



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable

Case no: 3865/2021

In the matter between:

CENTLEC (SOC) LIMITED

Plaintiff

And

FREE STATE DEVELOPMENT CORPORATION

Defendant

Neutral citation: *Centlec (SOC) Limited v Free State Development Corporation*
(3865/2021) [2026] ZAFSHC 320 (4 March 2026)

Coram: N SNELLENBURG AJ

Heard: 2, 3 and 5 December 2025

Delivered: 3 June 2026

Summary: Section 41 of the Constitution and s 40 of the Intergovernmental Relations Framework Act 13 of 2005 – s 44 of the Local Government: Municipal Finance Management Act 56 of 2000.

Special plea – stay of proceedings – whether dispute exists between the parties as envisaged by the Intergovernmental Relations Framework Act – if such a dispute exists, whether plaintiff failed to exhaust the alternative avenues contemplated in s 41 of the Constitution and s 40 of IRFA respectively; whether the Court should determine the dispute notwithstanding any failure to exhaust alternative avenues constitutionally and statutorily prescribed.

Principles of cooperative government and intergovernmental relations – organs of state obliged to make reasonable effort in good faith to settle intergovernmental disputes with necessary promptitude.

ORDER

1 The defendant's second special plea is upheld.

2 The action is stayed and the matter is referred back to the parties to comply with the processes prescribed in terms of the Intergovernmental Relations Frameworks Act 13 of 2005 and, insofar as the aforesaid does not also encompass the provisions of s 44 of the Local Government: Municipal Finance Management Act 56 of 2003, then the processes prescribed in s 44 of the Local Government: Municipal Finance Management Act 56 of 2003.

3 Any one of the parties may apply for leave to this Court to re-enrol this action for hearing:

3.1 In the event of such dispute(s) having been declared a formal intergovernmental dispute(s) in terms of s 41 of the Intergovernmental Relations Frameworks Act 13 of 2005, and insofar as the formal dispute does not encompass the requirements of s 44 of the Local Government: Municipal Finance Management Act 56 of 2003, then any process in terms of s 44 of the Local Government: Municipal Finance Management Act 56 of 2003, have been complied with; and

3.2 If all efforts to settle the dispute in terms of Chapter 4 of the Intergovernmental Relations Frameworks Act 13 of 2005; and insofar as the formal dispute does not encompass the requirements of s 44 of the Local Government: Municipal Finance Management Act 56 of 2003, any process in terms of s 44 of the Local Government: Municipal Finance Management Act 56 of 2003, were unsuccessful.

4 Each party to pay its own costs.

JUDGMENT

Snellenburg AJ:

Introduction

[1] The controversy in this matter revolves around (a) the question of whether a dispute exists between the parties as envisaged by the Intergovernmental Relations Framework Act 13 of 2005 (IRFA); (b) if such a dispute is found to exist, whether Centlec failed to exhaust the alternative avenues contemplated in s 41 of the Constitution of the Republic of South Africa, 1996 and s 40 of IRFA respectively; and (c) if Centlec failed to exhaust the alternative avenues contemplated in s 41 of the Constitution and s 40 of IRFA respectively, should the Court, in the specific circumstances of this matter, notwithstanding determine the dispute. The plaintiff further submits that, aligned to the aforesaid question, it must also be determined whether the dispute is a 'dispute of a financial nature' as referred to in the Local Government:

Municipal Finance Management Act 56 of 2003 (MFMA) that arose prior to the institution of the present action by the plaintiff during August 2021.

[2] It is not contentious nor in dispute that both Centlec and FDC are organs of state. The plaintiff, Centlec (SOC) Limited (Centlec), is a Municipal entity as contemplated in s 82(1) of the Local Government: Municipal System Act 21 of 2002. The defendant, the Free State Development Corporation (FDC), is established in terms of the Free State Development Corporation Act 6 of 1995 and is a Schedule 3D Provincial Business Enterprise in terms of the Public Finance Management Act 1 of 1999.

[3] Centlec supplied electricity in bulk to FDC. Centlec, by means of this action, claims payment of municipal service charges from FDC based on electricity consumed, interest and other charges flowing from the electricity usage.

The special plea serving for adjudication

[4] FDC's special pleas were separated to be adjudicated separately whilst the other issues stood over for adjudication. By agreement between the parties, the court was requested to determine FDC's second special plea, premised on the IRFA (the IRFA plea), first. The first special plea therefore also stands over for adjudication.

[5] FDC's IRFA plea, succinctly summarised, is as follows:

- (i) Centlec and FDC are both organs of state.
- (ii) The provisions of the IRFA provide that Centlec should have taken steps to attempt to resolve the dispute between it and FDC prior to issuing summons.
- (iii) The provisions of s 44 of the MFMA also required from Centlec to have taken all reasonable steps as may have been necessary to have the dispute resolved out of court, which Centlec failed to do.
- (iv) Centlec neither reported the dispute to National Treasury, nor did it request National Treasury to mediate the dispute between the parties.

(v) Centlec failed (a) to comply with the provisions of IRFA since the dispute between the parties are justiciable; and (b) to comply with the provisions of s 44 of the MFMA.

(vi) Section 40(1) of IRFA required from the parties, and in this matter especially Centlec, before declaring a dispute, to make every reasonable effort in good faith to preclude the dispute from being raised as an official dispute in terms of the Act, which provision Centlec failed to honour.

[6] As submitted on behalf of FDC, Centlec did not specifically deal with the IRFA plea by means of a replication. Nothing, however, turns on this in my view.

The Evidence

[7] Centlec presented the evidence of Mrs Williams, the current Chief Financial Officer (CFO), and Mr Sekoboto, the Chief Executive Officer, of the plaintiff. Mrs Williams' evidence was presented first.

