

SOUTH AFRICA / JUDGMENT

Ackerman v City Of Johannesburg (2022/9392) [2024] ZAGPJHC 334 (5 April 2024)

[2024] ZAGPJHC 334

COURT

South Gauteng High Court, Johannesburg

BEFORE

M.R. Chetty

CASE / FILE NUMBER

2022/9392

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Policy

FLYNOTES:

MUNICIPALITY – Billing – Dispute –
Applicant
contending that water and electricity charges excessive – Queries
and demands made by her attorney constituting
“dispute”
for section 102(2) of the Systems Act – Applicant paying on
monthly basis what she contends is
reasonable – After
several years of engaging with City, applicant left with no
alternative but to institute action
– City interdicted from
disconnecting services to applicant’s property and ordered
to furnish applicant with
detailed explanation to queries raised –
Punitive costs awarded – Local Government: Municipal Systems
Act 32 of 2000, s 102(2).
REPUBLIC
OF SOUTH AFRICA
IN
THE HIGH COURT OF SOUTH AFRICA
GAUTENG

REPORTABLE:

LOCAL DIVISION, JOHANNESBURG
CASE
NUMBER: 2022/9392
1.
NO
2.
OF INTEREST TO OTHER JUDGES: NO
3.REVISED:
NO
5
April 2024
In

the matter between:

SHARISE
ERICA ACKERMAN (née
WEINER) Applicant
and
CITY
OF JOHANNESBURG
First
Respondent
FLOYD
BRINK, CITED IN HIS CAPACITY AS
THE
MUNICIPAL MANAGER OF
THE
CITY OF
JOHANNESBURG Second
Respondent
FLOYD
BRINK
Third
Respondent

JUDGMENT

CHETTY J,

[1] The applicant resides at her home in Johannesburg and is entirely dependent on the City of Johannesburg (which I will refer to as ‘the City’ for convenience) for the supply of electricity and water. In total, three adults and one child occupy a house on the property. According to statistics relied on by the applicant (and which were not placed in dispute by the City) the average water consumption in residential households similar to that of the applicant is 300 litres per person per day. The average rate of consumption for which she is being billed by the City is 3 303 litres per day. In relation to her electricity charges (which form the kernel of this application), she has had a long and turbulent history of interaction with the City since March 2017, when she first brought the issue of excessive charges to the attention of the City.

- [2] According to figures put up by the applicant (and to which there has been no rebuttal), she has paid an amount of R844 717.52 between January 2019 and August 2022 in respect of what she contends is the reasonable costs for electricity and water utilised on her property. She continues to pay on average R12 000 per month, which she also believes is in excess of her deemed usage, all the while trying to resolve an ongoing dispute with the City for the past five years over what she contends is inaccurate billing, based on estimates, double charges and inexplicable, nonsensical invoices furnished by the City. The frustration leading to this application is described in the applicant's words that

'I am tired of having to attempt to resolve the disputes, with no end in sight, despite continued empty promises from the COJ. I have a right to accurate accounting, I have a right to have the disputes resolved, I have a right to seek judicial intervention when the COJ fails to comply with its duties. It is important to point out that I am simply seeking a proper, intelligible statement and debatement, based along the obvious errors in the COJ's invoices. In the interim and whilst this is pending, I seek an order that my services are not terminated and that threats to do so, cease.'

- [3] In contrast to the frustration exhibited by the applicant, the City maintains that it has rendered accurate invoices based on actual readings of the rate of consumption of electricity and water, and having utilised its services, the applicant is obliged to pay all outstanding amounts as reflected on her invoices. As at August 2022, the City contends that the applicant was indebted to it in the amount of R100 031.91. In those circumstances, it contends that it is entitled to resort to the disconnection of the services to her property in accordance with its Credit Control By-laws.
- [4] Against this backdrop, the applicant instituted an application in March 2022 for an interdict against the City from disconnecting,

terminating or restricting the provision of municipal services to her property, pending the final resolution of disputes in respect of her account with the City. The applicant further seeks a declaratory order that municipal charges levied against her in the three years preceding the institution of her current application, be held to have prescribed and be written off to a nil balance. The remaining orders sought (several of which are in the alternative) flow from the consequential relief referred to above, including the manner in which the City is required to effect corrections to its invoices, accompanied by explanatory reasons for any such corrective entries made.

- [5] It bears noting that the applicant also cited the City Manager as the third respondent on the basis that in the event of an order being granted in favour of the applicant not being complied with, the applicant would be able to proceed against the City Manager for contempt, without having to prove further that he was aware of the nature of the proceedings or the extent to which compliance of such orders would fall within the remit of his administrative duties. In *Matjhabeng Local Municipality v Eskom Holdings Ltd and others*, the Constitutional Court held that [1]

‘...the Municipal Manager ... is the accounting officer, “tasked with overseeing the implementation of court orders against the [M]unicipality” and the “logical person to be held responsible” for the overall administration of the Municipality.’

