

SOUTH AFRICA / JUDGMENT

Barstow and Others v City of Johannesburg Metropolitan Council South Africa (534/2020) [2023] ZAGPJHC 773 (7 July 2023) [2023] ZAGPJHC 773

COURT

South Gauteng High Court, Johannesburg

BEFORE

Senyatsi

CASE / FILE NUMBER

534/2020

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IN

THE HIGH COURT OF SOUTH AFRICAGAUTENG LOCAL DIVISION,
JOHANNESBURG
REPUBLIC OF SOUTH
AFRICA

CASE NO: 534/2020

NOT REPORTABLE

NOT OF INTEREST TO

OTHER JUDGES

NOT REVISED

07.07.23

In the matter between:

STEWARD
MICHAEL BARSTOW
FIRST
APPLICANT
FRANCES
ALEXANDRA BARSTOW
SECOND APPLICANT
NICOLAS GEOFFREY
CHARLES BARSTOW
THIRD
APPLICANT
And
CITY
OF JOHANNESBURG METROPOLITAN COUNCIL SOUTH AFRICAN
RESPONDENT

JUDGMENT

SENYATSI J

- [1] The dispute in this matter arises from the alleged incorrect billing of the applicants' account number 207 093 611 relating to water usage on the property known as Erf [...] Belle-Vue Township, situated at [...], Belle-Vue ("the property") jointly owned by the applicants. The dispute with the respondent was logged during July 2017 when the applicants noted an excessive increase in the water usage billed to their account.
- [2] The applicants contend that their average usage of water was between 8 kilolitres and 11 kilolitres per day prior to the change of the meter and that the usage spiked to over 28 kilolitres per day after the meter was changed and eventually to over 52 kilolitres per day during October
2016. The average consumption peaked at 63 kilolitres during November 2016. The abnormal spike in water usage started, so avers the applicants, during September 2016 when the inconsistent water readings were experienced.
- [3] Three water meters form the subject of this litigation. The first one is the initial meter number C-GJK 1483 which was installed on 16 February 2014. It was changed by the respondent, so aver the applicants during , March 2016 but was billed until March 2018. The meter was replaced by the faulty meter number CJJK5930 ("the faulty meter"). The applicants contend it was this faulty meter out of which abnormal water usage emanated and that there were no leaking water pipes on their property which could have caused the abnormal spike in water usage. The third meter is number CCJK1532 and was installed on 6 November 2019.

- [4] During July 2017 and arising out of the billing related to a meter which had been removed from the property by the respondent and to which water usage had spiked, the applicants logged a query and requested the respondent to investigate the reasons for the abnormal water usage billing. The billing was related to the non-existent meter as well as an abnormal spike in water utilisation. According to the applicants, there were no leaking pipes on their property.
- [5] The applicants were provided with query reference number 8003412459 but were never provided with the answer regarding the real reason for an abnormal water usage. In fact, so contend the applicants, the consumption of water was based on the estimates and when the actuals were provided, they were significantly abnormal without reason. The faulty readings continued for about one and half years as a result of which the respondent billed the applicants for water usage an amount of R 581 412.28.
- [6] When the applicants were getting no joy from the respondent, they engaged their attorneys of record to investigate on their behalf. Following exchanges of correspondence between the respondents and the attorneys of the applicants, the respondents could not provide the record of the job card relating to faulty meter which had been replaced. As a consequence, litigation was pursued and it was only during the exchange of pleadings that the respondents claimed that the faulty meter was removed during March 2018 which was way after the query regarding the faulty meter had been raised.
- [7] The applicants require this Court to order:-
- 7.1. The reversal of the water charges from 18 March 2016 until 6 November 2018;
- 7.2. the respondent to attend to the property to take actual readings for three consecutive months and work out the daily average of meter CCJ1532;
- 7.3. the reversal of any/all interest, VAT and any ancillary charges on the applicants account in respect of the amounts that stand to be reversed/written off;
- 7.4. that the respondent furnishes the applicants with an adjusted municipal account showing all the reversals made in respect of the prescribed charges within 14 days after the order is granted;
- 7.5. the respondent refrains from terminating or restricting the supply of any service to the property, or threatening to terminate/restrict the supply of any service to the property in respect of any amount outstanding to the applicant's account, until this dispute has been resolved and the respondent to provide the applicant with an undertaking stating as such within seven days from the date of the order; and
- 7.6. the cost of suit on the scale as between attorney and own client.
- [8] For its defence, the respondent states that the initial meter number C-GK1483 was installed on 16 February 2014 to 25 March 2018. It further states that meter number CJK5930 was installed on 26 March 2018 to 7 November 2018 and meter number CCJK1532 was installed from 7 November 2019 to date. It concedes that over the past number of years water

consumption on the property was measured by three consecutive meters as set out above and that meter CJK5930 never measured correctly. It contends therefore that the readings for the period March 2016 to November 2018 should be discarded completely in so far as they were from meter CJK5930.