[8] Mrs Williams first became aware of FDC's debt around 2013 when she had to report on it monthly. FDC's debt escalated because the current account was not being serviced. As result of FDC not servicing its account, discussions were held between Centlec and FDC between 2013 and 2017. Mrs Williams was a member of the team that participated in the aforesaid discussions. The purpose of these discussions was to assist FDC managing their increasing debt.

[9] Aligned to this, Mrs Williams explained that Centlec did an asset 're-evaluation' (henceforth referred to as 'the revaluation') every five years. Such an asset revaluation was due during the time of the ongoing discussions referred to above. Centlec required of FDC to include their fixed assets register in the revaluation proposal that had to be done at the time as the purpose of the revaluation report would be to aid in the aforesaid discussions between the parties. The revaluation report was done during 2018 to 2020 by EMS Solutions and included the FDC assets.

[10] The outcome of this process did not yield any success because FDC was not satisfied with the result of the revaluation as it had concerns over the value that EMS Solutions placed on its assets. In sum, according to Mrs Williams, FDC maintained that its assets had a higher value than what EMS Solutions determined.

[11] Regarding FDC's indebtedness to Centlec, Mrs Williams maintained that FDC had never disputed its debt, nor the amount of the indebtedness, to Centlec but rather acknowledged its indebtedness. Mrs Williams was satisfied that all due processes were followed in terms of the provisions of IRFA and s 41 of the Constitution, and that it would serve no purpose to remit the matter as sought by FDC, as Centlec and FDC had attempted to settle the matter without success.

[12] During cross-examination:

(i) Mrs Williams explained that the electrical assets of FDC, as a part of the entire assets of Centlec, had to be re-evaluated which included the electrical network and grid.

(ii) Mrs Williams confirmed that the parties met and that FDC was not satisfied with the value in respect of its electrical assets during the revaluation and that the disagreement regarding the value of FDC's electrical equipment was never resolved.

(iii) Mrs Williams was amongst others confronted with the fact that the evidence of Mr Tebogo Seloane, financial accountant, will be presented on behalf of FDC regarding the fact that a dispute would amongst others also have existed regarding instances of 'double billing' during 2020, 2021 and 2022.

(iv) Mrs Williams was also confronted with the fact that the action itself depicts disputes between the parties, and the dispute, for example, relating to prescription, had not been referred to a third-party for adjudication. Mrs Williams confirmed that no referral of the disputes occurred after the initiation of the litigation.

(v) It was stated, on behalf of FDC that although consumption had been acknowledged by FDC, the amount due had never been acknowledged. Mrs Williams disagreed with the statement and maintained that the amount due by FDC to Centlec to date was never disputed by FDC.

(vi) Lastly, it was put to Mrs Williams that a referral remained a viable option as it would not only be Centlec and FDC 'sitting across the table' but it would also 'entail third-involvement'. Mrs Williams did not agree that it would serve any further purpose.

[13] Mr Sekoboto first gained knowledge of the FDC debt around 2012 but was more intimately involved in the matter during 2019 when the matter was escalated. Mr Sekoboto explained that he first became aware of the FDC matter as result of a request that Centlec conduct an assessment of FDC's infrastructure during 2012 when he was head of planning at Centlec. According to Mr Sekoboto, the assessment followed from a proposal by FDC that both parties have assessments done. The reason for the proposal at the time was because FDC was unable to fulfil its monthly obligations towards Centlec. According to Mr Sekoboto, FDC's indebtedness to Centlec during 2012 was approximately R19 million.

[14] Mr Sekoboto testified that during 2019 there were numerous discussions as FDC's debt to Centlec increased exponentially whilst FDC was unable to satisfy its indebtedness to Centlec. As result of FDC's inability to pay, there were discussions regarding the transfer of infrastructure from FDC to Centlec. In sum – and this appears to have been the case since 2012 I may add – Centlec reasoned that engagement would be the best way to collect payment.

[15] Mr Sekoboto further explained, regarding the period from 2018, that although FDC did and had debt collection done for it, FDC did not service its current account with Centlec. When Centlec threatened to disconnect the electricity, FDC's clients were furious because FDC had not been paying the money it collected to Centlec. At that juncture FDC wanted to hand over their electrical infrastructure, but they needed to do a re-assessment. The purpose of the handover at the time was to stop the increase in monthly accounts accruing whilst Centlec would take over the clients of FDC.

[16] The first customer to be taken over by Centlec was Chicken Poultry. The intention was that the entire Botshabelo industrial area would be transferred to Centlec.

The process of transfer started in May 2019. To date, those clients make payments directly to Centlec for electricity consumed.

[17] Mr Sekoboto could not recall any 'double billing' nor, according to him, was double billing ever raised with Centlec. Thus, he testified that as far as he was concerned there was no dispute in that regard.

[18] Mr Sekoboto testified that the re-assessment previously referred to was done, and when he became the Acting CEO, he personally had numerous discussions with FDC. Regarding the issue of revaluation of assets, Centlec had it done and submitted a revaluation report to FDC. Mr Sekoboto explained that after the report had been submitted to FDC, there was a difference in 'understanding and belief' that the revaluation of FDC's assets should not be R39 million, but according to FDC rather R99 million or close to R100 million. He also testified that according to him, FDC received a grant from the Department of Trade and Industry to improve the infrastructure but never applied the funds for this purpose and that is the reason for the value placed on FDC's assets by EMS Solutions in the revaluation report.

[19] Mr Sekoboto confirmed that FDC however believed that their assets were worth more than R39 million. That is the reason why the parties could not, to date, conclude an agreement.

[20] To a question of what the idea behind the evaluation of the assets at that stage was, Mr Sekoboto explained that the two primary reasons for the revaluation were (a) to get an asset value to offset against FDC's debt, and (b) to take over the network and its maintenance going forward. To this end, Mr Sekoboto explained that FDC has its own electrical network in the industrial area in Botshabelo. Electricity was supplied by Centlec in bulk and then supplied to clients by FDC.