- [6] In essence, the applicant seeks an order to compel the City to correct her municipal account and, in the course of that process, to provide an explanation to her for any corrections and/or reversals that may be effected. The application was predicated on the back of threatened termination of her water and electricity supply by the City on the basis that her account was in arrears. This is strongly disputed by the applicant, who contends that she challenged the correctness of the charges, going as far back as March 2017. Her founding affidavit provides details of each of the instances when she wrote to City officials bringing her complaint to their attention. In response, the City provided her with invoices in which reversals were effected but without any explanation for the transactions, leaving the applicant in no better position than when the disputes were initially declared.
- [7] The City, however, contends that the applicant has yet to declare any dispute as contemplated in terms of s 102(2) of the Local Government: Municipal Systems Act 32 of 2000 (‘Systems Act’). Section 102(1)(c) authorises the City to ‘implement any of the debt collection and credit control measures’ where an account is in arrears. The word ‘any’ in the section

would, on a plain reading of the statute, together with the City’s Credit Control and Debt Collection Policy, include the disconnection of municipal services. Sub-section (2), however, puts the proverbial ‘brake’ on any disconnection

if a query or ‘dispute’ is lodged. The sub-section reads that ‘subsection

- (1) does not apply where there is a dispute between the municipality and a person referred to in that subsection concerning any specific amount claimed by the municipality from that person.’ (My emphasis.)
- [8] From the outset, the applicant pointed out that from about April 2017, she began lodging disputes with the City based on the monthly charges invoiced to her account. However, with every passing month a new dispute in theory arose because the contested or disputed amount from the previous month remained unresolved but would nonetheless be carried over to the next month. The applicant compiled a ‘Dispute Chronology’ in which each dispute logged with the City is detailed in terms of dates, written proof of the dispute, and the responses (or primarily the lack thereof) from the City. In some instances, the City responded that it compiled invoiced based on estimates and that actual readings would be rendered in due course. The City’s Credit Control and Debt Collection Policy and By-laws provide for accounts to be based on ‘a meter reading or estimated consumption’. However, the estimated charges must at some point be reconciled once actual readings are taken, with the resultant debit or credit being passed onto the consumer at the end of the reconciliation process. The ultimate purpose of the exercise is to ensure the accuracy of statements issued to a customer, with the latter having a reasonable measure of certainty that the amounts

charged by the City represent a true and accurate reflection of the municipal services utilised by the customer.

[9] The trigger for lodging a dispute in April 2017 arose from a debit of the applicant's account in the amount of R31 000 on 9 March 2017, followed with a further debit of R11 000 on 21 March

2017. A formal notice was issued to the City of the applicant's intention to institute proceedings against it. The letter, dated 23 March 2017, from the applicant's attorney (her husband) reads in part as follows:

'In the circumstances our client has no alternative but to formally declare a dispute with you, as it hereby does, in terms of Section 102(2) of the Local Government: Municipal Systems Act No.32 of 2000. In terms of the Section you are prohibited from disconnecting, or threatening to disconnect the utilities at the property until such time as the dispute has been resolved.'

The applicant describes this as her 'first demand' as contemplated in s 102(2) of the Systems Act. No response was received

from the City. Another missive was dispatched by the applicant's attorney on 7 April 2017, advising that the applicant was also not receiving accounts at her residential address. He again sought an explanation for the debits of R11 000 and R31 000 in March 2017. The City replied that it would urgently investigate the matter and revert.

[10] A series of emails were exchanged between the applicant and City officials, including a response from Mr Bongani Nkosi dated 19 June 2017 in which it was acknowledged that the City had billed the applicant based on an 'estimated reading' and that the billing department would be arranging for a 'special reading' so that actual readings could be taken. While these efforts were being pursued, City officials on 20 June 2017 attempted to disconnect the applicant's electricity supply, causing the applicant's attorney to place the City on terms that an urgent application would result should the 'state of chaos' arising from the City's billing system not be resolved.

[11] As a result, instructions were issued by City officials for the applicant's account to be 'flagged' and removed

from the queue assigned for disconnections. This reprieve was short-lived. In January 2018, the City once again delivered a notice

of intention to disconnect the applicant's electricity supply, contending that her account was in arrears with R11 022.41. The applicant and her attorneys again brought it to the attention of the City that no meter readings have been conducted on her property for the preceding year and more importantly, the City had not reversed the irregular debit of R31 000 against her account, an issue raised since March 2017.