- [9] The respondent furthermore contends that the average water consumption of three consecutive months should be calculated relating to meter CJK1532 and that the average should be used to re-calculate the account as far as meter number CJK5930 is concerned. It contends that what should remain to be decided is the period which meter number CJK5930 was on the property. It contends that the faulty meter CJK5930 was installed during March 2018. For the reasons that follow, this is nonsensical because if the respondent is prepared to concede that the readings of meter CJK5930 never measured correctly for the period March 2016 to November 2018, it must be inferred that the meter was installed in March 2016 as opposed to March 2018 according to its records. The respondent furthermore contends that the applicant's attorneys are in any event, not experts when it comes to queries relating to the billing challenges by the applicants. Whilst this is indeed the case, it does not make the query on billing go away.
- [10] The issue for determination is whether the contentions of the respondent avail themselves as a defence to the claim and whether from the papers the requirements for an interdict were met by the applicants.
- [11] In order to provide an answer to the first issue, it is important to consider the legal principles. The Constitution[1] states that:

“152.

- (1) The objects of local government are—
- (a) to provide democratic and accountable government for local communities;
- (b) to ensure the provision of services to communities in a sustainable manner.”

This provision requires of local government such as the respondent to ensure that queries raised by a consumer relating to utilities are dealt with promptly.

- [12] The provisions of the Constitution as set out above are emphasized by The Municipal Systems Act[2] which states as follows:

“95. In relation to the levying of rates and other taxes by a municipality and the charging of fees for municipal services, a municipality must, within its financial and administrative capacity—

- (a) establish a sound customer management system that aims to create ~ positive and reciprocal relationship between persons liable for these payments and the municipality, and where applicable, a service provider;

- (b) establish mechanisms for users of services and ratepayers to give feedback to the municipality or other service providers regarding the quality of the services and the performance of the service provider;
- (c) take reasonable steps to ensure that users of services are informed of the costs involved in service provision. The reasons for the payment of service fees, and the manner in which monies raised from the service are utilised;
- (d) where the consumption of services has to be measured, take reasonable steps to ensure that the consumption by individual users of services is measured through accurate and verifiable metering systems;
- (e) ensure that persons liable for payments, receive regular and accurate accounts that indicate the basis for calculating the amounts due;
- (f) 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;
- (g) provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the municipality;
- (h) provide mechanisms to monitor the response time and efficiency in complying with paragraph (g); and
- (i) provide accessible pay points and other mechanisms for settling accounts or making pre-payments for services.”

[13] Our Courts have consistently applied the Constitution and the Municipal Systems Acts in disputes relating to services rendered by the local government to consumers. In *Rademann v Maghaka Local Municipality*[3] Zondo J (as he then was) said the following regarding the duty of a consumer to pay for services rendered:

“[42] Before dealing with the question of what remedy a resident has in a case where the municipality is demanding payment for services not rendered, it is necessary to point out that in the present matter it was not Ms Rademan’s case that the Municipality claimed payment for services that it had not rendered. Indeed, in the present matter it has not been proved that the Municipality was claiming payment for services that had been rendered poorly or inefficiently. However, where a municipality claims payment from a resident or ratepayer for services, it is only entitled to payment for services that it has rendered. By the same token, where a municipality claims from a resident, customer or ratepayer payment for services, the resident, customer or ratepayer is only obliged to pay the municipality for services that have been rendered. There is no obligation on a resident, customer or ratepayer to pay the municipality for a service that has not been rendered. Accordingly, where, for example, a municipality included in a customer’s account for services an item for electricity when in fact no electricity has been connected to the particular property and, therefore, no electricity was supplied, the customer is entitled to take the stance that he or she will pay the total bill less the amount claimed for electricity supply.”

This therefore means that only where the services rendered are reflected correctly in the bill, will the obligation to pay arise. This also means that to the extent that certain items on the bill that are not queried that payment in respect thereof should be made.

