the municipality, not upon the consumer. In *Euphorbia (Pty) Ltd v City of Johannesburg*¹ ("*Euphorbia*"), the Court held:

'In the absence of special circumstances, considerations of policy, practice and fairness require that the City is saddled with the onus of proving the correctness of its meters, the measurements of water consumption and statements of account rendered pursuant thereto. It cannot reasonably be expected from the consumer, having raised a bona fide dispute concerning the services delivered by the city, to pierce the municipal veil in order to prove aspects that peculiarly fall within the knowledge of and are controlled by the city.'

- [21] This principle is of direct application in the present matter. The First Respondent claims an accumulated debt of R227,899.36 inclusive of disputed

¹ 2016 JDR 1309.

miscellaneous charges. In considering the applicant's dispute, the First Respondent has not yet discharged the evidentiary burden of establishing that those charges are correctly owed. Indeed, as I address below, it has not even engaged with the formal dispute process which would have been the appropriate vehicle for doing so.

- [22] The Constitutional Court has further confirmed that municipalities must maintain reasonably accurate records and must be able to provide complete, credible, and comprehensible information in relation to consumption charges within a reasonable time of being requested to do so.

The interruption of services and the constitutional framework

- [23] In *Matjhabeng Local Municipality v Eskom Holdings Limited*² ("*Matjhabeng*") the Constitutional Court emphasised that the provision of electricity is not merely a commercial function but one embedded in constitutional governance. The interruption of electricity supply carries profound consequences for occupants and proprietors alike, and must be exercised lawfully, rationally, and in accordance with constitutional obligations. Electricity may not be used as a coercive mechanism outside lawful processes.

Section 102(2) of the Systems Act: suspension of credit control pending a dispute

- [24] Section 102(2) of the Systems Act provides that a municipality may not take any collection steps against a person who, in writing, has disputed liability for the amount claimed unless the municipality has (a) established that the amount is correctly owed; or (b) the dispute has been determined against that person.
- [25] This provision is peremptory. It admits of no discretion and no qualification. Once a written dispute has been lodged, the municipality is prohibited from

² 2018 (1) SA 1 (CC).

implementing any credit control measures, including the disconnection of services, until it has either established that the amount is correctly owed or the dispute has been determined against the consumer.

- [26] In *Body Corporate Crofdene Mall v Ethekekwini Municipality*³ (“*Crofdene*”), the Supreme Court of Appeal clarified the threshold requirements for a valid dispute under s 102(2). At paragraph 20 the Court held:

'It is, in my view, of importance that section 102(2) of the Systems Act requires that the dispute must relate to a specific amount claimed by the municipality. Quite obviously, its objective must be to prevent a ratepayer from delaying payment of an account by raising a dispute in general terms. The ratepayer is required to furnish facts that would adequately enable the municipality to ascertain or identify the disputed item or items and the basis for the ratepayer's objection thereto. If an item is properly identified and a dispute properly raised, debt collection and credit control measures could not be implemented regarding that item.'

- [27] The question of whether the Applicant's dispute satisfied the *Crofdene* threshold falls for determination below.

The duty to engage with disputes in good faith

- [28] In *Body Corporate of Willow and Aloe Grove v City of Johannesburg Metropolitan Municipality*⁴ (“*Aloe Grove*”), the Court clarified the proper approach to disputes concerning municipal charges. A municipality is obliged to engage with a properly formulated dispute efficiently, intellectually, and in good faith, and to provide a reasoned written determination.

³ 2012 (4) SA 169 (SCA).

⁴ 2023 JDR 4762 (JG).

[29] Crucially, the Court held that while internal remedies are being pursued in good faith, there can be no lawful termination of services. This principle operates as a second, independently sufficient legal basis for the relief sought in this matter.

The requirements for contempt of court

[30] The requirements for civil contempt of court are set out in *Fakie NO v CCII Systems (Pty) Ltd*⁵ (“*Fakie*”). An applicant must establish: (a) the existence of a court order; (b) knowledge thereof on the part of the respondent; and (c) non-compliance with the order.

[31] Once these three elements are established, wilfulness and *mala fides* are presumed. The respondent then bears an evidentiary burden to rebut that inference on a balance of probabilities.

[32] Where a fine (as opposed to imprisonment) is sought as sanction, proof on a balance of probabilities suffices. Where imprisonment is sought, the standard of proof is proof beyond a reasonable doubt⁶.

[33] In *Matjhabeng*, the Constitutional Court further clarified that where a court order is directed at a municipality, responsibility for compliance rests with the officials tasked with its implementation. Such officials bear a personal constitutional obligation to take reasonable steps to ensure compliance and cannot avoid personal liability by relying on institutional structures or bureaucratic inertia.

[34] In *Pheko*, the Constitutional Court reaffirmed that compliance with court orders is foundational to the rule of law, and that this obligation bears with particular force upon organs of State.