[21] As to whether any attempts were made to resolve FDC's indebtedness to Centlec during the period from 2012 to 2019, Mr Sekoboto said that during that period, he

personally had a discussion with the previous CEO to finalise the matter and to also finalise the issue of the transfer of assets and the grid. According to Mr Sekoboto no dispute exists; it is more about finalising the activities. Mr Sekoboto stated there was no dispute around the debt itself and as far as Centlec and FDC were concerned, no dispute existed except with regards to the engagements pertaining to how the payment would be effected. According to his testimony, the amounts were never disputed prior to the action being instituted by Centlec.

[22] During cross-examination:

(i) Mr Sekoboto confirmed that there were numerous discussions during 2018 and 2019 which related to and entailed a transfer of infrastructure which would be part and parcel of reducing FDC's debt to Centlec. It may be noted that it was put to Mr Sekoboto that the disconnection of the Botshabelo industrial area occurred on 19 December 2018, but Mr Sekoboto did not have any independent recollection of the date and could not deny the aforesaid. Mr Sekoboto did confirm that there were disconnections as result of FDC's non-payment. The handover as result of disconnections following FDC's failure to pay Centlec was envisaged to be, at least, in partial settlement of FDC's debt.

(ii) Mr Sekoboto confirmed that part of the discussions were also the repayment terms, interest and so forth, which formed part of a draft settlement document between the parties that was sent to FDC. Mr Sekoboto confirmed that the document forming part of the amended particulars of claim was in fact a 'draft' providing for payment which would also entail the transfer of the assets. The transfer of assets were part and parcel of the proposed structure and had to be explored. Mr Sekoboto confirmed that the assets and the value thereof were part and parcel of the negotiations and that FDC did not agree with the asset value stated in the report but according to Mr Sekoboto, FDC's dispute is without basis.

(iii) When confronted with the fact that FDC had appointed their own engineers, Incqali Engineers, to do a valuation of FDC's assets between 2019 and 2021, Mr Sekoboto replied that all he knew was that FDC disputed the valuation done by Centlec and stated that he was not in possession of the valuation done by FDC. He, in fact,

indicated that the questions should rather be posed to Mr Schalk van der Merwe (who was identified as one of FDC's witnesses).

(iv) Mr Sekoboto confirmed that FDC was willing to do a transfer of assets, however, FDC could not agree on the value of the assets and therefore did not proceed with the transfer.

(v) Regarding the issue of double billing, Mr Sekoboto was confronted with the fact that both FDC and Chicken Poultry (referred to by FDC as Supreme Poultry) were billed for the same consumption, so-called double billing, which would be testified to by Mr Schalk van der Merwe as well as Mr Seloane on behalf of FDC, and that this issue was raised by Mr Seloane during April 2021 with Ms Ntabiseng Motse. It was also put to Mr Sebokoto that the amount in issue was approximately R55,6 million and after the matter was raised with Centlec, Centlec credited FDC's account in the amount of R48 million, but in a month thereafter, FDC's account was again debited with the same amount. Mr Sekoboto maintained that he is not aware of the billing issue, nor that it was raised with Ms Ntabiseng Motse.

(vi) It was put to the witness that Mr van der Merwe will testify that the grants were not taken into account in the 'evaluation', only the infrastructure. This was disputed by Mr Sekoboto.

(vii) Mr Sekoboto explained that in his view there was only a disagreement regarding the payment value attached to the assets.

(viii) When challenged with the fact that it was FDC's case that it only admitted consumption but not the amount, Mr Sekoboto denied the statement and explained that the dispute was raised only in respect of how payment could be made.

[23] The defendant presented the evidence of Mr Seloane, a financial accountant, and Mr Schalk van der Merwe, a property consultant, both in the employ of FDC. Mr Seloane's evidence was presented first.

[24] In his position as financial accountant, Mr Seloane dealt with accounts, including the account of Supreme Poultry. He noticed the double billing to both Supreme Poultry and FDC (for the same consumption) and raised it with Ms Nthabiseng Motse at

Centlec. Supreme Poultry's account was moved from FDC to Centlec during 2019 and Mr Van der Merwe had requested a report for the period June 2019 to July 2021, when the account was transferred. After taking issue with the double billing a reversal of R48 million was passed on FDC's account during August 2021, but the next month the same amount was again charged to FDC's account.

[25] During cross-examination, Centlec's counsel conceded the overbilling (referred to by FDC as 'double billing') on behalf of Centlec as well as the fact that a reversal was done, but the amount of the reversal was placed in dispute. It was put to Mr Seloane that the reversal was approximately R20 million instead of the amount alleged by FDC, which was disputed by Mr Seloane.

[26] Mr Van der Merwe was promoted during 2001 to the district property manager, which included the whole district. During 2017/2018 there was a restructure and he remained in Botshabelo as a property consultant. He confirmed that there was overbilling in respect of the Supreme Poultry account.

[27] Mr Van der Merwe explained that electricity was purchased in bulk by FDC and then sold to its clients. During 2014/2015, FDC took a decision not to operate as a Municipality and subcontracted their billing to Unique Mbane, which was later ceded to Sanusie. On 17 April 2019, they were instructed to inform the tenants in the industrial area that they have been taken over by Centlec and that Centlec will contact them to make applications and sign agreements directly with Centlec; future consumption had to be paid directly to Centlec.

[28] During 2019 and 2020 he personally had to point out infrastructure for a report to be prepared by Incqali Engineers. This related to a valuation report that was prepared and submitted to the then CEO.

