

SOUTH AFRICA / JUDGMENT

Beck and Others v Kopanong Plaaslike Munisipaliteit and Others (3772/2002)

[2003] ZAFSHC 34 (20 March 2003)

[2003] ZAFSHC 34**COURT**

Free State High Court, Bloemfontein

BEFORE

Rampai

CASE / FILE NUMBER

3772/2002

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IN THE HIGH COURT OF SOUTH AFRICA

(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No.: 3772/2002

In the matter between:

BABY GERTY BECKFirst Applicant

SIMON MAY MUTLANYANESecond Applicant

JEANETTE NTIFILELIE LECHOEKONEThird Applicant

APRIL SELLO LESOLEFourth Applicant

BIDI ELIZABETH MACWILIFifth Applicant

PAUL MAMPUDI CHAKASixth Applicant

PETE JOBOSeventh Applicant

SINA SANETSI MUTLANYANENinth Applicant

and

KQPANONG PLAASLIKE MUNISIPALITEIT

EDENBURG MUNISIPALITEITFirst Respondent

MANGAUNG PLAASLIKE MUNISIPALITEITSecond Respondent

KOSMOS KAFEEThird Respondent

CORAM: RAMPAL, J

HEARED ON: 20 FEBRUARY 2003

JUDGMENT BY: RAMPAL, J

DELIVERED ON: 20 MARCH 2003

[1] The matter first came before me on Saturday 19 October 2002 by way of an urgent application. I directed the applicants to serve the papers on the respondents first and then postponed the matter to Tuesday 2j October

2002. The respondents were duly served.

On 21 October 2002 I granted the provisional order and issued rule nisi returnable on Thursday 14 November 2002.

The rule nisi was granted in favour of the applicants against the respondents. In terms of the rule nisi, in other words the provisional order, the respondents were prohibited from preventing the applicants or any other electricity consumer of the Edenburg from purchasing electricity by way of prepaid electricity coupons on the grounds that they are indebted to the

first respondent in respect of other municipal services, other than the municipal services provided in connection with the supply of domestic electrical energy. The application is opposed by the first respondent. The second respondent and the third respondent have adopted a neutral attitude towards these proceedings.

The rule nisi was extended on a few occasions. At long last the matter was argued before me on Thursday 20 February 2003. Having heard argument on behalf of the applicants for the confirmation of the rule nisi and argument on behalf of the respondents for the discharge of the rule nisi, I reserved judgment and extended the rule nisi to Thursday 13 March 2003.

[2] The eight applicants are all residents of Ha-Rasebei at Edenburg in the Free State Province. They are all consumers of electricity. All of them make up a class of consumers who buy electricity from the respondents and pay in advance for the electricity units they need. Since they do not purchase electricity from the respondents on credit, they are not indebted to the respondents in respect of their electricity consumption.. Yet another feature common to all the applicants is that they all deny that they are indebted to the first respondent in respect of unpaid water accounts. The first respondent they claim, does not provide the community with satisfactory services. For instance the respondent does not take regular readings of the water meters, guesses the readings and sends out inaccurate water accounts to the financial detriment of the residents.

The first respondent is a local government authority, in other words a local municipality as defined in section 2 of the Municipal Systems Act No. 32/2000. The first respondent consists of nine magisterial districts of which Edenburg Municipality is one. According to the provisions of section 1 of the Electricity Act No. 41/1987 the second respondent is defined as an electricity licensee whereas the applicants are defined as electricity consumers. By agreement it would appear that the second respondent supplies electricity to the first respondent.

[3] The story of the applicants was narrated by Ms E.G. Beck in her founding affidavit. A summary of their allegations of facts is necessary. An unknown number of residents of Edenburg caused electricity apparatus to be installed at their residents. The first respondent appointed the third respondent as its coupon distributing outlet. The domestic electricity measuring apparatus were then linked up with the computer of the appointed distributing agent by means of a unique code. The residents with electricity apparatus buy electricity coupons from the outlet to replenish their electricity units for their domestic use. The purchase of electricity is a cash transaction. An example of such an electricity coupon appears on p.44 of the court record. The first respondent has been refusing to sell electricity coupons to certain residents since 29 August 2002. A list of consumers to whom tire sale of coupons had been blocked appears on p.43 of the record. The undated list was faxed from the first respondent on 29 August 2002.

The names of the fourth, fifth, seventh and eighth applicants are blacklisted. Later on the remaining applicants also discovered that the sale of electricity coupons to them too was forbidden by the first respondent.

The members of this class decided that they would not pay the water accounts, which the first respondent rendered to them monthly until the respondent did something about the poor services it was rendering to the community. The respondents reacted to this non-payment strategy by the blocking of the coupon sales of electricity to the applicants. They considered the action unlawful, unreasonable and unprocedural.