Confirmation of the rule nisi

⁵ 2006 (4) SA 326 (SCA)

⁶ *Fakie supra*. See to *Pheko v Ekurhuleni Metropolitan Municipality* 2015 (5) SA 600 (CC).

Did the Applicant's dispute meet the Crofdene threshold?

- [35] The first question on the confirmation enquiry is whether the Applicant's dispute of 23 May 2023 constitutes a valid dispute for purposes of s 102(2), having regard to the *Crofdene* requirement that the disputed amount be specifically identified.
- [36] The dispute under reference E[...] 1[...] related specifically to miscellaneous charges that had been added to the Applicant's account. The dispute was not a blanket refusal to pay; it was directed at an identifiable category of charges. It was formally accepted by the First Respondent and allocated a reference number.
- [37] Most significantly, the First Respondent's own email address for disputes, [d\[...\]](#), corresponded with the Applicant acknowledging receipt of the dispute and its pending status. The First Respondent thereafter engaged in the dispute process sufficiently to generate a reference number and written acknowledgment.
- [38] I am satisfied that the Applicant's dispute met the *Crofdene* threshold. The disputed items were sufficiently identified to enable the municipality to ascertain and engage with them. The First Respondent's conduct in accepting the dispute and issuing a reference number is itself acknowledgment that the dispute was properly formulated.

Was the disconnection lawful?

- [39] Once a valid written dispute has been lodged under s 102(2), the municipality is prohibited from taking any collection steps in respect of the disputed amount until it has either established that the amount is correctly owed or the dispute has been determined against the consumer. This prohibition is peremptory.

- [40] In this case, the First Respondent disconnected the electricity supply on 2 April 2025 — some 22 months after the dispute was lodged — without ever having investigated, engaged with, or determined that dispute. The First Respondent had not established that the disputed amounts were correctly owed. The dispute had not been determined against the Applicant.
- [41] The Respondents contend that the disconnection was authorised under Clauses 28.1 to 28.3 of the By-Laws. That contention cannot be sustained. The By-Laws operate within, and are subordinate to, the statutory framework created by the Systems Act. To the extent that any by-law purports to authorise conduct that is prohibited by s 102(2) of the Systems Act, the by-law must yield.
- [42] The hierarchy is reinforced by s 156(3) of the Constitution, which provides that national legislation prevails over a by-law where there is an inconsistency.
- [43] Furthermore, the Respondents' reliance on Clause 22.4 of the By-Laws — which requires that a complaint be accompanied by payment of the undisputed portion — does not provide a defence. The Applicant was paying R20,000 per month throughout, demonstrating that it was not simply seeking to avoid its obligations but was genuinely contesting only the disputed charges.
- [44] In any event, a procedural requirement in a by-law governing the mechanics of lodging a query cannot operate to nullify a peremptory statutory prohibition in an Act of Parliament.
- [45] Additionally, as confirmed in *Aloe Grove*, while internal remedies are being pursued in good faith — as they manifestly were here, the dispute having been formally accepted and allocated a reference number — there can be no lawful termination of services. This provides a second, independently sufficient basis for finding the disconnection unlawful.

[46] The First Respondent has also failed to discharge the evidentiary burden, confirmed in *Euphorbia*, of proving that its accounts and the charges levied are correct. It has provided no reasoned determination of the dispute. It has not established that the miscellaneous charges are accurately computed or properly leviable.

[47] The disconnection of electricity supply on 2 April 2025 was accordingly unlawful. It was effected in direct contravention of s 102(2) of the Systems Act, in breach of the municipality's obligations under *Aloe Grove*, and without discharging the evidentiary burden confirmed in *Euphorbia*. The *rule nisi* was correctly granted and falls to be confirmed.

Adequacy of alternative remedies and balance of convenience

[48] The Respondents urged that the Applicant had adequate alternative remedies including an internal appeal process. This contention has no merit on the facts. The internal processes have demonstrably failed the Applicant: the dispute was lodged in May 2023 and remains entirely unresolved. A remedy that presupposes institutional action that has been consistently refused for nearly three years cannot be characterised as adequate.

[49] The balance of convenience overwhelmingly favours the Applicant: it and its occupants face immediate, ongoing prejudice from each disconnection; the First Respondent suffers no prejudice from maintaining supply, as it continues to receive monthly payments.

Contempt of court

[50] The following are common cause:

- a) An order was granted by Kooverjie J on 15 April 2025;

- b) The Respondents had knowledge of that order⁷; and
- c) The Respondents failed to comply with it⁸.

[51] In terms of *Fakie*, these three established elements give rise to an inference of wilfulness and *mala fides*. The Respondents bear an evidentiary burden to rebut that inference.

[52] The Respondents have offered no explanation for either post-order disconnection. There is no evidence that compliance was impossible, that any operational circumstance prevented compliance, or that steps were taken to challenge or vary the order through proper legal channels.