[29] Regarding the amount owed to Centlec, part of that amount, according to Mr Van der Merwe, related to a property that Centlec in fact rented. That amount accordingly

had to be offset against the amount owed by FDC. Regarding the revaluation, Mr Van der Merwe testified that according to him, Centlec did their own valuation.

[30] During cross-examination:

(i) Mr Van der Merwe was confronted with the fact that the FDC valuation report was not presented to the legal representatives of Centlec.

(ii) Mr Van der Merwe explained that the valuation was based on the incoming cables, mini substations, switchgear and included the high mask lights. It was for the infrastructure where the main feeder is located. As he was on 'ground level' he could only speculate to the purpose of the valuation. In his view an amount had to be determined on the value of the infrastructure, and if agreed upon, it should be set off against the debt owed to Centlec if the parties could come to an agreement. It was put to Mr Van der Merwe that Centlec agreed that there was a difference in the valuations; from the Centlec side it was approximately R39 million whilst FDC insisted that the revaluation of its assets should be approximately R100 million. Mr van der Merwe said that he knew about it and that Centlec appointed their own team.

(iii) It was put to Mr Van der Merwe that insofar as the valuations differ, it is a difference of opinion. In response, Mr Van der Merwe maintained that the parties did their own valuations, including Centlec.

(iv) According to Mr Van der Merwe, Centlec appointed a valuator as they disputed the FDC value, only after FDC had provided Centlec with the FDC valuation. Mr Van der Merwe however qualified his evidence insofar as he initially said that he had assumed that the valuation was provided to Centlec but later testified that he was informed of the aforesaid fact. Whilst further cross-examination followed on this, Mr Van der Merwe later conceded that he was not part of the management of FDC nor the executive level and was not able to deny nor admit what would and would not have been agreed between Centlec and FDC.

(v) For sake of caution, it is recorded that it was put to Mr Van der Merwe that during 2019, when the FDC's debt was already substantial, the parties tried to lessen it or set it

off; the parties, before any valuation reports were obtained had agreed to such valuation being made.

The Legislative Matrix

[31] Co-operative government and intergovernmental relations is constitutionally ordained in s 41 of the Constitution. Section 41(1) of the Constitution, in peremptory terms, provide amongst other matters that all spheres of government and all organs of state within each sphere must co-operate with one another in mutual trust and good faith by, inter alia (a) fostering friendly relations; (b) assisting and supporting one another; (c) adhering to agreed procedures; and (d) avoiding legal proceedings against one another. Section 41(2) requires that an Act of Parliament (c) must establish or provide for structures and institutions to promote and facilitate intergovernmental relations; and (b) provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes. Section 41(3) provides that of an organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose and must exhaust all other remedies before it approaches a court to resolve the dispute. Lastly, s 41(4) vests court with a discretion, namely if the court is not satisfied that the requirements of subsection (3) have been met, it may refer a dispute back to the organs of state involved. *Constat*, the discretion must be exercised judiciously.

[32] As result of the fact that various Acts of Parliament already gave expression to s 41(2) in some sectors of government, and to give effect to s 41(2) of the Constitution, the IRFA was enacted to establish a general legislative framework applicable to all spheres and in all sectors of government to ensure the conduct of intergovernmental relations in the spirit of the Constitution.¹ IRFA was assented to on 10 August 2005 with date of commencement being 15 August 2005.

¹ See the Preamble to IRFA.

[33] Section 1 of IRFA defines an 'intergovernmental dispute' as a dispute between different governments or between organs of state from different governments concerning a matter (a) arising from (i) a statutory power or function assigned to any of the parties; or (ii) an agreement between the parties regarding the implementation of a statutory power or function; and (b) which is justiciable in a court of law, and includes any dispute between the parties regarding a related matter.

[34] The injunction contained in s 41(3) of the Constitution is echoed in s 40(1) of IRFA and, where relevant, imposes an obligation on all organs of state to make every reasonable effort to settle intergovernmental disputes without resorting to judicial proceedings. Significantly, if a dispute as envisaged by IRFA does exist *in casu*, the obligation to make every reasonable effort to settle intergovernmental disputes without resorting to judicial proceedings rests on both parties.

[35] Section 41 of IRFA, in turn, provides in relevant parts that an organ of state that is a party to an intergovernmental dispute with another organ of state may declare the dispute a formal intergovernmental dispute by notifying the other party of such declaration in writing. However, before a formal intergovernmental dispute is declared, the organ of state in question must, in good faith, make every reasonable effort to settle the dispute, including the initiation of direct negotiations with the other party or negotiations through an intermediary. The consequences of declaring formal intergovernmental disputes are dealt with in s 42 of IRFA.

[36] Notably, s 45 of IRFA provides, in relevant parts, that no organ of state may institute judicial proceedings in order to settle an intergovernmental dispute unless the dispute has been declared a formal intergovernmental dispute in terms of s 41 and all efforts to settle the dispute in terms of the relevant Chapter (in the IRFA) were unsuccessful.

[37] Lastly, section 44 of the MFMA requires that 'whenever a dispute of a financial nature arises between organs of state, the parties concerned must as promptly as

possible take all reasonable steps that may be necessary to resolve the matter out of Court'. The section further provides that if the National Treasury is not a party to the dispute, the parties (a) must report the matter to the National Treasury; and (b) may request the National Treasury to mediate between the parties or to designate a person to mediate between them. National Treasury may accede to a request to mediate between the parties and in such event may determine the mediation process.

Discussion

Does a dispute exist between the parties as envisaged by IRFA?

[38] FDC contends that an intergovernmental dispute as envisaged by IRFA does exist between the parties.

(i) FDC submits that on conspectus of the evidence, a live dispute exists between Gentlec on the one hand and FDC on the other, in relation to the manner as to how FDC's debt would be liquidated; the terms of repayment and the manner in which the debt would be collected. To this end FDC submits that all the witnesses agreed that there is a disagreement regarding the value of FDC's infrastructure, at least FDC's electrical assets, whilst no further intervention was sought.