[12] In May 2018, in response to the queries raised for over a year, the applicant received a 'screen dump' from Mr Nkosi of the City. The applicant contends that this document was impossible to understand, containing terms such as 'IS-U Invoicing'; 'Reset cleared items'; 'IS-U inv. reversal' and 'Payment Lot'. Significantly, the disputed entry of R31 039 is first described under the caption 'Payment Run', then 'IS-U inv. reversal' and finally 'Reset Cleared Items'. No attempt was made by the City at the time when the screen dump was sent to the applicant, or subsequent thereto, or even in its answering affidavit, to explain these terms in any intelligible fashion or whether they relate to water or electricity charges and whether they result in the applicant's account being reduced or increased. Although dealing with the requirement for a rates clearance certificate prior to the transfer of a property, in *Mkontwana v Nelson Mandela Metropolitan Municipality*[2] it was held that:

'It is necessary for all municipalities to ensure that they have reasonably accurate records and that they are able to provide complete, credible, comprehensible and reasonably detailed information in relation to consumption charges that are owing within a reasonable time of being requested to furnish it.'

[13] The point was emphasised in *Argent Industrial Investment (Pty) Ltd v Ekurhuleni Metropolitan Municipality*[3] that

'It is not the applicant's duty to read meters, determine what its consumption is, and be ready to pay for that consumption whenever the respondent gets around to asking for payment, whenever in the future that may be. The respondent has a duty to read the meters and invoice for consumption, at its convenience but at reasonable intervals.'

Similarly, in *Euphorbia (Pty) Ltd t/a Gallagher Estates v City of Johannesburg*[4] it was held that

'[16] The accurateness and correctness of the contentious meter remained in dispute and the onus in regard thereto accordingly, rested and remained on the City .

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

in regard to the services, and the City bore the onus to prove the correctness thereof.'

[14] The position of the applicant was exacerbated in August 2018 when she received two accounts for differing amounts (one for R30 138 and the other for R30 861) without any explanation from the City as to how this situation had arisen. This again led to the applicant lodging a query with the City.[5] In response to another pre-termination notice sent by the City, the applicant's attorney again wrote to the City repeating much of the content contained in previous correspondence. Specifically, the letter of 31 August 2018, addressed

to 21 email addresses, records the following:

‘On 23 March 2017 we gave you notice in terms of the relevant Act 40 of 2000 of an intention by our client to institute action against you and not only is that notice renewed but we give you further notice that our client formally declares a dispute with you in terms of section 102(2) of the Local Government: Municipal Systems Act No.32 of 2000 in terms of which you are prohibited from disconnecting or threatening to disconnect the utilities at our client’s property until such time as her dispute relating to her account has been resolved.’

- [15] Similar correspondence continued to be exchanged between the applicant and the City without any attempt to resolve the situation. In January 2020, the applicant was informed that her account was R96 898.77 in arrears and that she was again facing the threat of disconnection. The City’s response of again providing a second screen dump failed to take the matter further as it proved impossible to decipher.
- [16] Having secured no resolution of the matter, the applicant engaged the services of an attorney, Mr Luke Mouyis, who had prior experience in interacting with the City in similar matters. In the course of his engagement with the City, Mr Mouyis established that there was an error in the billing system used by the City. Another feature unearthed as a result of Mr Mouyis’ intervention, is that the attempts to reconcile the electricity accounts resulted in ‘lump billing’ against the applicant’s account. One of the consequences of this is that a consumer is charged for electricity or water at a higher tariff than if billed on the basis of regular, accurate readings. As a result, the consumer is billed at a higher rate because of the increased volume of consumption. These ‘step tariffs’ are reflected in the City’s invoices. Subsequent enquiries on behalf of the applicant further revealed that she was being billed based on readings from three different meters, with a response from the City that one of the electrical meters had burnt out without the applicant having reported this to the authorities. This is denied by the applicant who points out that if the meter had burnt out, as suggested by the City, this curiously had no impact on the supply to her home.
- [17] Despite credits being passed against the applicant’s account through the intervention of Mr Mouyis, the rectification of the account was still not done. To make matters worse, the applicant then ascertained that the City was billing her based on meter readings from an incorrect water meter. The applicant suspects that a neighbouring property’s usage was being billed as hers. Despite bringing this to the attention of the City through Mr Mouyis, the City continued to demand from the applicant the amounts contained in its statements.
- [18] With no end in sight after several years of engaging in correspondence with the City, the applicant was left with no

alternative but to institute action against the City for the relief as set out in her notice of motion. Throughout the period during

which she disputed the charges being attributed to her, the applicant has been paying and continues to pay an approximate amount of R12 000 to R14 000 per month, which she considers to be more than adequate for the utilities consumed by her. As at November 2021, the City contends that the applicant's arrears totalled R92 325.592. The failure to settle this invoice carries with it the looming spectre of disconnection, despite the applicant having lodged queries over the past several years in terms of the appropriate legislation. The vexed question is whether the applicant's complaints to the City over several years, as articulated earlier in this judgment, is considered to be a 'dispute' within the meaning of the Systems Act. This is considered in more detail below.

