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

Case Number: 2025-090421

(1) REPORTABLE: No	
(2) OF INTEREST TO OTHER JUDGES: No	
(3) REVISED: Yes	
	30 October 2026
Signature	Date

In the matter between:

LOMBARDY HOME OWNER'S ASSOCIATION NPC Applicant
T/A LOMBARDY HOME OWNER'S ASSOCIATION

and

RAYMOND MALEBYE First Respondent

HELLEN ELENKIE MALEBYE Second Respondent

JUDGMENT

LINDEQUE, AJ

[1] The applicant is the LOMBARDY HOME OWNER'S ASSOCIATION NPC (LHOA), a non-profit company registered in terms of section 13 of the Companies Act[1] (Companies Act) and governed by its Memorandum of Incorporation (MOI), conduct rules, regulations and by-laws.

[2] The respondents are a married couple, who are the joint registered owners of Portion 71 of Erf 1[…], Paradiso, Lombardy Homeowner's Association, Fountains 071, Via Firenze, Paradiso, Pretoria East (the property), situated within the LHOA.

[3] It is common cause that the respondents are members of the applicant and bound by the provisions of its MOI. The LHOA contends that the respondents are in arrears in respect of levies, consumption charges and ancillary amounts due to the LHOA.

[4] As a result of the alleged indebtedness, the LHOA seeks the following relief against the respondents:

4.1 CLAIM A

4.1.1 Authorising the LHOA to terminate the supply of electricity to the property;

4.1.2 Authorising the sheriff to grant an electrician, appointed by the LHOA, access to the property in order for the electricity supply to the premises to be terminated; and

4.1.3 Prohibiting the respondents from tampering with any installation or removal by an electrician or reconnecting the power supply to the property.

4.2 CLAIM B

[1] 71 of 2008.

4.2.1 Authorising the LHOA to limit the water supply to the property to the amount of 6000 litres per month and installing a prepaid water meter in the property unless and/or until the respondents make payment of the full arrear amount due and owing to the LHOA;

4.2.2 Authorising the sheriff to grant a contractor, appointed by the LHOA, access to the property in order to limit the water supply and install the prepaid water meter; and

4.2.3 Prohibiting the respondents from tampering with the installation or reconnecting an unlimited water supply to the property.

4.3 CLAIM C

4.3.1 Pertaining to the respondents' access to the Association, to authorise the LHOA to disconnect the respondents' remote and/or tag access and/or biometric access to the Association, until such a time as the respondents have made full payment of the arrear amounts due to the LHOA.

4.4 CLAIM D

4.4.1 Ordering the first and second respondents to pay jointly and severally to the LHOA the amount of R 479 369.08 for unpaid levies, electricity, water consumption and related monthly charges together with interest thereon at the prime interest rate of plus 3% per annum, compounded monthly in arrears.

4.4.2 At the outset of the hearing, Mr Smith, counsel on behalf of the LHOA informed the court that the amount claimed has to be reduced by R59 399.90 as a result of a court order granted by Liebenberg, AJ on 23 September 2025, wherein *inter alia* the property was declared specially executable and judgment was granted against the respondents in the amount of R59 399.90.

4.5 CLAIM E

4.5.1 That the respondents pay the costs of the application on the attorney and client scale.

[5] The respondents contend that clause 4.11 of the MOI subjects members to autocratic rule by the LHOA as it gives the right to the LHOA to impose financial penalties and penalty levies on members who are in contravention of the rules and or their obligations as members of the LHOA, irrespective of whether those rules and or obligations are set out in the MOI and or whether such obligations are imposed upon members pursuant to a resolution successfully passed at a meeting of the LHOA.

[6] The respondents admit that they are liable to pay levies, consumption charges and ancillary amounts, but "*only to the extent that same are not subject to unexplained financial and arbitrary financial penalties*".

