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

Case Number: 2025-010310

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED: NO

DATE: 24 August 2026

SIGNATURE:

In the matter between:

BRICS TRADING ENTERPRISES (PTY) LIMITED

Applicant

And

MADIBENG LOCAL MUNICIPALITY

Respondent

REASONS

MOKOSE J

[1] This matter came before me on 26 May 2026, and the parties have requested this court to furnish the reasons for the decision. The following order was granted:

"1. The respondent is to forthwith restore the electricity supply to the applicant's business premises situated at Erf 3[...] Brits Township, situated at 7[...] P[...] Street, Brits ("the property").

2. The respondent and/or its agents are, pertaining to Account No. 2[...] ("the account") interdicted from further terminations of the electricity supply to the property pending the final determination of the main application, which has already been instituted.

3. Granting the applicant leave to approach the Court on supplemented papers for any additional relief it may seek.

4. The respondent is pay the costs of this application on Scale C of the Uniform Rules of Court."

[2] The applicant approached this Court on an urgent basis for spoliatory relief arising from the respondent's disconnection of the electricity supply to the applicant's commercial property on 15 May 2026. The order was sought to prevent termination of the electricity supply which had been terminated on 15 May 2026 and had not been restored at the date of the hearing.

[3] The respondent opposed the application on the basis that the disconnection does not constitute an act of spoliation but rather a lawful and mandated exercise of credit control in terms of Section 96 and 97 of the Local Government: Municipal Systems Act 32 of 2000. Furthermore, the respondent contends that the applicant had chosen to institute the incorrect remedy and that the correct remedy to have been sought is specific performance.

[4] It is common cause that the applicant was in possession of an electricity supply at its property prior to the disconnection which was effected on 15 May 2026. The disconnection was effected without a court order in respect of a billing dispute between the parties. It is common cause that the respondent served a disconnection notice on the applicant on 27 March 2026.

[5] The applicant further contended that a response to the disconnection notice was sent through its attorneys wherein the *bona fide* dispute between the parties concerning electricity charges was recorded. The applicant averred that although the respondent had failed to furnish the applicant with invoices, the applicant had continued paying amounts in good faith. The applicant contended further that that notice of 27 March 2026 was rendered unenforceable by the dispute which had been noted. The respondent's failure to respond to the letter disputing the amounts renders the reliance on the notice procedurally unfair and unlawful.

[6] In respect of the urgency of the matter, the applicant contended that the matter was urgent and that the harm suffered was immediate, ongoing and incapable of adequate redress in due course. The applicant averred further that its business operations had been severely disrupted, resulting in financial loss and prejudice to its tenants and employees and as well as reputational harm to itself. This was denied by the respondent.

[7] A court is obliged in its determination of urgency, to interrogate the allegations of the parties in the papers and decide whether the matter should be heard on an urgent basis. In terms of Rule 6(12) of the Uniform Rules of Court a party seeking relief must set out explicitly in its affidavit, the circumstances which render the matter urgent with proper particularity and must also set out the reason why he or she would not be afforded redress at a later date.

[8] The locus classicus for the law pertaining to urgent proceedings is the case of *Luna Meubels Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers*¹. The court established guidelines for urgent applications in terms of Rule 6(12) of the Uniform Rules of Court. The court expressly recognised that in appropriate circumstances, the ordinary forms and time periods may be abridged to permit the court to deal with the matter as one of urgency. The test for urgency in applications was further enunciated in the case of *East Rock Trading 7 (Pty) Limited*

¹ 1977 (4) SA 135 (W)

*and Another v Eagle Valley Granite {Pty} Limited and Others*². Two key elements which an applicant must satisfy for an urgent application to qualify as such are that the matter is genuinely urgent and that he or she will not obtain substantial redress in due course should the matter proceed in the normal course.

[9] I have considered the submissions of both the applicant and the respondent pertaining to the urgency of the matter and am of the view that the matter is sufficiently urgent as to obtain a hearing in terms of Rule 6(12) of the Uniform Rules of Court. The urgency is not measured merely by the passage of time but by whether the delay inherent in the ordinary course would render the relief hollow, ineffective or meaningless. Furthermore, matters pertaining to spoliation proceedings are of themselves urgent. The remedy is designed to arrest ongoing unlawful conduct and to restore the and preserve public order. Any delay in granting such an order can defeat the very purpose of the remedy.

