




IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2025-071425

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
	28/05/2026
SIGNATURE	DATE

In the matter of:

**KOSMOSDAL EXT 61 AND 62 HOMEOWNERS
ASSOCIATION NPC**

APPLICANT

And

TSHOLOFELO LERATO GABELA

1ST RESPONDENT

MAITE ROSINA MODIBA

2ND RESPONDENT

MOTJILE RAYMOND RANKHUMSISE

3RD RESPONDENT

ISABEL VICTORIA RANKHUMSISE

4TH RESPONDENT

MOEKETSI ELIJAH MOOROSI

5TH RESPONDENT

LINDIWE MABENA

6TH RESPONDENT

THAPELO MOGATUSI

7TH RESPONDENT

PALESA MOGATUSI

8TH RESPONDENT

SIMON TUMELO MAPHANGA	9TH RESPONDENT
MASHILA JEMINAH MATLALA	10TH RESPONDENT
BRENDALYN JEANET JOHANNA MASHILOANE	11TH RESPONDENT
ELIOTH AMOS MUZAMANE	12TH RESPONDENT
RHULANI VANESSA MUZAMANE	13TH RESPONDENT
ANDILE LAURETH MALETSATSI DUBE	14TH RESPONDENT
MPHASHA NELSON KGARE	15TH RESPONDENT
DORCUS PEBETSE MATSHEDISO KGARE	16TH RESPONDENT
LANGETELA ALERT CHAUKE	17TH RESPONDENT
TLABO AGOSE THOKOLO	18TH RESPONDENT
GRACE SIBONGILE THOKOLO	19TH RESPONDENT
VINCENT NHUBUNGA	20TH RESPONDENT
ANGELA MMATLOU NHUBUNGA	21TH RESPONDENT
SIBUSISO ALEXANDER MLOTSHWA	22ND RESPONDENT
HOPE OLGA MLOTSHWA	23RD RESPONDENT
MICHAEL THAANE MOLEKWA	24TH RESPONDENT
ESTHER MOLEKWA	25TH RESPONDENT
LIMA CYRIL BALOYI	26TH RESPONDENT
MICAL SINDISA BALOYI	27TH RESPONDENT
NTEBALENG DORIS	28TH RESPONDENT
MZIMHLE DAVID MADUNA	29TH RESPONDENT

This Order is made an order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court, and is submitted electronically to the Parties/their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her Secretary. The date of this Order is deemed to be 28 May 2026.

JUDGMENT

LUKHAIMANE AJ

Introduction

[1] The applicant applied for an order in the following terms¹:

3.1 Declaring that all the respondents are interdicted and restrained from making any illegal connections, alternatively to continue to make illegal connections to their electricity supply, and from the centralised electricity meter box situated in the premises of Brooklands 3 Lifestyle Estate, Gauteng, to their respective units or dwellings.

3.2 An order compelling the respondents to terminate all illegal connections to the electricity supply, and from the centralised electricity meter box situated in the premises of Brooklands 3 Lifestyle Estate, Gauteng and / or restore the electricity connections to their respective units or dwellings to that of the lawful and duly appointed service provider, known as Metershack (Pty) Ltd, within thirty (30) days of this order.

3.3 That the respondents shall pay the costs of this application, jointly and severally, on the Scale as between Attorney-and-Client.

3.4 That the applicant shall be permitted to debit the taxed costs of this application pro rata on the respondent's respective levy accounts.

3.5 Further and / or alternative relief as the Court may deem appropriate and fit."

[2] The application came before me on 24 April 2026. The applicant abandoned prayer 3.4 at the outset. The ninth respondent represented himself and his

¹ Notice of Motion

submissions were no different from the rest of the respondents, therefore, the respondents' submissions were dealt with as one.

Background facts

[3] On or around June 2016, the board of directors of the applicant ("the board"), entered into a prepaid electricity vending agreement with British Xabhaya (Pty) Ltd ("British"), later amended, via an addendum. The applicant contends that the agreement expired on 1 June 2018 and was never renewed. However, the facts, also adduced by the applicant, indicate that British provided this service through to 2023 and beyond to the respondents. The applicant further states that sometime in 2023, its board adopted the following two resolutions²:

"4. Motion

It is hereby proposed that the resolution set out below be accepted and approved by the majority of the board of Kosmosdal Ext 61 & 62 HOA NPC Board of:

1. Resolution 1

Approval to terminate the services of British-Xabanya (PTY) LTD as a prepaid meter and vending supplier.