[7] The LHOA's MOI adopted by the directors of the company in accordance with section 13(1) of the Companies Act provides *inter alia* as follows:

"*CLAUSE 4: POWERS OF THE ASSOCIATION*

4.1 The Company has all of the legal powers and capacity of an individual for purposes of carrying out its object, except to the

extent that a juristic person is incapable of exercising any such power or having any such capacity …

4.5 *Shall enter into agreements for the provision of any services with any competent authority or any other third party,* inter alia *including the provision of access to the Township, water, electricity and sewerage services to the Association and where required to supply such services to the various Members of the Association.*

4.9 *The right to impose Levies upon the Members of the Association for the purpose of meeting all the expenses that the Association has incurred or to which the Directors reasonably anticipate the Association will incur in the attainment of the objects of the Association or the pursuit of its business.*

4.10 *The right to impose Rules and Obligations on Members and Residents.*

4.13 *In general, do all such things and perform all such acts as may be necessary or expedient to ensure that the Township is developed and maintained in the interests of all Members thereby ensuring that the Township will be and remain one of premier status.*

CLAUSE 5: MEMBERSHIP OF THE ASSOCIATION

5.8 *Every Member is obligated to comply with:*

5.8.1 *the provision of this Memorandum and any Rules or Obligations passed by the Association in terms hereof;*

5.8.2 *any Agreement concluded by the Association insofar as such Agreement may directly or indirectly impose Obligations on a Member in its capacity as a Member;*

5.8.7 pay all or any levies, financial penalties, penalty levies, special levies and other dues as contemplated in the governing documents of the Association as well as interest of arrears on the due date for payment thereof;

CLAUSE 6 : FINANCIAL AND LEVIES

6.1 The Board shall from time to time impose levies upon the Members for the purposes of meeting all expenses which the Association has incurred in addition, the Board shall at their own discretion apply an annual interim levy increase up to 5% (five) per cent at the beginning of every new year …

6.10 The annual Levies shall be payable in equal monthly instalments, due in advance of the first day of each and every month.

6.12 Members shall be liable for and shall pay interest on any debt due and payable to the Association (including but not limited to any arrear Levies of whatsoever nature), such interest to be calculated monthly in advance at the Prime rate plus 3 (three per cent) per year from the due date, to date of actual payment, both days included."

[8] The prime rate is defined in clause 1.1.31 of the MOI as *"the prime overdraft rate levied by the Company's bankers from time to time."*

[9] On 27 March 2024 the LHOA adopted a Credit Control Policy Addendum (hereinafter "CCPA") to its credit control policy, which addendum was initially approved at the Annual General Meeting of the LHOA held on 24 February 2024 by means of a special resolution with 92% of members present voting in favour thereof.

[10] Clause 5 of the CCPA provides as follows:

"5. *RESTRICTION OF ACCESS TO THE HOA AND RESTRICTION OF AMENITIES FOR DEFAULTERS"*

5.1 The HOA is empowered to approach a competent Court for an order to temporarily suspend or restrict certain privileges of defaulters, or their Tenants;

5.2 Neither defaulters nor their Tenants can claim to enjoy to the same privileges than compliant Members until he/she/they have paid every levy contribution, financial levy, penalty levy, interest on arrears, and/or any other debt which may be due and payable to the Association from whatsoever cause arising;

5.3 The order referenced hereinabove may include inter alia *the following relief:*

5.3.1 the defaulter's electricity supply be disconnected;

5.3.2 the defaulter's water supply may be limited;

5.3.3 the Defaulter's remote and/or tag-access and/or biometric access to the HOA may be temporarily suspended;

5.4 Notwithstanding anything to the contrary hereinabove, the HOA may seek such additional prayers for relief as the HOA deems fit; and

5.5 The costs of any such actions shall be recovered from the defaulter, on an attorney and own client scale, as per the invoice rendered from the HOA's attorney, and the costs associated therewith will be loaded directly to the defaulter's levy statement as a contribution due and payable immediately."

[11] The respondents do not place the adoption of the CCPA in issue.

Quantum of arrears

[12] The LHOA contends that at the date of preparing the application, the respondents were indebted to the LHOA in the amount of R 1 403 789.63. It attached the respondents' latest levy statement to the founding affidavit showing the aforesaid amount to have been due on 1 June 2025 as annexure "FA7".

[13] The LHOA also avers that it obtained two other judgments against the respondents, namely a judgment in Tshwane Central Magistrate's Court for the amount of R 297 691.61 on 16 March 2020 and a judgment in this court under another case number in the amount of R 626 728.94 on 4 June 2024.