[14] In the City of Johannesburg Metropolitan Municipality and Others v Hlophe and Others[4] in restating the accountability of a local municipality, Van Der Merwe AJA stated as follows:

“[25] In my view, however, the decisive consideration is the principle of public accountability. It is a founding value of the Constitution[5] and central to our constitutional culture.[6] In terms of s 152(1) (a) of the Constitution the objects of local government include to provide accountable government for local communities. Section 6(1) of the Systems Act provides that the municipality’s administration is governed by the democratic

values and principles embodied in s 195(1) of the Constitution. Section 195(1)(f) of the Constitution specifically states that public administration must be accountable. In terms of s 6(2) (b) of the Systems Act the administration of a municipality must facilitate a culture of public service and accountability amongst staff. Constitutional accountability may be appropriately secured through the variety of orders that the courts are capable of making, including a mandamus.[7]

[15] In view of the authorities quoted above, I hold the view that the respondent has failed to discharge its legal obligation to address the billing relating to the disputed meter readings of meter number CJKK5930 in terms of the law. This view is fortified by the concession made on behalf of the respondent by its Legal Adviser Mr. Tuwani Ngwana who deposed to an affidavit, at paragraph 7.2 of his answering affidavit he states that meter number 2, which is CJKK5930, never measured correctly, and its measurements should be discarded entirely for the period March 2016 to November 2018. The notion that this metre was replaced during November 2018 should be dispelled. What can be inferred from the papers is that the job card relating to the replacement meter went missing and the subsequent discovery of a job card purportedly replacing meter number C-GK1483 was more likely contrived. This is so because as far back as July 2017 several e-mail exchanges were made relating to the job card about the meter that had been replaced. The respondent failed to provide the replacement job cards relating to the faulty meter which was the subject of the inconsistent high usage of the water and such usage could not be supported by any leaking pipe within the applicant’s property. It is not enough as contended by the respondent to state that there were reversals made because these reversals were based on incorrect readings of the queried meter and were mostly estimates.

[16] I now deal with the requirements of an interdict which have been restated countless by our courts. In Residents, Industry House and Other v Minister of Police and Others [8] Mhlantja J restated the principles as follows:

[81] In Masstores[9] this court reiterated the test for a final interdict as set out in Setlogelo,[10] and held that '(t)he requirements for a final interdict are usually stated as (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the lack of an adequate alternative remedy.'[11]

[17] In the light of the legislative framework and the authorities quoted above, it follows that the applicants have made out a case and must succeed.

ORDER

[18] An order is therefore granted in the following terms:

18.1. The respondent is ordered to reverse the water charges from 18 March 2016 until 6 November 2018 emanating from the faulty meter;

18.2. The respondent is to attend to the property to take actual meter readings for three consecutive months and work out the daily average of meter CCJ1532;

18.3. The respondent is to reverse any/all interest, VAT and any ancillary charges on the applicants account in respect of the amounts that stand to be reversed/written off;

18.4. The respondent is to furnish the applicants with an adjusted municipal account showing all the reversals made in respect of the prescribed charges within 14 days after the order is granted;

18.5. The respondent is to refrain from terminating or restricting the supply of any service to the property, or threatening to terminate/restrict the supply of any service to the property in respect of any amount outstanding to the applicant's account, until this dispute has been resolved and the respondent to provide the applicant with an undertaking stating as such within seven days from the date of the order; and

18.6. The respondent is directed to pay costs of suit on the scale as between attorney and own client.

ML SENYATSI

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Delivered: This Judgment was handed down electronically by circulation to the parties/ their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 7 July 2023

DATE APPLICATION HEARD: 24 April 2023

DATE JUDGMENT HANDED DOWN: 7 July 2023

APPEARANCES

Counsel for the Applicant: Adv T Paige-Green Instructed by: Schindlers Attorneys Counsel for the Respondent: Adv Du Toit Maritz Instructed by: Mohamed Randera & Associates

- [1] Section 152 (1) (a) and (b) of Act 108 of 1996.
- [2] Section 95 of the Municipal Systems Act 32 of 2000
- [3] (CCT41/12)[2013] ZACC; 2013(4)SA225(CC); 2013 (7) BCLR 791 (CC) (26 April 2013) at para 42.
- [4] (1035/2013) [2015] ZASCA 16; [2015] 2 All SA 251 (SCA) (18 March 2015)
- [5] Section 1(d) of the Constitution.
- [6] Olitzki Property Holdings v State Tender Board & another 2001
- (3) SA 1247 (SCA) para 31
- [7] City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd & another 2012 (2) SA 104 (CC)
- [8] 2023
- (1) SACR 14 (CC)
- [9] Masstores (Pty) Ltd v Pick n Pay Retailers (Pty) Ltd 2017 (1) SA 613 (CC) (2017 (2) BCLR 152; [2016] ZACC 42) (Masstores).
- [10] Setlogelo v Setlogelo 1914 AD 221; and Pilane and Another v Pilane and Another 2013 (4) BCLR 431 (CC) ([2013] ZACC 3; 2013 JDR 0295) para 3
- [11] Masstores above n99 para 8.

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