[19] In response to the application, the City contends that the applicant 'has always been billed on the actual reading of the meter'. In substantiation, the City relies on five selected invoices over the disputed period of five years from July 2017 to August 2022. The applicant points to 13 invoices, referred to in her founding affidavit, which show that the City has invoiced her based on estimated consumption. This is in direct contradiction to the City's version that the applicant has 'always' been billed on actual readings. Even the invoices relied on by the City do not bolster its case. The invoice dated 20 August 2019 (annexure 'COJ8') indicates that a meter reading of meter no BWTB741 was conducted for the period from 8 February 2018 to 14 July 2019. By implication, no actual readings were done for almost a year and a half. The water charges are based on a 'sliding scale' for a period of 522 days. As set out earlier, the failure to carry out timeous and regular meter readings causes a consumer to be billed at a higher tariff – the difference between the tariff applicable to Step 1 being R7.14 per kl and Step 8 being R38.72 per kl.

[20] The screen dump of the document purporting to be the spreadsheet showing the 'reading export of the meter at the applicant's property' is not explained at all by the deponent to the City's answering affidavit, who is a legal advisor, and who, I doubt, would in any event have the necessary technical skill to decipher the spreadsheet. Moreover, the readings appear to have been carried out by Messers S Ndimande and S Mahosi. Neither of them has deposed to an affidavit as to the correctness of these figures, or to explain how the spreadsheet can be interpreted in any intelligible fashion.[6] It is necessary to record that counsel for the City attempted in argument to provide his interpretation of annexure 'RA46',

an invoice dated 12 August 2019, in which the City appears to have undertaken a 'rebilling' exercise, which indicates that the applicant was indebted to the City in the amount of R61 304.76. Apart from this indebtedness being denied by the applicant, I refused to admit evidence from the bar as counsel would, at best, be providing hearsay evidence as to how the invoice must be interpreted. At worst, it would be entirely based on speculation. It was incumbent on the City to put up evidence to substantiate its case that its invoices were calculated based on actual meter readings, or where estimates were relied on (which is permitted in terms of the City's Credit Control Policy), that these were eventually reconciled once the actual readings were done. Nothing of this sort emerges from the City's answering affidavit.

- [21] The City's assertion that the applicant has always been billed based on actual readings is in direct contradiction to the statement of Mr Bongani Nkosi from its billing department, where he records in an email directed to the applicant on 19 June 2017 (annexure 'FA10') that 'according to the billing department we have billed on estimated readings for meter number 003582'. A further contradiction is to be found in the detailed explanations put forth by the applicant in justification of her frustration with the incomprehensible manner in which she is billed for municipal services. She has provided detailed information of the queries she has registered or logged with the City and the disputes she has formally declared.
- [22] The City's argument is that it is obliged in terms of the Constitution to provide services such as water and electricity to residents living in its area of jurisdiction. The applicant does not dispute that the City is obliged to collect revenue from consumers for services supplied. The City contends that where it has supplied services and the consumer fails to pay, it is entitled to proceed with measures in terms of its Credit Control and Debt Collection Policy to recover such arrears. This would include the issuing of pre-termination notices and eventual disconnection. The City concedes that in terms of s 102(2) of the Systems Act, it cannot terminate services if there is a dispute. However, in its heads of argument, it suggests that this is dependent on the existence of a 'valid' dispute. No such wording is found in the legislative framework, only the word 'dispute' is contained in s 102(2). I accept, however, that a spurious reason proffered to avoid disconnection cannot stand.[7] This should not, however, be interpreted to mean that the City can summarily decide or without having conducted an investigation and without providing reasons to the consumer, to dismiss the query or dispute. This is evident from the City's Credit Control and Debt Collection By-laws.
- [23] In response to the injunctive relief sought by the applicant, the City drew on OUTA,[8] which cautions against this court granting an order that might have the effect of 'cut[ting] across or prevent[ing] the proper exercise of a power or duty that the law has vested in the authority to be interdicted'. The City misunderstood the applicant's case. The applicant does not seek to prevent the City from exercising its rights to collect revenue from consumers who have benefited from services rendered. In her case, the applicant continues to pay an amount which she believes constitutes a reasonable amount for services utilised by her family. She is not a delinquent consumer. Far from it. What she is asking for is a proper account and explanation by the City as to the amounts and entries on her invoices. As the SCA in *Real People*[9] noted, 'an owner cannot be expected to tender payment if he or she has no knowledge of what is due...'. In the present case, the converse applies where the City has issued invoices to the owner, but the accuracy of the amount billed is placed in dispute. What the applicant is seeking is not vastly different from 'itemised particulars'[10] to enable her to be satisfied as to the correctness of the figures for which she has been invoiced. As she has pertinently drawn to the attention of the City, invoices were based on estimates, and she has not been provided with any explanation in relation to the double debits against her account, readings from multiple meters and water charges based on meters not feeding her property.