[14] The LHOA then avers that the judgment, obtained in this court on 4 June 2024, was for amounts due and owing to it as on 1 February 2025, less the first judgment amount obtained on 13 March 2020 and that it is vital to highlight that this application is premised upon amounts due and owing to the applicant from 1 February 2025 to date of the affidavit.

[15] Annexure "FA7", the copy of the respondents' latest levy statement starts on 1 January 2024 and includes a multitude of items such as charges for electricity, water, sanitation, levies, interest, legal fees as well as an amount of R 925 519.97 described as "Debtor's Take On Balance As per Lombardy 31/12/2023 02".

[16] It is clear from the LHOA's affidavit that it is claiming the amounts due from 1 February 2025 on annexure "FA7", which are monthly charges for electricity, water, sanitation, levies as well as legal fees charged on several dates with different reference numbers. The amounts claimed on annexure "FA7" also includes charges for interest on the total running outstanding amount from 1 January 2024 inclusive of a "Debtors Take On

Balance As per Lombardy 31/12/2023 02" of R 925 519.97" and not only in respect of the charges from 1 February 2025.

[17] The LHOA was granted orders for the payment of interest by the respondents in respect of the previously obtained judgments referred to above. In the judgment obtained in the Pretoria Magistrate's Court, it was granted interest on the judgment amount of R 297 691.61 "at prime rate plus 3% per month calculated from 01 November 2019 to date of final payment". In the judgment obtained in this court for R 626 728.94 in 4 June 2024 it was granted interest at the prime interest rate at plus 3% per annum, compounded monthly in arrears supposedly from the date of judgment, namely 4 June 2024. It is not clear to me what "prime rate" or "prime interest rate" the two judgments refer to.

[18] Furthermore, there is the third judgment granted against the respondents in this court by Liebenberg AJ on 23 September 2025 for R 59 399.90 with interest on the said amount of 13,5% per annum from 27 August 2024 to which Mr Smith referred the court at the inception of the hearing.

[19] It is therefore evident that the applicant's papers in respect of the amount claimed is contradictory in that the LHOA avers that the judgment of 4 June 2024 was obtained for amounts due to it as on 1 February 2025, which is not possible.

[20] Furthermore, it is evident from the levy statement, annexure "FA7", that the interest charges are in respect of the total amount allegedly due to the LHOA, which includes the three judgment amounts referred to above as well as the orders in respect of the interest payable thereon.

[21] These judgment amounts as well as the interest payable in respect thereof have to be collected by means of the normal execution process in respect of court judgments.

[22] I therefore find that by adding the interest due in respect of those judgments onto the respondents' levy statement, annexure "FA7", and in seeking judgment in respect thereof in these proceedings that the LHOA duplicated parts of the same debt and that it is not entitled to claim such duplicated interest in these proceedings.

[23] The legal fees charges from 1 February 2025 on the levy statement, annexure "FA7", have different reference numbers and seems to be in respect of the previous legal proceedings which resulted in judgments against the respondents with orders as to the payment of costs. Once again, the legal costs for the previous legal proceedings should be recovered in the execution process for the specific judgments.

[24] Even if the legal costs charged on annexure "FA7" are in respect of new legal costs incurred, there is no indication that such costs have been agreed between the parties or taxed.

[25] As far as the CCPA provides that legal costs shall be recovered from a defaulter on an attorney and own client scale as per the invoice rendered from the LHOA attorney and that the costs associated therewith would be loaded directly to the defaulter's levy statement as a contribution due and payable, such provision cannot deprive a member of the opportunity to challenge the costs claimed.

[26] These provisions saddle the members of the LHOA with charges they had no opportunity to scrutinise or challenge, which creates the potential danger that the LHOA and its attorneys may inflate accounts without any oversight.

[27] Even if clause 5.5 of the special resolution of 24 February 2024 could be interpreted to authorise debiting members' accounts with whatever amounts are reflected in an attorney's invoice, such rule has the potential to operate unfairly against the members. The members have no direct

knowledge of the work done and cannot reasonably be expected to assess the proportionality of the charges with only a line entry on the statements they receive.[2] Taxation serves as a check on such practices.