Resolved: That the services of British-Xabanya (PTY) LTD be terminated as a prepaid meter and vending supplier for Kosmosdal Ext 61 & 62 HOA.

2. Resolution 2

Approval to appoint Meter Schack as the preferred prepaid meter and vending supplier

Resolved: That Meter Schack be appointed as the preferred supplier of prepaid meters and vending services to Kosmosdal Ext 61 & 62 HOA NPC.

² CaseLines 006-32 paragraph 6.10 to 6.11 FA, CaseLines 006-64, Annexure FA3)

PAST AND ADOPTED

By a majority of the Board of Directors of THOA on theby Round Robin vote of the Board of Directors members."

[4] It is the applicant's case that British continued to sell prepaid electricity to its homeowners beyond 2023 and failed to properly disclose or remit these amounts to the applicant. It is the applicant that is responsible for remitting funds for the bulk electricity supplied to its one centralised meter to the City of Tshwane. The indebtedness or otherwise of British to the applicant is the subject of separate litigation.

[5] The applicant submits that it appointed a new service provider, Metershack (Pty) Ltd ("Metershack") with the aim of migrating the estate to a more efficient system, at free cost to the homeowners.

[6] According to the applicant, the majority of the homeowners have migrated to Metershack, except for the respondents, that the applicant considers as engaging in disruptive and unlawful conduct including illegal electricity connections, spurious litigation and continued engagement with British; the applicant considers British to be operating unlawfully, including after being interdicted on 22 October 2024³.

[7] The applicant contends that this conduct is causing it financial prejudice as it remains liable for the bulk municipal electricity bill.

[8] The applicant entered into a service level agreement (SLA) with Metershack⁴, which agreement is undated and not signed by or on behalf of Metershack and its duration is not specified nor is a date of commencement indicated. In fact, except for the fact that someone purportedly signed on behalf of the applicant, which signature was witnessed by one other person, the applicant is nowhere indicated as a party to the agreement.

³ Annexure FA6

⁴ CaseLines 006 – 190, paragraph 33; 006 - 174

[9] Except to state that the decision to appoint Metershack was validly taken, ratified at an annual general meeting and confirmed through judicial pronouncements, the applicant does not engage any further with the respondents' contentions⁵.

[10] The respondents on the other hand, take issue with the relief sought. They contend that the applicant's memorandum of incorporation ("MOI") or its General Rules of Conduct ("Conduct Rules"), do not prohibit the homeowners (members of the applicant) from purchasing electricity from a third party not nominated or appointed by the applicant. They further contend that the appointment of Metershack was unlawful, not in accordance with the applicant's governance processes. Therefore, they state that the applicant has no cause of action to support a claim against the respondents and the manner that the relief sought is framed, is fatally defective.

[11] The applicant is a non-profit company and therefore acts in terms of the Companies Act 71 of 2008. Clauses 13 and 20 of the applicant's MOI that prevailed at the time the SLA was entered into provides as follows:

**"13. MEMBERS' MEETING AND ROUND ROBIN RESOLUTIONS
CONTEMPLATED IN CLAUSE 1.2.22**

13.28 Every resolution of members is either an ordinary resolution or a special resolution.

An ordinary resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of more than 50% of the voting rights exercised on the resolution.

A special resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI shall require to be adopted with the support of at least 75% of the voting rights exercised on the resolution.

Every member present in person or by proxy shall have the voting rights on behalf of himself and on behalf of each person for whom he acts as a proxy, determined in accordance with the formula contained in clause 13.27.