(ii) Relying on *Eskom Holdings SOC Ltd v Resilient Properties (Pty) Ltd and Others; Eskom Holdings SOC Ltd v Sabie Chamber of Commerce and Tourism and Others; Chweu Local Municipality and Others v Sabie Chamber of Commerce and Tourism and Others*² (*Resilient*), FDC submits that a dispute between the parties as to the manner in which the parties agree to settle the debt, the terms of repayment and the manner to collect the debt owed, constitutes a dispute for purposes of IRFA.

(iii) Lastly, on this issue, FDC submits that the parties were engaged in settlement negotiations, the impasse being the valuation and the double billing, the latter at least until the concession during the trial in that regard.

² *Eskom Holdings SOC Ltd v Resilient Properties (Pty) Ltd and Others; Eskom Holdings SOC Ltd v Sabie Chamber of Commerce and Tourism and Others; Chweu Local Municipality and Others v Sabie Chamber of Commerce and Tourism and Others* [2020] ZASCA 185; [2021] 1 All SA 668 (SCA).

[39] Centlec, in turn, contends that no such intergovernmental dispute exists between the parties.

(i) Centlec submits that when evaluating the evidence, it stands uncontested that at no stage prior to the institution of the present action by Centlec did FDC dispute (a) its liability towards Plaintiff; nor (b) the amounts as claimed by Centlec.

(ii) Centlec further submits that FDC is attempting to establish disputes regarding (a) the 'double billing' and (b) different 'values' which the parties attached to the assets of FDC during 2019/2020, in order to rely on IRFA and the relevant provision of the MFMA, but the attempt must fail for the following reasons.

(iii) First, the double billing by Centlec had been conceded before the institution of the action, which had again been confirmed on behalf Centlec in Court. It is contended that FDC's plea confirms the aforementioned to an extent. In view of the concession by Centlec regarding the issue of double billing, any alleged dispute had fallen away. The subsequent debiting of the relevant amount again after institution of the action may influence the quantum of Centlec's claim when dealing therewith, but it cannot bar the institution or further prosecution of the claim.

(iv) Second, in respect of the different 'values' which the parties attached to the assets of FDC during or about 2019/2020, in the absence of a formal valuation on behalf of FDC being placed before Court, the fact that the different values may have been discussed during the relevant period, can merely be considered as part of the negotiations between the parties at the time.

(v) There was no dispute regarding the manner in which the debt of FDC was to be liquidated. In this regard, the facts of the present matter are distinguishable from the facts in *Resilient*. In *Resilient*, Eskom unilaterally reduced the electricity supply to the Municipalities concerned.

(vi) The fact that there is no dispute in this regard, is further, to a certain extent, confirmed by FDC in its plea where it stated that it would still be amenable to enter into discussion with Centlec for purposes of effecting transfer if its electrical grid to Centlec after the parties reaching agreement on (a) the price to be paid by Centlec for FDC's

infrastructure, and (b) the terms of the set-off of debt. Such deliberation will however not, in absence of a dispute between the parties, be part of the process envisaged in terms of IRFA and the MFMA.

(vii) Lastly, it is common cause that neither of the parties reported the matter to National Treasury as envisaged in s 44(2) of the MFMA. The defendant does not rely on the provisions of s 45(1) of IRFA in its plea. Reliance on s 42 of IRFA is misplaced whereas no formal dispute has been declared.

[40] As stated above, it is common cause that both parties are organs of state. Centlec provided electricity in bulk to FDC who has its own electrical network in the industrial area in Botshabelo. FDC would then distribute the electricity to its properties where FDC's tenants would have the benefit of the electricity against payment. Initially FDC itself recovered the payment of electricity from its tenants, but from 2014/2015 it appointed service providers to do the collection on its behalf. During 2019 this changed when Centlec took over certain of FDC's tenants who pay Centlec directly for the electricity they consume. Centlec instituted the current action to claim payment of municipal service charges from FDC based on electricity consumed, interest and other charges flowing from the electricity usage supplied by Centlec.

[41] A consideration of the evidence of the respective witnesses shows a lack of particularity regarding specific dates and the fallibility of human memory to accurately recall dates when testifying about events years later. This is understandable considering the time that have passed. I have no doubt that all the witnesses assisted the court to the best of their ability.

[42] The evidence establishes that FDC has been indebted to Centlec for more than a decade (at the very least since 2012). The outstanding amount continued to increase due to FDC's failure to service its current account. Mr Sekoboto first became aware of FDC's debt during 2012 as result of a request that Centlec do an assessment regarding FDC's infrastructure during 2012 when the outstanding amount owed by FDC to Centlec was approximately R19 million. Mrs Williams became aware of FDC's indebtedness

during the following year, to wit 2013, and was part of the team representing Centlec that participated in the discussions between Centlec and FDC during the period 2013 to 2017. According to Mrs Williams, the purpose of these discussions, which took place on an ongoing basis since 2013, was to assist FDC because of its increasing debt.

[43] It is safe to conclude that the issue regarding FDC's outstanding account and FDC's failure/inability to pay clearly started to escalate from 2018. On all accounts whilst discussions were ongoing, Centlec started to threaten to disconnect electricity supply to FDC. According to Mr Sekoboto, FDC's clients were furious because whilst they were paying FDC for their electricity consumption, FDC had not been paying the collected money to Centlec. It is common cause that Centlec commenced with disconnections as result of FDC's non-payment and to this end it stands uncontested that the disconnection of the Botshabelo industrial area occurred on 19 December 2018.