[28] During the hearing of the application, Mr Bekker SC on behalf of the respondents contended that on the papers the LHOA is only entitled to the charges in respect of services and levies as from 1 February 2025 as per annexure "FA7". He further contended that if only those charges were calculated that the respondents owe the LHOA the amount of R 58 285.24. The said amount excludes the charged legal fees and interest.

[29] I agree that the applicant is only entitled to judgment in respect of the conceded R 58 285.24 in respect of services and levies as from 1 February 2025 in light of the inherent contradictions in the papers regarding the date from which the charges are calculated as well as the duplication of charges in respect of interest and possibly legal fees already provided for in the three previous judgments alluded to above.

[30] In as far as the respondents contend that the CCPA and MOI provide for penalties without a basis or framework how same is calculated, the contention is not relevant in that the levy statement does not contain such penalties and judgment will only be granted in respect of the amount conceded on behalf of the respondents to be due and payable to the LHOA.

The claims for termination of electricity and limit of water supply and access

[31] As set out above, the LHOA has adopted the CCPA as a special resolution at an annual general meeting to provide that it may approach a competent court for an order to temporarily suspend or restrict certain

[2] *Mannikin Close Body Corporate v Mrabalala and Others* 2025 JDR 4216 (GJ) at paras 14 and 17. See also: *Spartacus Body Corporate v Machubeng* 2026 JDR 1200 (GJ) at paras 24-9.

privileges of defaulters, which may include that the defaulter's electricity supply be disconnected, the water supply limited and remote access disabled.

[32] In terms of clause 3.1 of the CCPA, persons who have any amounts due and owing to the LHOA for utilities and or levies and have not paid such amounts within a period of 30 days on such amounts becoming due and payable and who have not entered into a contractual acknowledgement of debt and repayment arrangement with the LHOA to settle such outstanding amounts, shall have the status of "Defaulter" conferred on them.

[33] Clause 6 of the CCPA provides that the LHOA shall be entitled to, in its sole discretion, to appropriate any payment(s) received from a defaulter as the LHOA deems appropriate and no purported allocation of payments made by the defaulter shall be binding on the LHOA.

[34] The CCPA authorises the LHOA to seek the relief sought to have the electricity disconnected or water limited not only pending payment of the arrears in respect of electricity and or water specifically, but also in respect of every levy contribution, financial levy, penalty levy, interest on arrears and or any other debt which may be due and payable to the LHOA from whatsoever cause arising according to clause 5.2 of the CCPA.

[35] The formulation of the relief sought in claim A in the notice of motion pertaining to the termination of the supply of electricity to the property will have the effect of a final interdict for the termination of the supply of electricity to the property as it does not provide for the electricity supply to be reinstated upon payment of either the arrears in respect of electricity or the full amount owing to the LHOA in respect of levies and other charges.

[36] In respect of claim B pertaining to the limitation of the supply of water, the LHOA only seeks such limitation until the respondents make payment of the full arrear amount due and owing to the applicant. Also in this instance, it appears as if "the full arrear amount" referred to is the full amount owing as per the levy statement, annexure "FA7", and not only the arrears in respect of water.

[37] In respect of claim C, the LHOA is seeking that the respondents' remote and/or tag access and/or biometric access be disconnected until the respondents have made full payment of the arrear amounts due to the LHOA. As there is no separate charge for remotes and/or tag access and/or biometric access on the levy statement, it is clear that the "full payment of the arrear amounts" in respect of claim C means all the amounts referenced in clause 5.2 of the CCPA.

The Authorities

[38] In *Lion Ridge Body Corporate v Alexander* (*Lion Ridge*),[3] the applicants asked for judgment in respect of arrear levies, water and electricity charges and in addition thereto for an order disconnecting the electricity supply to the respondent's units and an order limiting the water supply to each unit to not more than 6 kilolitres per month, until the judgment amounts were paid in full.