[24] The high-watermark of the City's reply is that the demands or queries made by the applicant do not fall within the purview of s 102(2) on the basis that she has not made reference to 'any specific amount claimed by the Municipality' and therefore has not satisfied the requirement of a 'dispute' in s 102(2), which would be cause for the City not to disconnect any of the applicant's municipal services while her account remains unpaid.[11]

[25] The definition of 'dispute' in s 102 of the Systems Act was first authoritatively dealt with by the SCA in Croftdene Mall,[12] where it held as follows:

'[21] Neither the Systems Act nor the Policy defines the term "dispute". Some of the definitions ascribed to it include "controversy, disagreement, difference of opinion" etc. This court had occasion to interpret the word in *Frank R Thorold (Pty) Ltd v Estate Late Beit* and said that a mere claim by one party that something is or ought to have been the position does not amount to a dispute: there must exist two or more parties who are in controversy with each other in the sense that they are advancing irreconcilable contentions.

[22] It is, in my view, of importance that subsec 102(2) of the Systems Act requires that the dispute must relate to a "specific amount" claimed by the municipality. Quite obviously, its objective must be to prevent a ratepayer from delaying payment of an account by raising a dispute in general terms. The ratepayer is required to furnish facts that would adequately enable the municipality to ascertain or identify the disputed item or items and the basis for the ratepayer's objection thereto. If an item is properly identified and a dispute properly raised, debt collection and credit control measures could not be implemented in regard to that item because of the provisions of the subsection. But the measures could be implemented in regard to the balance in arrears; and they could be implemented in respect of the entire amount if an item is not properly identified and a dispute in relation thereto is not properly raised.

[23] Whether a dispute has been properly raised must be a factual enquiry requiring determination on a case-by-case basis. It is clear from clause 22.3 of the Policy referred to above that the dispute must be raised before the municipality has implemented the enforcement measures at its disposal.' (Footnotes omitted, and underlining is my emphasis.)

[26] Croftdene is distinguishable from the facts in the present case. In Croftdene, the appellant was the entity charged with the management of the property which owed rates to the municipality. It owed the municipality in excess of R2,2 million and wished to engage in an exercise to write-off a significant portion (almost 50%) of the arrears based, not on the fact that such amounts were not due and payable, but rather out of 'sympathy', later contending that the amount claimed contravened the in duplum rule. In Croftdene, the appellant did not identify any specific amount which it contested with the municipality. Instead, it was seeking a general reduction or write-off of its debts. This is in stark contrast to the present matter, where the applicant has raised queries and declared disputes in writing with the City in relation to particular invoices (as and when received), even though the inaccuracy of the invoice may be traced to entries made several years prior, and which themselves have never

been resolved. The SCA stated clearly that '[i]f an item is properly identified and a dispute properly raised, debt collection and credit control measures [cannot] be implemented' against the person disputing a particular figure.[13]

[27] In addition, to the extent that the City refuses to acknowledge and accept that the applicant has declared several disputes over the same account over a period of more than five years, Croftdene informs us that this is a fact-based enquiry, on a case-by-case basis. Contrary to the finding in Croftdene that the appellant did not challenge the debt reconciliation provided to it nor did it deny its liability for those amounts,[14] the applicant's conduct stands in marked contrast. The applicant has persistently engaged the City regarding what she perceives as its inaccurate accounting and has disputed the amounts reflected in her invoices. Unlike Croftdene where the appellant was unable to pay anything on its bills, the applicant pays on a monthly basis what she contends is a fair amount pending the finalisation of her dispute. Lastly, there is no suggestion on these papers that the raising of the disputes by the applicant is a delaying tactic, as was the case in Croftdene. To the extent that the City rests its case on Croftdene, I am of the view that such reliance was misplaced or ill-conceived.

[28] The full court in *Ekurhuleni Metropolitan Municipality v Ergo Mining (Pty) Ltd and another*[15] also considered the meaning attributable to 'dispute' in the context of s 102(2) of the Systems Act. It said the following:

'[28] Applying these principles in the present case, I am of the view that the context of section 102(2) is that it is part of Chapter 9 of the Systems Act which deals with credit control and debt collection. Section 102 appears under the heading of "Accounts". In terms of section 95 the appellant is required to, inter alia, ensure that persons liable for payments, receive regular and accurate accounts that indicate the basis for calculating the amounts due; provide accessible mechanisms for those persons to query or verify accounts and metered consumption, and appeal procedures which allow such persons to receive prompt redress for inaccurate accounts. Section 96 makes provision for collection, by the municipality, of all money that is due and payable to it.