[44] Although not entirely clear exactly when the request was made, it appears that as part of the ongoing discussions, during this time, FDC was requested to include their assets in the five-yearly revaluation of Centlec's assets. This revaluation and report were done some time between 2018 and 2020 by EMS Solutions and included the FDC assets. If Mr Sekoboto's evidence is considered, there was also a request that Centlec do an assessment regarding FDC's infrastructure during 2012. No evidence regarding the purpose of the latter request or the outcome thereof was however tendered.

[45] After the disconnections commenced, Centlec started 'taking over' FDC clients who would henceforth pay Centlec directly for electricity consumed. The first client that was taken over by Centlec was Chicken Poultry (Supreme Poultry). The intention was that the entire Botshabelo industrial area would be transferred to Centlec. FDC instructed, amongst others, Mr Schalk van der Merwe, on 17 April 2019, to inform the tenants in the industrial area that they have been taken over by Centlec and that Centlec will contact them to make applications and sign agreements directly with Centlec. Mr Sekoboto testified that this process of transfer started during May 2019. To

date the tenants that were taken over by Centlec pay Centlec directly for the electricity they consume.

[46] Mr Sekoboto testified that at that juncture FDC wanted to hand over their electrical infrastructure, but they needed to do a re-assessment. The purpose of the handover at the time was to stop the increase in monthly accounts accruing whilst Centlec would take over the tenants of FDC. The handover as result of disconnections following FDC's failure to pay Centlec was envisaged to be, at least, in partial settlement of FDC's debt.

[47] It is common cause between the parties that FDC did not accept the value of its assets which formed part of the revaluation. Mr Sekoboto stated that there was a difference in 'understanding and belief' that the revaluation of FDC's assets should not be R39 million, but according to FDC, rather R99 million or close to R100 million. According to Mr Sekoboto, the difference between the value placed on FDC's assets and what FDC maintained the value was, is the reason why the parties could not, to date, conclude an agreement. As will be recalled, according to Mr Sekoboto, FDC's dispute about the value was without basis.

[48] As to the idea behind the valuation of the assets at that stage, it will be recalled that Mr Sekoboto explained that the two primary reasons for the revaluation were (a) to determine an asset value to offset against FDC's debt, and (b) to take over the network and its maintenance going forward. The discussions according to Mr Sekoboto during 2019, specifically between Mr Sekoboto and FDC's CEO was to finalise the matter and to also finalise the issue of the transfer of assets and the grid.

[49] Both Mrs Williams and Mr Sekoboto were adamant that no dispute existed, at least not prior to Centlec's action being issued, regarding FDC's liability towards the plaintiff or the amounts claimed by Centlec. According to Mr Sekoboto there was no dispute around the debt itself and as far as Centlec and FDC were concerned, no

dispute existed except regarding the engagements pertaining to how the payment can be made.

[50] Mr Sekoboto did confirm under cross-examination that part of the discussions related to the repayment terms, interest and so forth, which would also entail the transfer of the assets. The transfer of assets was part and parcel of the proposed structure and had to be explored. Mr Sekoboto confirmed that the assets and the value thereof were part and parcel of the negotiations.

[51] I am satisfied that Centlec has established, on a balance of probabilities, that prior to the institution of this action, FDC did not dispute its liability towards Centlec, nor the amounts as claimed by Centlec.³ Centlec was aware of the dire financial situation of FDC, whether by their own doing as Mr Sekoboto alleged, or not.

[52] The facts in *Resilient* admittedly differ from the facts in this matter, but there are also similarities in certain respects. FDC's argument is however premised on the basis that on the facts of this matter the legal principles established in *Resilient* find application, namely that the dispute between organs of state as to the manner in which the parties agree to settle the debt, the terms of repayment and the manner to collect the debt owed, would constitute a dispute for purposes of IRFA.

[53] In terms of s 3 of the Free State Development Corporation Act 6 of 1995, FDC shall be responsible, in accordance with a policy determined by the responsible member or any direction given by him or her, to perform or promote urban or rural development in die Free State Province with regard to any matter within the functional areas specified in Schedule 6 of the Constitution of the Republic of South Africa Act 200 of 1993⁴ (for

³ Whilst FDC challenged Centlec's evidence in this regard by means of statements by its counsel, it is trite law that statements put to the witnesses during cross examination is not evidence. No evidence in line with the statements were produced by FDC. In fairness, FDC's counsel did argue for a different finding on this issue. Its argument rests on the summary of its submissions set out above.

⁴ The Free State Development Corporation Act 6 of 1995 still refers to the Interim Constitution, 1993 and has not yet been amended to refer to the Constitution, 1996 (which repealed the Interim Constitution, 1993). The functional areas specified in Schedule 6 of the Interim Constitution, 1993 related to legislative competences of provinces as listed in the Schedule. Insofar as may be relevant, the majority of the

sake of convenience referred to as ‘the Interim Constitution, 1993’). In terms, that includes a developmental role in growing the economy of the Free State. Seen in proper context, Centlec and FDC’s relationship is more than merely a contractual one. Centlec supplied bulk electricity to FDC which, in turn, had a concomitant duty to supply it to its end-users, its tenants or as referred to by FDC, its clients. In the context of the FDC’s statutory ordained objects, that would secure or promote economic and social well-being of the people. In the present context, FDC’s financial position and any agreement to offset debt against transfer of assets, as well as handing over ‘clients’, constitutes a matter of public interest in the context of FDC’s objects.

[54] When the narrative above is considered, it is clear that during 2018 Centlec started to disconnect electricity supply whilst the parties were in discussions. This resulted in Centlec taking over tenants of FDC who now pay Centlec directly for the electricity they consume. The revaluation of FDC assets as part of Centlec’s revaluation would serve two primary functions, namely, to determine an asset value to offset against FDC’s debt and to take over the network and its maintenance going forward. It is common cause that the parties’ positions became entrenched at some point.