[10] Accordingly, I was of the view that the urgency of the matter has been established by the applicant.

[11] The *mandament van spolie* is an immediate possessory remedy which protects the rule of law by prohibiting self-help. Its purpose is not to decide rights but to restore possession that had been unlawfully disturbed. The only requirements for a spoliation order are that the applicant was in possession of the spoliated thing and that the applicant was wrongfully deprived of the spoliated thing.³

[12] Possession for spoliation is a factual enquiry. The applicant need not prove a right to electricity. He need only prove undisturbed control of the electricity supply which has been recognised by our courts to amount to quasi-possession when it is integral to the use and enjoyment of the property. The court in the matter of *Makeshift 1190 (Pty)*

² [2011] ZAGPJHC 163 (23 September 2011)

³ *Ivanov v North-West Gambling Board* 2012 (6) SA 67 (SCA) at para 19

*Ltd v Cilliers*⁴ held that electricity used as part of occupation may be protected by a spoliation remedy.

[13] The applicant contends that it had a continuous, peaceful and undisturbed supply of electricity until 15 May 2026 when it was disconnected unilaterally and without a court order due to a billing dispute which was pending before this court. The only issue on hand is whether the applicant had possession and whether it was disturbed unlawfully. It contends further that the respondent's attempts to justify its conduct by relying on statutory power and debt are irrelevant.

[14] In opposition to the application, the respondent contends that the disconnection was executed as a statutory credit control measure due to the applicant's commercial account being in default. The respondent referred the court to the Local Government: Municipal Systems Act 32 of 2000 wherein the act authorises it to collect all revenue due to it. It further contends that the enforcement of this act is not spoliation.

[15] As sated above, there are two requirements for a spoliation order. The applicant needs to show that he was in peaceful and undisturbed possession and that the applicant has been dispossessed of such possession without lawful process. The respondent fails to deal with the matter on hand being the spoliation and in fact conflates it with the merits of the dispute. The issues of billing and the respondent's reliance on the credit control policies do not belong to the process on hand. They cannot justify dispossession of electricity.

[16] Furthermore, the respondent sought to rely on a termination notice of 27 March 2026 which was responded to through the applicant's attorneys on 30 March 2026. A bona fide dispute to the notice had been noted. I am of the view that the termination notice had been rendered unenforceable by the notice of a dispute by the applicant. Accordingly, the respondent was not entitled to proceed with the termination of the electricity supply as if the debt was not in dispute. Its actions were premature.

⁴ 2020 (5) SA 538 (WCC)

Furthermore, the respondent failed to respond to the applicant's letter dated 24 March 2026 and a further letter dated 30 March 2026. Procedural fairness is required before a disconnection can be effected.⁵ The respondent's failure to engage the applicant is accordingly procedurally unfair.

[17] The applicant further sought interdictory relief due to a real risk of continued or repeated unlawful disconnection of the electricity supply. The applicant contends that it is therefore necessary to prevent further unlawful conduct and to protect its rights from ongoing unlawful infringement. The interdict was intended as one pending the final determination of the main dispute. The requirements for an interim interdict are well established in the matter of *Setlogelo v Setlogelo*⁶. They are the following:

- (i) the applicant must establish a prima facie right to the continued supply of electricity as an incident of its occupation and possession of the property;
- (ii) the applicant must establish a well-grounded apprehension of irreparable harm if the relief is not granted;
- (iii) the applicant must also establish that there is no adequate alternative remedy available to it; and
- (iv) the balance of convenience must overwhelmingly favour the applicant.

[18] Accordingly, I was satisfied that the applicant had established on the evidence before the court that the relief sought should be so granted.

SNI MOKOSE J
Judge of the High Court of South Africa
Gauteng Division, PRETORIA

⁵ *Joseph v City of Johannesburg* 2009 ZACC 30 para 47

⁶ 1914 AD 221

For the Applicant: Adv Z Hoosen
On instructions of: SLH Incorporated

For the Respondent: Adv LA Maisela
On instructions of: Rangwako Attorneys Inc