[29] In this context, the word "dispute" should, in my view, be interpreted as being a dispute relating to an account issue, with reference to a "specific amount" of consumption of electricity and the tariff at which the electricity was charged. Therefore any dispute outside of this interpretation would not be covered by section 102(2). The result is that the dispute between the parties does not fall within the ambit of section 102(2). Therefore the Court below erred in deciding otherwise.' (Underlining is my emphasis.)

[29] Apart from the court in *Ekurhuleni* reinforcing the right of a consumer to regular and accurate billing for municipal services, it refers to a dispute pertaining to an 'account issue'. In *Casting, Forging & Machining Cluster of South Africa (NPC) and others v National Energy Regulator of SA and others*,[16] Fourie J held that:

[17] In *Ekurhuleni Metropolitan Municipality v Ergo Mining (Pty) Ltd* 2017 JDR 1860 (GJ) the Full Bench of the Gauteng Local Division, Johannesburg considered the interpretation of section 102(2) of the Municipal Systems Act. In that decision it was decided (par [29]) that:

"In this context, the word "dispute" should, in my view, be interpreted as being a dispute relating to an account issue, with reference to a 'specific amount' of consumption of electricity and the tariff at which the electricity was charged. Therefore any dispute outside of this interpretation should not be covered by section 102(2)." (Formatting as in the original judgment.)

[30] In 39 Van Der Merwe Street,[17] the court summarised the requirements from *Croftdene* as follows:

[27] *Croftdene* Mall thus imposes the following requirements before a consumer of municipal services may rely on the protection from disconnection afforded by section 102(2) of the Systems Act:

27.1 there must be a dispute, in the sense of a consumer, on the one hand, and the municipality, on the other, advancing irreconcilable contentions;

27.2 the dispute must be properly raised, which would require, at least, that it be properly communicated to the appropriate authorities at the municipality and that this be done in accordance with any mechanism and appeal procedure provided in terms of section 95(f) of the Systems Act for the querying of accounts;

27.3 the dispute must relate to a specific amount or amounts or a specific item or items on an account or accounts, with the corollary that it is insufficient to raise a dispute in general terms;

27.4 the consumer must put up enough facts to enable the municipality to identify the disputed item or items and the basis for the ratepayer's objection to them;

27.5 it must be apparent from the founding affidavit that the foregoing requirements have been satisfied.' (My emphasis.)

[31] 39 Van der Merwe Street appears to indicate a slight departure from the reasoning in *Croftdene*, in which the Court referred to a 'specific amount' claimed by the municipality. The suggestion was that this was a reference to a single amount being disputed. This, on a sensible interpretation, cannot be what the court in *Croftdene* intended. This conclusion receives support from the court's subsequent wording in paragraph 22 of *Croftdene* where the following is said 'The ratepayer is required to furnish facts that would adequately enable the municipality to ascertain or identify the disputed item or items...'. (My emphasis.)

[32] In light of the above analysis of s 102(2) of the Systems Act, together with an assessment of the facts before me, I am of the view that the litany of queries lodged by the applicant in respect of her municipal services account held with the City, as well as the formal demands made by her attorney, are sufficient to meet the burden of proof for the injunctive relief sought by the applicant, and that such queries and demands constitute a 'dispute' within the meaning of s 102(2). This has been the fundamental obstacle standing in the way of the

applicant moving forward to resolve the perceived or real inaccuracies in her account. Once an explanation or reasons are tendered for the various queries raised regarding the account, the provisions of the Credit Control and Debt Collection By-laws prescribe the path towards a resolution of the dispute. It is not for the court to fashion, through its order, a process for the parties. That procedure has already been crafted by the City.

- [33] In light of the conclusion I reach above, I do not deem it necessary to rule on the remaining relief sought in the notice of motion, or on the status of the counter-application seeking judgment in the amount of R100 031.91. Should the resolute process in terms of the Credit Control and Debt Collection By-laws succeed, the counter-claim as well as several of the remaining orders sought by the applicant, will fall away. In the event that the matter is not resolved, the applicant will have the security of the injunctive relief preventing the disconnection of her electricity or water supply. The interdict will remain in place but while the dispute remains unresolved, the applicant must continue to pay the amount she regularly pays (between R12 000 to R14 000) which represents in her mind, the reasonable costs of her utilities account each month. Her defence to the counter-application based on prescription will remain available to her.
- [34] It behoves me to make a few concluding remarks regarding the conduct of this litigation. The City's approach towards the applicant was as if it were dealing with a delinquent consumer. She is not. Her evidence under oath that she continues to pay, on a monthly basis what she contends is a fair and reasonable amount based on what she consumes, remains uncontested. Her conduct is not that of someone seeking to avoid paying for services, hence I refer to what was said in Regona Properties (Pty) Ltd:[18]

'As with many other cases dealing with s 102(2) of the Municipal Systems Act, this case concerned consumers who paid nothing while lodging a dispute, quite rightly raising the alarm about the possibility of consumers to submit disputes to evade payment. The consumer must furnish facts to enable the municipality to ascertain or identify the disputed item or items and why the ratepayer objects. This is not the case here.'