[55] Centlec did show some appreciation for its obligations as far as intergovernmental relations go. It discussed and negotiated with FDC from 2012 on an ongoing basis. It however took a hardline during December 2018 and disconnected the electricity supply. The discussions/negotiations regarding the management and ultimately the payment of FDC’s debt to Centlec clearly included Centlec taking over tenants from FDC (which eventuated after the electricity supply was disconnected), determining the asset value of FDC’s relevant assets to offset against FDC’s debt to Centlec, and that Centlec take over the network and its maintenance going forward.

categories referred to in Schedule 6 to the Interim Constitution, 1993, are now provided for in Schedule 4 of the Constitution, 1996 which regulates functional areas of concurrent national and provincial legislative competence, Schedule 5 of the Constitution, 1996 deals with functional areas of exclusive provincial legislative competence.

[56] I do not agree with Centlec's submission that in the absence of a formal valuation on behalf of FDC being placed before Court, the fact that the different values may have been discussed during the relevant period, can merely be considered as part of the negotiations between the parties at the time.

[57] I have carefully considered Centlec's submissions and all the legal precedent Centlec referred to in their heads of argument.⁵ Whilst, as stated, the facts in *Resilient* are distinguishable, I am satisfied that in applying the legal principles established by the Supreme Court of Appeal in the aforementioned case, there was a live dispute between Centlec on the one hand and FDC on the other, in relation to the manner as to how FDC's debt would be liquidated, specifically the value of FDC's assets to be offset against its debt and that a dispute as envisaged by IRFA existed, prior to institution of the action between Centlec and FDC in regard to how FDC's debt to Centlec would be liquidated.

[58] Any amounts that were 'double billed' would form part of the resolution of the dispute on how FDC's debt would be liquidated. I am therefore satisfied that the dispute was a dispute of a financial nature and also a dispute as envisaged by IRFA that existed prior to Centlec instituting its action against FDC.

Did Centlec fail to comply with s 41 of the Constitution and s 40 of IRFA before issuing summons?

[59] Before the advent of IRFA the Constitutional Court, in *Uthukela District Municipality and Others v President of the Republic of South Africa and Others*⁶ (*Uthukela*), reiterated that the essence of chapter 3 of the Constitution is that disputes

⁵ I do not list all judgments I was referred to but note that the case law included *Petersen and Others v South African Social Security Agency* [2024] ZASCA 173; 2025 (3) SA 153 (SCA); *Eskom Holdings SOC Ltd v Lekwa Ratepayers Association NPC and Others and a Similar Matter* [2022] ZASCA 10; 2022 (4) SA 78 (SCA) and *National Gambling Board v Premier, KwaZulu-Natal, and Others* [2001] ZACC 8; 2002 (2) SA 715 (CC) (*National Gambling Board*). *National Gambling Board* preceded IRFA, but the passage in para 36 supports the view I take in this matter. Some of the judgments that the plaintiff relied on are also discussed in this judgment.

⁶ *Uthukela District Municipality and Others v President of the Republic of South Africa and Others* [2002] ZACC 11; 2002 (11) BCLR 1220; 2003 (1) SA 678 (CC) (*Uthukela*) para 15.

between organs of state should, where possible, be resolved at a political level rather than through adversarial litigation,⁷ and as is apparent from s 41(4) of the Constitution, courts must ensure that this duty is duly performed.

[60] In *Resilient*, Petse DP on behalf of a unanimous Court said:

'It is important to note that the s 41(2) [of IRFA] obligation, to 'make every reasonable effort to settle the dispute', is already relevant before a dispute is declared a 'formal intergovernmental dispute'. Thus, in effect, organs of state are obliged at two (separate) stages of the process to resolve their disputes with each other, by means of whatever mechanism or procedure available to them in the circumstances, outside of the courts.'⁸

[61] The Court proceeded to explain that both s 41 of the Constitution and s 40 of IRFA make plain that an organ of state has a constitutional and statutory duty to avoid judicial proceedings before a genuine attempt has been made to settle a dispute envisaged in the aforesaid sections. To that end, state organs must make every reasonable effort, in good faith, to settle the dispute without recourse to litigation. Moreover, where a dispute is of a financial nature, the organs of state that are parties to the dispute, not only the one or the other, are required to promptly take all reasonable steps necessary to resolve the dispute. To this end, organs of state have a statutory duty to report the matter to the National Treasury for the latter to mediate the dispute.

[62] The plaintiff did enter discussions/negotiations with FDC, and it did so over a protracted period whilst FDC's debt kept on increasing. It is however common cause that neither Centlec nor FDC reported the matter to National Treasury, nor did either of them declare a formal intergovernmental dispute in terms of s 41(1) of IRFA by notifying the other party of such declaration in writing. Whilst on the facts it may be argued that Centlec complied with the obligation imposed by s 41(2) of IRFA to the extent that it in

⁷ *Certification of the Constitution of the Republic of South Africa*, 1996 [1996] ZACC 26; 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC); (1996) 17 ILJ 821 (CC) para 291.

⁸ *Resilient* fn 4 para 66.

good faith made every reasonable effort to settle the dispute by direct negotiations with FDC, it did not thereafter comply with the obligation imposed by s 41(1).

Should the Court, in the specific circumstances of this matter, notwithstanding the failure by Centlec to exhaust the alternative avenues contemplated in s 41 of the Constitution and s 40 of IRFA respectively, proceed to determine the dispute?

[63] In *City of Cape Town v Premier, Western Cape, and Others*,⁹ Swain J (Nicholson J concurring) held that s 45(1) of IRFA read in conformity with the provisions of s 41(3) and s 41(4) of the Constitution vests a Court with the discretion to hear a matter, even if not satisfied that the parties have made every reasonable effort to settle the dispute.