[39] Lion Ridge Body Corporate had not identified the source of its alleged right to seek to disconnect or limit the respondent's utilities and did not allege that it had adopted a specific rule that empowered it to disconnect or restrict its member's utilities to recover outstanding levies or that it set

[3] 2022 JDR 3057 (GJ) at paras 2-3.

out the terms of an agreement it entered into with the respondent which empowered it on breach to seek the relief sought.[4]

[40] Wilson AJ (as he then was) held that:

> "*15. Thirdly, and probably most importantly, the relief that Lion Ridge claims implicates a delicate web of constitutional rights. These are the right against arbitrary deprivation of property (section 25(1) of the Constitution, 1996),*, *the right to sufficient water (section 27(1)(b) of the Constitution, 1996), the public law right to receive electricity from a municipality, even where the electricity is transmitted through an intermediary such as a landlord or a body corporate (see Joseph v City of Johannesburg 2010 (4) SA 55 (CC), para 47), and the right of access to adequate housing (section 26 of the Constitution, 1996).*
>
> *16 Relief limiting these constitutional rights is plainly incompetent if it is not authorised by law. The form that law might take depends on the facts of a particular case. In this matter, the very least that would have to be established is a provision of the Sectional Titles Act, a rule of the body corporate, or a term in an agreement that authorises the relief Lion Ridge now claims. Lion Ridge does not allege any of this. The instrument authorising the relief, where it exists, may itself have to conform to constitutional requirements designed to protect the rights implicated. However, since no authorising instrument is alleged in Lion Ridge's founding papers, I need not address that issue.*"[5]

[41] Lion Ridge dealt with a body corporate established in terms of the Sectional Titles Schemes Management Act[6] (STSMA) as opposed to a

[4] *Id* at para 7.
[5] *Id* at paras 15-16.
[6] 8 of 2011.

HOA in this application.[7] There is no material difference between Homeowners Associations and Bodies Corporate in terms of their objects, activities and status. Homeowners Associations are obliged to provide services to all of their members and in doing so they extend credit to all home owners in their estates without the benefit for requiring security therefore.[8]

[42] *Body Corporate of Balboa Park v Skeyi and Another* (*Balboa Park*)[9] also dealt with four unopposed applications where the bodies corporate sought to discontinue electricity and in one instance to restrict water supply until certain arrear amounts owed to the body corporate had been paid, whereafter those services would have been reinstated.

[43] Dippenaar, J agreed with Wilson, AJ's judgment in *Lion Ridge* that there was nothing in the Sectional Titles Act[10] (STA) or the STSMA and management rules promulgated under it empowering a body corporate to interfere with a member's utility supply.[11]

[44] Dippenaar, J further held that it is well established that the relationship between a body corporate and its individual members, is based in contract. The rules constitute an agreement on the one hand, the owners *inter se* and on the other, between the owners and their body corporate, resembling an arrangement between joint owners under the common law in respect of the use and enjoyment of their joint property.[12]

[45] That is also the position in respect of a Homeowners Association[13].

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[7] *Id* at para 1.
[8] *Willow Waters Homeowners Association (Pty) Ltd v Koka NO & Others* 2015 (5) SA 304 (SCA) at para 27.
[9] 2024 JDR 1560 (GJ) at paras 1, 7 and 10.
[10] 95 of 1986.
[11] *Id* at paras 19 and 36.
[12] *Id* para 35.
[13] *Mount Edgecombe Country Club Estate Management Association II RF NPC v Singh and Others* 2019 (4) SA 471 (SCA) at para 19.

[46] Dippenaar, J further held:

> *"The significant impact on the constitutional rights of a recalcitrant member by the exercise of a termination power, further militates against the construction of such power as being necessary. It is self-evident that no management rules or conduct rules may conflict with the Bill of Rights and the Constitution. It follows that the powers which a body corporate may exercise, must also pass Constitutional muster."*[14]

[47] In *Body Corporate the Straight v Katisi* (*the Straight*)[15] the body corporate sought payment of R 107 940.63 in respect of arrear levies and electricity charges and interest thereon as well as an order that the electricity supply to the debtor be disconnected until the full arrear amount was paid.

[48] Windell, J granted the monetary judgment of R 107 940.63 and an order authorising the applicant to engage the services of an electrician to disconnect the electricity supply to the respondent's unit, but only in the event that the respondent did not pay the outstanding electricity charges within 10 days of her order. She also ordered that the electricity supply was to remain disconnected until the arrears in respect of the electricity and the interest thereon was paid.[16]

[49] It is important to note that despite the fact that Windell, J granted judgment for the payment of arrear levies and utilities due to the body corporate in the amount of R 107 940.63, of which R 16 610.68 was in respect of unpaid and arrear electricity consumption charges,[17] that she only granted the order to interrupt the electricity to the respondent's unit until the respondent had paid the electricity charges and interest thereon.