- [35] Much was made of the request by the applicant to have the matter heard in chambers, with the suggestion being that the City or its representatives wished to use the opportunity to embarrass the applicant by virtue of her office. The matter was heard virtually, without objection by either party. I point out that parts of the papers are indicative of personal undertones and animosity between the parties and their representatives. En passant, litigation should never be conducted in this manner. Reckless and unfounded comments, even made in the context of litigation, can never be enough to shield one from the reach of a claim for defamation.

[36] As regards costs, I am satisfied that the applicant has been substantially successful. She has pursued the matter against the City for more than seven years, with her only purpose being to ensure that she is accurately billed for what she consumes in her home. The City's response was one of placing obstacles in the path of resolving the dispute. In *Body Corporate of Willow and Aloe Grove*[19] the court stated that

'...the Act requires that disputes in relation to specific charges on a municipal account must be dealt with through a co-operative structure which places obligations on both the customer and the municipality and which affords to the customer procedural fairness. This includes an internal appeal mechanism.' (My emphasis.)

The approach of the City has been anything but one which fosters a spirit of co-operation. The applicant has been treated in a manner at variance with the standards which the City is obliged to treat its residents. It cannot be accepted that a resident should have to complain for five years regarding a proper explanation for the exorbitant costs levied against her account, all the while being

under threat of disconnection. In the circumstances, the applicant was compelled to approach the court after her pleas for intervention

fell on deaf ears. I see no reason why the City's conduct should not be sanctioned with a punitive costs order.

[37] In the result, I make the following order:

1. The first respondent is interdicted and restrained from disconnecting/causing the disconnection/termination or restriction of the provision of basic municipal services to the applicant's property at Erf 3[...], I[...] Extension 3, situated at 4 O[...] Street, I[...], Johannesburg, pending the final determination of this application and the final resolution in terms of the respondent's By-Laws, the Local Government: Municipal Systems Act No.32 of 2000 and the Constitution, of all disputes and queries in respect of municipal account number 2[...] for electrical and water services

actually consumed.

2. The respondent is directed and ordered to furnish the applicant with a detailed explanation to the queries raised by the applicant in respect of the water and electricity charges levied against the property situate at Erf 3[...], I[...] Extension 3, so as to enable the applicant to analyse her accounts and to respond to the respondent within 30 days of the receipt of such reasons.
3. The reasons referred to in paragraph 2 must be furnished to the applicant's attorney at Darryl Ackerman Attorneys, care of robynn@ackermanlaw.co.za (Ref. Mr D Ackerman), not later than 30 days from the date of this order.

4. Within 30 days after the receipt of the response from the applicant referred to in paragraph 3, the parties must hold a meeting and conduct a statement and debatement of the applicant's account.
5. Pending the final resolution of the dispute, the applicant is directed to pay R12 000 per month to the City in respect of the deemed usage of water and electricity on or before the due date for payment of her municipal services. In the event of actual readings being submitted to the applicant for the utilisation of municipal services, and where no dispute exists, the applicant is directed to pay such amounts as and when they fall due. All amounts paid by the applicant pending the finalisation of the dispute are to be considered in the statement and debatement exercise.
6. In the event that the applicant fails or neglects to meet with the respondent pursuant to paragraph 4 above, or to pay such amounts as are due in terms of paragraph 5 above, the interim interdict granted in paragraph 1 shall lapse.
7. The remaining relief sought in the notice of motion is adjourned sine die.
8. The counter-application is adjourned sine die.
9. The first respondent is directed to pay the applicant's costs on an attorney and client scale.

M.R. CHETTY

Judge of the High Court

Hearing:

26 February 2024

Judgment:

05 April 2024

Appearances:

For Applicant: Mr C van der Merwe

Instructed by: Darryl Ackerman Attorneys

For Respondents: Mr E. Sithole

Instructed by: Mulaudzi John Attorneys

^[1] Matjhabeng Local Municipality v Eskom Holdings Ltd and others [2017] ZACC 35; 2018 (1) SA 1 (CC) para 75.

- [2] Mkontwana v Nelson Mandela Metropolitan Municipality and another; Bissett and others v Buffalo City Municipality and others; Transfer Rights Action Campaign and others v MEC, Local Government and Housing, Gauteng, and others (Kwazulu-Natal Law Society and Msunduzi

Municipality as amici curiae) [2004] ZACC 9; 2005

- (1) SA 530 (CC); 2005 (2) BCLR 150 (CC) para 64.