[64] *Constat*, such discretion, exercised judiciously would in my view only be exercised in exceptional circumstances. In *Uthukela* the Constitutional Court emphasised that Chapter 3 of the Constitution contemplates that organs of state must make every reasonable effort to resolve intergovernmental disputes before having recourse to the courts.

[65] Mrs Williams testified that she was satisfied that all due processes were followed in terms of the provisions of IRFA and s 41 of the Constitution and that it would serve no purpose to remit the matter as sought by FDC, as Centlec and FDC had tried to settle the matter without success. On the other hand, I have found that Centlec did not comply with the provisions of s 41(1) of IRFA.

[66] FDC submits that it would negate and subvert the entire purpose of the application of IRFA and the manner in which organs of state are required to deal with each other if Centlec should be allowed to simply argue that it is entitled to sue FDC where it has also already taken steps to enforce payment of the debt by disconnecting the electrical supply.

⁹ *City of Cape Town v Premier, Western Cape, and Others* [2008] ZAWCHC 52; 2008 (6) SA 345 (C) paras 15 to 18.

[67] In my view it cannot be said at this time that when the procedures and mechanisms provided for by IRFA are followed, the dispute may not be resolved without the necessity of litigation. In the premises I am not inclined to determine the dispute in the circumstances.

[68] Before dealing with the issue of costs, it needs to be said that the requirements of s 44 of the MFMA may well be encompassed by the IRFA proceedings. I am not called upon to decide this issue and expressly decline to do so. Bearing in mind the history of this matter it is worth to note that nothing would however prevent the parties to agree on a practical manner to deal with the matter when acting in terms of IRFA if, for whatever reason, the s 44 process is not encompassed by the IRFA proceedings.

Costs

[69] Costs resort in the discretion of the Court. The general rule is that costs usually follow the result.

[70] In my view the general rule should not apply to these proceedings at this juncture. The matter has a protracted history where FDC's debt to Centlec increased exponentially through the years. Whilst it can be accepted that a dispute as envisaged by IRFA did not exist during the entire period, it did originate and was then not dealt with as envisaged constitutionally and statutorily.

[71] Not only is the resolution of intergovernmental disputes with litigation only as last resort considered so important that it is constitutionally ordained and the mechanisms and procedures when disputes arise regulated by statute, but when these disputes arise, the parties thereto are clearly expected to act with the necessary promptitude to attempt to resolve such a dispute. The parties to such a dispute should be bona fide in their endeavours to settle the dispute. The prompt resolution of intergovernmental disputes is clearly in the public interest. The statutory mechanisms patently aim to achieve finality as opposed to having disputes dragging on indefinitely. If parties act with the necessary promptitude and their dispute cannot be resolved notwithstanding their

bona fide efforts, then having complied with the constitutional and statutory obligations, the court may be approached to finally resolve the dispute.

[72] As pointed out above, the obligations imposed by s 41 of the Constitution and IRFA applies equally to both parties to the dispute. Neither of the parties reported the dispute to National Treasury. Whilst Centlec believed, wrongly so but nonetheless, that it had complied with its obligations if an intergovernmental dispute did exist, FDC, who relies on Centlec's non-compliance with the provisions of IRFA and s 44 of the MFMA, similarly failed to comply with the said provisions to have the dispute resolved.

[73] It is not contentious that the parties' positions became entrenched at some point. At that stage, both parties, as organs of state, had the same responsibilities to make every reasonable effort to promptly settle that dispute by means of the mechanisms and procedures provided for that purpose, namely, in IRFA and insofar as the dispute resolution mechanisms in IRFA does not also encompass the requirements of s 44 of the MFMA, then also in terms of s 44 of the MFMA. That included declaring a formal dispute when it became clear that the attempts to resolve the matter by other means had failed. FDC relies on the fact that an impasse existed between the parties that had not been resolved, but it is silent as to what steps it took and why it also failed to declare a formal dispute in terms of IRFA or reported the dispute in terms of section 44 of the MFMA to have the dispute resolved.

[74] Whilst FDC's second special plea is upheld, in my view the just order as to costs in the circumstances of this case would be that each party pays its own costs of the proceedings.

[75] In the premises it is ordered:

1 The defendant's second special plea is upheld.

2 The action is stayed and the matter is referred back to the parties to comply with the processes prescribed in terms of the Intergovernmental Relations Frameworks Act 13 of 2005 and, insofar as the aforesaid does not also encompass the provisions of s 44 of the Local Government: Municipal Finance Management Act 56 of 2003, then the processes prescribed in s 44 of the Local Government: Municipal Finance Management Act 56 of 2003.

3 Any one of the parties may apply for leave to this Court to re-enrol this action for hearing:

3.1 In the event of such dispute(s) having been declared a formal intergovernmental dispute(s) in terms of s 41 of the Intergovernmental Relations Frameworks Act 13 of 2005, and insofar as the formal dispute does not encompass the requirements of s 44 of the Local Government: Municipal Finance Management Act 56 of 2003, then any process in terms of s 44 of the Local Government: Municipal Finance Management Act 56 of 2003, have been complied with; and

3.2 If all efforts to settle the dispute in terms of Chapter 4 of the Intergovernmental Relations Frameworks Act 13 of 2005; and insofar as the formal dispute does not encompass the requirements of s 44 of the Local Government: Municipal Finance Management Act 56 of 2003, any process in terms of s 44 of the Local Government: Municipal Finance Management Act 56 of 2003, were unsuccessful.

4 Each party to pay its own costs.

N SNELLENBURG
ACTING JUDGE OF THE HIGH COURT

Appearances

For the plaintiff: JJF Hefer SC with V Mokhuane
Instructed by Tshangana & Associates, Bloemfontein

For the respondent: A Sander
Instructed by: Peyper Attorneys, Bloemfontein