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[14] *Balboa Park* para 50.
[15] 2025 JDR 0126 (GJ) at para 1-2.
[16] *Id* at paras 3-6 and para 40.
[17] *Id* at paras 17 and 40.

The order granted was therefore not in respect of the payment of the full amount of arrears as is sought in this application, which includes utilities as well as levies and legal fees.

[50] Windell, J held that in *Lion Ridge* the basis for the authorisation of the relief sought was not properly pleaded, but that in *the Straight* a tacit agreement between the body corporate and the members laid the basis for authorisation of the relief sought.[18]

[51] In this application the LHOA also lay a basis for the authorisation of the relief sought in respect of the disconnection of the electricity, the limitation of water supply and access to the LHOA if regard is given to the CCPA.

[52] Windell, J further remarked that it was unclear why Dippenaar, J expressed her doubts on whether an agreement between a body corporate and the respective owners would survive constitutional muster and might be *ultra vires*.[19] She remarked that it is unclear why that is the position in relation to Sectional Titles, which pays the owners accounts due to an existing agreement, when a municipality may disconnect the power of a non-paying owner upon written notice and a landlord may, upon notifying a non-paying tenant, stop paying the municipality, who could then disconnect the power.[20]

[53] I agree with Windell, J that if members continue to benefit from electricity without paying their due, that same is detrimental to the financial stability of the body corporate or in this instance the LHOA and other owners. I also agree that the disconnection of members' supply of electricity can operate or function as a preventative measure to safeguard other owners

[18] *Id* at para 22 and 31.

[19] *Id* at para 35, referring to *Balboa Park* above n 10 at paras 50 and 52.
[20] *Id* at para 35 citing *Joseph and Others v City of Johannesburg and Others* 2010 (4) SA 55 (CC) paras 55, 61 and 63

by ensuring that the financial responsibility is shared equally and proportionally to avoid financial hardships and the repercussions thereto.[21] Further, this will put a body corporate or HOA in the position where it will be able to cap its losses whilst it attempts to recover the arrears.[22] At the very least, the LHOA will be able to prevent the situation from becoming worse, by preventing further electricity supply to the unit in circumstances where the respondents are not paying and avoiding the risk of the municipality disconnecting the electricity supply to all the units in the association.

[54] In *Spartacus Body Corporate v Machubeng* (*Spartacus*)[23] Ossin, AJ followed the same approach as Windell, J in *the Straight* in respect of the disconnection of electricity supply.

[55] Ossin, AJ held with reference to *Lion Ridge*, *Balboa Park* and *the Straight* that it appears that the assessment as to whether in a given situation an electricity termination order is competent, is carried out with reference to two enquiries.[24] The first enquiry considers the source of a body corporate's entitlement to seek authority to terminate electricity supply.[25] The second enquiry considers constitutional imperatives, mostly in favour of the debtor, as against policy considerations, mostly in favour of a body corporate and its members.[26] On this approach, the second enquiry comes into play only if a body corporate identifies a valid basis and source for its entitlement to seek authority to terminate electricity supply.

[56] I agree with Ossin, AJ that the termination of electricity supply with reference to all arrears, not just arrear electricity charges and resumption of supply upon payment of all arrears instead of arrear electricity charges

[21] *Id* at paras 30, 37-9.
[22] *Id*.
[23] 2026 JDR 1200 (GJ) at paras 66-7 and 70.
[24] *Id* at para 50.
[25] *Id*.
[26] *Id*.

only, is both constitutionally problematic and extends beyond the applicant's immediate policy concern being its contractual obligation to pay the municipality for electricity usage and obtain reimbursement for that amount from its members.[27]

[57] As a result, Ossin, AJ was prepared to authorise termination of electricity supply, but again subject to payment of the arrear electricity charges only and not the full amount of arrears which included the levies. This is the same approach as that of Windell, J in *the Straight's* order as referred to above.