- [3] Argent Industrial Investment (Pty) Ltd v Ekurhuleni Metropolitan Municipality [2017] ZAGPJHC 14; 2017 (3) SA 146 (GJ) para 15.

- [4] Euphorbia (Pty) Ltd t/a Gallagher Estates v City of Johannesburg

[2016] ZAGPPHC 548 paras 16-17.

- [5] It bears noting that the City's Credit Control and Debt Collection By-laws of 2004, in section 11, make provision for a

query to be lodged in relation to the accuracy of any amount due in terms of an account, and provides that this must be done within a specified period against the payment of the average consumption for the preceding three months, where those amounts are not in dispute. In the present matter, the full amounts reflected in the invoices, as well as those in the preceding three months, are in dispute, with the dispute stemming back to April 2017. The By-laws further provide in section 11(4) that '[a]n authorised official must register the query or complaint and provide the customer with a reference number' and must investigate the query or complaint within 14 days after the query or complaint was received. Further provision is made that the customer must be informed, in writing, of the Council's decision as soon as possible after the investigation is concluded, and any amount found to be due and payable must, subject to a further appeal, be paid within 21 days from the date on which the customer is notified.

- [6] In Joseph and others v City of Johannesburg and others [2009] ZACC 30; 2010 (4) SA 55 (CC); 2010 (3) BCLR 212 (CC) para 46, the Constitutional Court articulated the duties of local government in its interaction with those dependent on its services, and stated as follows: '... government [is] to act in a manner that is responsive, respectful and fair when fulfilling its constitutional and statutory

obligations. This is of particular importance in the delivery of public services at the level of local government. Municipalities

are, after all, at the forefront of government interaction with citizens. Compliance by local government with its procedural

fairness obligations is crucial therefore, not only for the protection of citizens' rights, but also to facilitate trust

in the public administration and in our participatory democracy.'

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[7] My conclusion is fortified by the remarks of Dodson AJ in *39 Van Der Merwe Street Hillbrow CC v City of Johannesburg Metropolitan Municipality and another* (GJ) unreported case number 7784/2023 (24 March 2023) para 23 where he says the following: ‘The dispute in this case, if there is one, has remained extant for more than a decade. As matters stand, it shows no realistic prospects of resolution in the short or even the medium term. Assuming compliance with section 102(2), a customer of the City in these circumstances can perpetuate a dispute indefinitely by simply ensuring that it does not agree to any assertion by the City as to the extent of the customer’s indebtedness in respect of particular amounts. On this basis, section 102(2) might become an indefinite shield against the exercise of a statutory power of disconnection, notwithstanding continuing non-payment.’

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[8] *National Treasury and others v Opposition to Urban Tolling Alliance and others* [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) para 66.

[9] *City of Cape Town v Real People Housing (Pty) Ltd* [2009] ZASCA 159; 2010 (5) SA 196 (SCA); [2010] 2 All SA 305 (SCA) para 17.

[10] Real People Housing (Pty) Ltd v City of Cape Town 2010

(1) SA 411 (C) para 38.

[11] Section 102 of the Systems Act provides as follows: ‘102. Accounts.—(1) A municipality may—
(a) consolidate any separate accounts of persons liable for payments to the municipality; (b) credit a payment by such a person against any account of that person; and (c) implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person.

(2) Subsection

(1) does not apply where there is a dispute between the municipality and a person referred to in that subsection concerning any specific amount claimed by the municipality from that person.

(3) A municipality must provide an owner of a property in its jurisdiction with copies of accounts sent to the occupier of the property for municipal services supplied to such a property if the owner requests such accounts in writing from the municipality concerned.’ (My emphasis.)

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[12] Body Corporate Croftdene Mall v Ethekwini Municipality [2011] ZASCA 188; 2012 (4) SA 169 (SCA) paras 21-23 (‘Croftdene’).

[13] Ibid para 22.

[14] Ibid para 26.

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- [15] Ekurhuleni Metropolitan Municipality v Ergo Mining (Pty) Ltd and another [2017] ZAGPJHC 263 paras 28-29.
- [16] Casting, Forging & Machining Cluster of South Africa (NPC) and others v National Energy Regulator of SA and others [2019] ZAGPPHC 967 para 17.
- [17] 39 Van der Merwe Street Hillbrow CC v City of Johannesburg Metropolitan Municipality and another (GJ) unreported case number 7784/2023 (24 March 2023) para 27.
- [18] Regona Properties (Pty) Ltd and another v City of Johannesburg Metropolitan Municipality and another [2023] ZAGPJHC 877 para 60.
- [19] Body Corporate of Willow and Aloe Grove v City of Johannesburg and another [2023] ZAGPJHC 1451 para 19.
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