⁵ Annexures FA8 and FA9

20 *PROCEEDINGS OF DIRECTORS*

20.11 *Resolutions adopted by the board –*

- 20.11.1 *must be dated and sequentially numbered;*
- 20.11.2 *are effective as at the date of the resolution,
 unless the resolution states otherwise;*
- 20.11.3 *subject to the provisions of his clause 20, a
 majority of the votes cast on a resolution
 proposed at any Board meeting or by Round
 Robin – is sufficient to prove that resolution; and*
- 20.11.4 *any decision of the Board to outsource the
 provisions (sic) of electricity or security services
 to the Company or any Dwelling shall not be
 effective without the prior written approval of the
 HOA by special resolution, and the powers of the
 Board are hereby accordingly restricted.”*

[12] The respondents argue that the Court should not exercise its discretion by granting the applicant the declaratory relief sought, as it is not competent. They submit that it is not clear what the applicant is referring to with “making illegal connections” and when pressed by the respondents during the hearing, Counsel for the applicant could not clarify this. The respondents suggest that the matter was not ripe for determination, as something further had to happen, meaning the proper appointment of a service provider, Metershack, before the applicants would be entitled to act. I believe that these contentions of the respondents are valid, both in fact and in law. As demonstrated above, the applicant’s powers are circumscribed by the law and its founding governance documents i.e MOI and Conduct Rules. It may not act outside of these powers, otherwise its actions would be null and void.

Analysis

[13] This court must therefore determine whether the respondents are engaged in unlawful activity by illegally connecting their respective units or dwellings to the centralised meter box. It is correct that the remedies the applicant seeks are competent and may be granted by a court together where justified by the facts. This is

the declaratory order sought by the applicant and whether the applicant may lawfully demand that the respondents restore the electricity connections to their dwellings from the centralised meter through Metershack.

[14] To evaluate both the applicant's and respondents' assertions, it is important to consider the resolutions that the applicant relies on to deem the conduct of the respondents illegal / unlawful and actionable.

[15] The applicant has failed to adduce evidence of its compliance with clauses 13.28 and 20.11.4. These are the provisions of the MOI that prevailed in 2023 when the decision to replace British with Metershack was taken and the applicant did not follow these provisions. The applicant's failure to follow its regulated procedures when appointing Metershack, renders the resolution of no effect. It does not assist the applicant that most homeowners have migrated to Metershack. The respondents are within their rights to refuse to abide by a decision of the applicant that was not taken in line with its governing prescripts. In addition, the applicant may not seek the assistance of the courts to enforce such a decision / resolution.

[16] The requirements for declaratory relief are settled. Section 21(1)(c) of the Superior Courts Act⁶ reads: '*A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power – ... in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination*'. In *Gensinger & Neave CC and Others v Minister of Mineral Resources and Energy and Others*⁷ the Court applied these provisions as follows:

'An applicant seeking a declaratory order must satisfy the court that he or she is a person interested in an existing, future or contingent right or obligation. ... once the applicant has satisfied the court that it is interested in an existing, future or contingent

⁶ Act 10 of 2013.

⁷ 2025 (4) SA 84 (SCA) at para 31.

right or obligation, it does not mean that the court is bound to grant a declarator. The court must consider and decide whether it should refuse or grant a declarator, following an examination of all the relevant factors. The court accordingly has a discretion. In the exercise of that discretion, the court considers whether an applicant, in seeking such a declarator, has standing in terms of s 38 of the Constitution. In line with the doctrine of ripeness, the court may enquire as to whether alternative remedies have been exhausted. In addition, a court will not grant a declaratory order on moot or academic issues, as this would conflict with the doctrine of effectiveness ...'

[17] Specifically in the context of declaratory relief, and where it concerns the exercising of the Court's discretion in granting the declaratory relief sought once it is established the necessary interest exists, the Court in *Queen Sibongile Winnifred Zulu v Queen Buhle Mathe and Others*⁸ appositely held that:

'... The jurisdictional facts that have to be established are whether the applicant has an interest in an existing, future or contingent right or obligation. If the court is so satisfied that such interest exists, it is required to consider whether the order for a declaratory relief should be granted. The court considers whether an applicant in seeking such an order has a standing in terms of s 38 of the Constitution. In addition, the doctrine of ripeness is at issue, as consideration is given to whether prejudice has already resulted or is inevitable, irrespective of whether the action is complete or not. The doctrine of ripeness may also require an enquiry as to whether alternative remedies have been exhausted. This is termed a premature action. As aforesaid, s 21(1)(c) of the Superior Courts Act 10 of 2013 enjoins the high court 'in its discretion and at the instance of any interested person to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination'. In addition, a court will not grant a declaratory order on moot or academic issues, as this would conflict with the doctrine of effectiveness. ...'