[58] Clause 5 of the CCPA seems to suggest that the supply of electricity and water as well as remote and/or tag access and/or biometric access to the LHOA are "privileges" enjoyed by members. As referenced above, the right to sufficient water is protected in section 27(1)(b) of the Constitution and there is a public law right to receive electricity from a municipality, even when the electricity is transmitted through an intermediary.[28] Furthermore the respondents have a right against arbitrary deprivation of property (section 25(1) of the Constitution) and the right to have access to adequate housing (section 26 of the Constitution).

[59] In the notice of motion, the applicant does not seek the termination of electricity or the restriction of water pending payment of the arrear amounts in respect of electricity and water respectively but seeks termination of electricity without any reservation and the limitation of water pending payment of all arrear amounts, which include arrear levies and legal fees.

The applicant's averments

[27] *Id* at para 87.
[28] *Joseph and Others v City of Johannesburg and Others* 2010 (4) SA 55 (CC) paras 32, 40 and 47.

[60] The LHOA contends that it has to mitigate its damages and that the only way in which it can mitigate its damages regarding electricity consumption and charges is through the disconnection of the electricity supply to the property as the applicant is liable to the municipality for the electricity consumption of the entire LHOA. This amount is recovered *pro rata* from the members in terms of their individual consumption and where a member fails to make payment to the LHOA of the amounts due, the applicant is out of pocket by having already made payment to the municipality of the non-compliant member's consumption charges.

[61] The LHOA further contends that the respondents' non-payment prejudices both the applicant and other compliant members of the LHOA, who ultimately subsidizes the respondents' consumption of electricity and that it could lead to a situation where the applicant is no longer in a position to subsidize non-compliant members' consumption charges which will lead to the municipality disconnecting the supply of electricity to the LHOA as a whole, which would severely prejudice the compliant members of the LHOA.

[62] The LHOA advanced the same contentions in respect of the limitation of water, with the noticeable difference that it accepts that it is not entitled to suspend the supply of water to the property in totality but contends that it is entitled to an order limiting the supply of water to the minimum allowed in terms of municipal bylaws and applicable legislation, being 6000 litres per month.

[63] The applicant contends that in its heads of argument that the limitation of the water supply will not infringe on the respondents' constitutional rights in terms of section 27 of the Constitution and that the limitation of 6000 litres per month is in accordance with the national standards required as per the regulations relating to Compulsory National Standards and

Measures to Conserve Water.[29] Regulation 3(1)(b) makes provision for a minimum quantity of 25 litres per day or 6 kilolitres per household per month.[30]

[64] The regulations referred to by the applicant were actually issued in terms of the Water Services Act[31], which regulations were repealed and replaced on 6 June 2025 by Government Notice 6292 in Government Gazette 52814.

[65] Regulation 2(2) of the Compulsory National Water and Sanitation Services Standards[32] provides that the minimum standard for basic water services must consist of a minimum quantity of drinking water of 6 kilolitres per household per month. There are also additional requirements regarding the flow and interruption of the flow of water.

[66] The LHOA contends that in respect of the remote and/or tag access and/or biometric access, the LHOA makes use of a service provider who in turn renders an invoice to the LHOA for the service and the LHOA in turn recovers the cost of this invoice from its members *pro rata*. In the premises it contends that the respondents should not be entitled to make use of this access service without making payment of the amounts due for these services.

[67] Mr Smith also submitted with reference to claim C, that by disconnecting the respondents' remotes and/or tag access and/or biometric access to the HO that the effect thereof will be limited and it does not mean that the respondents will be barred from their property. He further submitted from the bar that the guards have instructions not to refuse the respondents access to their property when making use of the visitor's entrance.

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[29] Regulations Relating to Compulsory National Standards and Measures to Conserve Water GN R509 in GG 22355 of 8 June 2001.
[30] *Id.*
[31] 108 of 1997.
[32] GN R6292 in GG 52814 of 6 June 2025.

The respondents' averments

[68] During argument Mr Bekker SC accepted on behalf of the respondents that they are indebted to the LHOA for at least R 58 285.24, which comprises of the total for electricity, water and levies without interest and legal fees as from 1 February 2025.