[53] On the contrary, the evidence establishes that the disconnection of 29 September 2025 was executed by employees of the First Respondent acting under instructions from the Second Respondent's office, as evidenced by the letter from the Office of the Municipal Manager and the photographic record annexed to the founding affidavit in the contempt application.

[54] In terms of *Matjhabeng*, the Second Respondent as Municipal Manager and the Third Respondent as Revenue Manager were the officials specifically responsible for the implementation of credit control measures, including disconnections.

[55] They bore an obligation to ensure compliance with the April Order and cannot shelter behind the municipal institution. Their inaction constitutes a deliberate disregard for the authority of this Court.

[56] Applying the applicable standard of proof, being proof on a balance of probabilities (the sanction sought being a fine rather than imprisonment), I am

⁷ It was served on their attorneys by email on the day it was granted, and a letter dated 16 April 2025 from the Applicant's attorneys specifically drew their attention to the order and warned that further disconnections would constitute contempt.

⁸ The electricity supply was disconnected on 12 September 2025 and again on 29 September 2025, on both occasions in direct breach of the April Order.

satisfied that the non-compliance was wilful and *mala fide*. The Second and Third Respondents are in contempt of court.

Sanction

[57] A fine is the appropriate sanction in the circumstances. I am mindful of the guidance in *Matjhabeng* that sanctions for contempt by municipal officials must carry genuine deterrent force, having regard to the constitutional gravity of non-compliance by an organ of State. Accordingly, the fine imposed will be suspended on conditions designed to ensure prospective compliance and provide the Applicant with an expedient enforcement mechanism should further non-compliance occur.

Further observations

[58] Before turning to the order, I am constrained to place observations on record that transcend the interests of the parties.

[59] A dispute formally lodged and accepted in May 2023 remains unresolved in March 2026 — a period of nearly three years. During that period the First Respondent: failed to investigate or determine the dispute; continued to charge the Applicant for disputed amounts; proceeded to disconnect the electricity supply in contravention of s 102(2) of the Systems Act; failed to comply with a court order on multiple occasions after explicit warning; and did all of this while continuing to accept the Applicant's monthly payments of the undisputed amounts.

[60] The use of service disconnection as a tool of fiscal coercion — deployed against a consumer who is actively engaged in the municipality's own dispute process — is antithetical to the constitutional values of dignity, fairness, and lawful administration. It is precisely the conduct that s 102(2) of the Systems Act was designed to prevent.

[61] I deal with this in the order below.

Order

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

[63] The *rule nisi* granted by Kooverjie J on 15 April 2025 is confirmed as a final order in the following terms:

- a. The Respondents are hereby permanently and finally interdicted and restrained from disconnecting the water and/or electricity supply to the property known as Erf 3[...] V[...] C[...] E[...] No. [...], also known as 2[...] J[...] Street, Central East No. [...], Vanderbijlpark, Gauteng (Account Number: 1[...]), pending the finalisation of the formal dispute registered under reference number E[...] 1[...].

[64] The Second Respondent (in his capacity as Municipal Manager) is directed, within 15 (fifteen) days of the date of this order, to file an affidavit with this Court setting out:

- a. The steps taken to comply with this order.
- b. The measures implemented to ensure the continued and uninterrupted electricity supply to the property pending the finalisation of the formal dispute registered under reference number E[...] 1[...]; and
- c. What steps have been put in place to ensure the advancement and resolution of the pending dispute.

[65] The Second Respondent, Sotshengani April Ntuli, and the Third Respondent, Tsietsi Rafube, are each found to be in contempt of the order of this Court granted on 15 April 2025.

[66] The Second Respondent and the Third Respondent are each ordered to pay a fine in the amount of R50,000.00 (fifty thousand rand), which fine is wholly suspended for a period of 12 (twelve) months on condition that:

- a. They comply fully and timeously with this order; and
- b. They take all reasonable steps within to ensure that the First Respondent does not again disconnect the water and/or electricity supply to the property in breach of this order.

[67] In the event of any further non-compliance with this order or any breach of the conditions above, the Applicant is granted leave to approach this Court on the same papers, duly supplemented, for the enforcement of the suspended fine and/or the imposition of a further suspended or unsuspended order of committal to imprisonment.

[68] The First Respondent is ordered to pay the costs of this application, including the costs of the contempt application, on the scale as between attorney and client.

DH HINRICHSEN
ACTING JUDGE OF THE HIGH COURT
PRETORIA

DATE OF THE HEARING: 17 MARCH 2026

DATE OF HANDING DOWN JUDGMENT: 1 APRIL 2026

Appearances:

For the Applicant:

Adv W Venter instructed by HJ van
Rensburg Attorneys Inc.

For the Respondents:

Adv P Seloga instructed by Tsotetsi
and Mchunu Incorporated