[18] I am not satisfied that the applicant has met the requirements for declaratory relief to be competent. The applicant has a direct interest in the provision and payment of electricity as it is an issue that directly impacts upon its operations and will continue

⁸ 2024 JDR 1017 (SCA) at para 12. See also *West Coast Rock Lobster Association and Others v Minister of Environmental Affairs and Tourism and Others* [2011] All SA 487 (SCA) para 45.

to do so going forward. Absent an agreement with British for payments to the applicant to satisfy the portion of the bulk supply from the municipality to the respondents, the applicant may suffer harm. This leaves the second leg of the enquiry, namely whether this Court should exercise its discretion, based on the facts and the issues at stake in this case, and grant the applicant the declaratory relief sought.

[19] A further consideration is whether prejudice has already resulted or is reasonably likely to result, even if some action may still need to come going forward. This was made clear in *Rhino Oil and Gas Exploration South Africa (Pty) Ltd v Normandien Farms (Pty) Ltd and Another*⁹ as follows:

'There is a close connection between prejudice and ripeness. Baxter states that 'the appropriate criterion by which the ripeness of the action in question is to be measured is whether prejudice has already resulted or is inevitable, irrespective of whether the action is complete or not'.

[20] The applicant is unable to illustrate a clear right to the relief sought by convincing the Court to grant declaratory relief in its favour and the respondents oppose the interdictory part of the relief sought. In *Setlogelo v Setlogelo*¹⁰ the Court explained the requirements of an interdict as follows: *'... The requisites for the right to claim an interdict are well known; a clear right, injury actually committed or reasonably apprehended, and the absence of similar protection by any other ordinary remedy ...'*. In addition, the applicant has already stated that it is in other litigation with British for outstanding amounts. Therefore, the applicant, bar a proper legal basis for its claim for declaratory and final interdict relief, should avail itself other ordinary remedies for any damages against British.

[21] Whilst the applicant discusses the requirements of an interim interdict, it is clear from the couching of the relief sought that the applicant seeks final relief. The applicant has failed to demonstrate a clear right, nor that there is an absence of an adequate

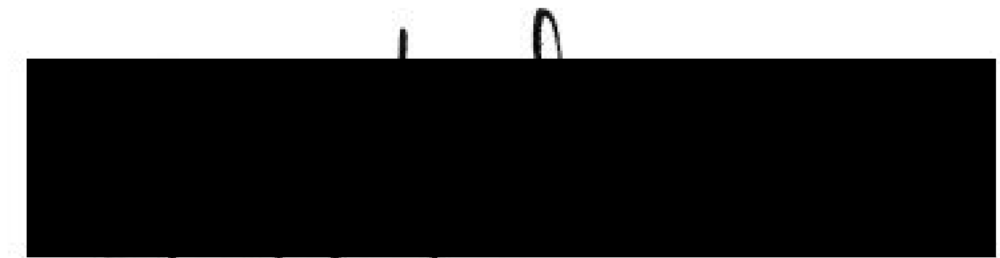
⁹ 2019 (6) SA 400 (SCA) at para 33.

¹⁰ 1914 AD 221 at 227. See also *Masstores (Pty) Ltd v Pick N Pay Retailers (Pty) Ltd* 2017 (1) SA 613 (CC) at para 8.

alternative remedy. In addition, the applicant was unable to explain the relief sought, as far as it impugns upon the respondents some form of unlawful / illegal activity. From the papers, the applicant was also unable to demonstrate that there is reasonable apprehension of harm.

Costs

[22] The application is dismissed with costs.



LUKHAIMANE AJ

Acting Judge of the High Court of South Africa
Gauteng Division, PRETORIA

Appearances:

Heard on:	24 April 2026
Judgment on:	28 May 2026
Counsel for the Applicants:	Adv Francois Muller
Instructed by:	Dixon Attorneys
For the Ninth Respondent:	Self represented
All other Respondents:	Adv HP West
Instructed by:	O'Donoghue & Marais Inc