[69] The respondents make it clear in their answering affidavit that they do not deny liability in toto, but that they dispute the amount owed to the LHOA.

[70] Even to the extent that the respondents admit with reference to a recalculated annexure "FA7" uploaded during argument, that they owe the LHOA the amount of R 58 285.24, it is not evident from the recalculated annexure "FA7" exactly which amounts are due and payable on the respondents' version specifically in respect of electricity, water, sanitation and levies as separate line items in that there is a payment from the sheriff in the amount of R 13 874.86 made on 30 January 2025 as well payments in respect of water and electricity, water and sanitation on 1 May 2025, which conflate the amounts.

[71] Mr Bekker SC submitted that the effect of the MOI and the CCPA resolution is to establish regime of punitive measures to penalize defaulting members which is in conflict with the Constitution and *ultra vires*.

[72] He also submitted that there is a duplication in respect of interest charges and legal fees on the levy statement and that it is not the function of the court to be an accountant and examine the levy statement line by line and item for item.

Evaluation

[73] As explained above I am not in a position to quantify the amount owing from 1 February 2025 to date of the affidavit in respect of electricity only.

It is therefore not possible to make an order for the termination of the electricity supply until the arrears in respect of the electricity and interest on such amount is paid as was done in *the Straight* and *Spartacus* cases discussed above.

[74] Section 27 of the Constitution provides that everyone has the right to have access to sufficient water. I am of the view that it is not correct to equate every person's right to have access to sufficient water in terms of the Constitution to the minimum standard for basic water services in terms of the Compulsory National Water and Sanitation Services Standards.[33]

[75] Other than to recognise that access to water is a basic human right and that the LHOA is not entitled to suspend the supply of water to the property in total, the LHOA did not make out a case as required in section 36 of the Constitution that the infringement of the respondents' constitutional rights would be justified in exercising the balancing act which must be performed where fundament rights compete. No such case had been made out in the LHOA's founding papers other than by way of reference to the LHOA's contentions in respect of the discontinuation of the supply of electricity as the applicant is out of pocket to the detriment of itself and its members.

[76] I am therefore of the view that the applicant failed to make out a case for the restriction of the water supply.

[77] The LHOA avers in its affidavit that the respondents' access to the LHOA will not be removed in its entirety, but rather that the respondents will be forced to make use of the visitors' access gate to gain access to the LHOA. Again, the applicant seeks to place a restriction on a constitutional right, namely that everyone has the right to have access to

[33] *Id.*

adequate housing without the applicant doing an exercise in terms of section 36(1) of the Constitution to show that the infringement of the respondents' constitutional rights would be justified in exercising the balancing act which must be performed where fundamental rights compete.

[78] The applicant does not explain what it means when it states the following in its affidavit:

> *"It is further vital to point out that the Respondent's access to the Association will not be removed in its entirety, but rather that the Respondent will be forced to make use of the visitors access to gain access to the Association."*

[79] From the wording of the above it is clear that there will be some limitation of access to the LHOA and by implication to the respondents' residential property where they reside and/or that they will have to gain access at a security control point where someone may deny them access to their property. The notice of motion also does not provide for any guardrails in respect of the respondents' access to the LHOA and their residential property after disconnection of the respondents' remote and/or tag access and/or biometric access.

[80] I am therefore also of the view that the applicant failed to make out a case for the restriction of the respondents' access to the LHOA.

Order

WHEREFORE I make the following order:

1. Judgment is granted against the first and second respondents, jointly and severally for:

1.1 Payment of the amount of R 58 285.24 to the applicant;

1.2 Payment of interest on the amount of R 58 285.24 at the prime overdraft rate of the applicant's bankers charged from time to time plus 3% from 25 June 2025, being the date of service of the application, to date of final payment.

2. The respondents to pay the costs of the application.

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I M LINDEQUE
Acting Judge of the High Court
GAUTENG DIVISION

Date of Hearing: 24 April 2026

Date of Judgment: 30 October 2026

APPEARANCES

For the Applicant: Adv R Smith
Instructed by: Heerschop Pienaar Attorneys

For the Respondents: Adv F Bekker SC
Instructed by: Malebye Motaung Mtembu Inc