[4] On 16 October 2002 the first applicant found herself facing the same predicament. She proceeded to the Edenburg office of the first respondent where she enquired about the reason why she was precluded from purchasing electricity coupons. There she was informed that her household electricity apparatus had been blocked since the household water account was in arrears. This dilemma of the household water arrears applied to all the applicants. All of them confirmed that their municipality accounts were currently in arrears. They averred that this state of affairs was brought about by the neglect on the part of the first respondent. The first

respondent, they alleged, had failed to take accurate readings of the water meters. In addition, the first respondent had failed to credit their municipal water services accounts correctly with the payments they had made. Moreover, they were chased away when they wanted to make minimal payments. The conduct of the first respondent forced them to notify the first respondent that they were no longer going to make any further payments in respect of their water accounts until the first respondent furnished them with properly audited financial statements.

- [5] The blocking of the electricity coupons led to a public meeting which was held at Ha-Rasebei. Community Hall on Thursday 17 October 2002 where the blocking action of the first respondent was discussed and legal advice obtained. The lawyer, Attorney Van der Walt's attempt to resolve the impasse with Mr. L.A. Khechane, the Edenburg Municipal Manager, was fruitless. The telephone conversation between the lawyer and the manager was on Friday 18 October 2002.
- [6] The story of the first respondent was told through the lips of its municipal manager Mr. L.A. Khechane. He denied in the opposing affidavit that the first respondent acted unilaterally. The applicants were invited to negotiate with the first respondent concerning their unpaid municipal accounts, but they were uncooperative. There was a careful and considered decision taken before a blockade was placed on the sale of electricity coupons to the applicants. The alleged common interest among the applicants is denied. He denied that the first respondent was not servicing the communities in a satisfactory manner as the applicants had alleged. He averred that the majority of the residents in the nine communities in its jurisdiction were happy with the way in which the first respondent was providing the municipal services to them. He denied the action taken against the applicants was legally invalid. He admitted that the respondent had installed electricity apparatus at the residences of the applicants. He admitted that all the sales of electricity were done per coupon system in accordance with the first respondent's credit control policy as provided for in section 96 Municipal Systems Act No.32/2000. He admitted that the third respondent was an agent of the first respondent and that as such the third respondent carried out the sales only in accordance with the rules and instructions of the first respondent. He stated that there were hundreds of consumers whose energy supply had not been blocked in spite of the fact that their municipal service accounts were in arrears. This was so because suitable arrangements had been made with the first respondent in order to alleviate their financial burdens.
- [7] He also confirmed that since 29 August 2002 the first respondent had taken steps against the consumers or residents who were not complying with their financial obligations towards the first respondent. He averred that what the applicants did not disclose to the court was that it was the general policy of the first respondent to keep the community informed about the credit control policy and indigent subsidy scheme. The information was disseminated at public community meetings through municipal councilors. At these meetings residents are often invited by the first respondent to discuss their financial problems. From p. 109 to p.115 of the record appeal* similar letters of demand, which the first respondent addressed to

each of the applicants. Some were dated 16 August 2002, others 21 August 2002. None of the applicants responded to the invitation by paying or making arrangements to pay.

He averred that the first respondent had been implementing the indigent subsidy scheme since the beginning of the year 2001. vide p. 139 of the record. The poverty bench-mark was R1 100,00 per month. Every household receives 6 kilolitres water per month free of charge.

- [8] On 5 October 2002 the first respondent adopted a credit control policy - vide p.127 of the record for the minutes of the special meeting and p.130 of the record for the policy document itself. On 30 October 2002 the first respondent adopted a service tariff policy - vide p.136 of the record for minutes of the special council meeting. He admitted that where any amount was owing to the first respondent in respect of water, sanitation, garbage and so on and where no acceptable arrangements had been made, rule 7.2.4 of the credit control principles and measures applied against the resident concerned. He annexed a list of 32 residents against whom a similar action had been taken prior to the commencement of these proceedings - vide p. 143 of the record. The names of all the applicants appear on this list. He denied that the applicants, except for the second applicant were members of indigent households.
- [9] He specifically denied the allegations that the readings of the water metering apparatus were not accurately and regularly taken. And he also denied that the applicants were not correctly credited in respect of the payments they had made. He admitted that he had a telephone conversation with the attorney for the applicants on 18 October 2002. He declined to lift the ban on coupon sales to the applicants. He explained the credit control policy to the lawyer. The matter could not be solved since the lawyer was prescriptive. He denied the municipal action was unconstitutional. He denied the allegations concerning the functional designation of the first and second respondents. He averred that the second respondent was a service provider, but the first respondent a service deliverer. He denied the matter was urgent. He denied the applicants were remediless. Finally he denied applicants were entitled to the relief they sought.
- [10] In her replying affidavit the deponent for the applicants replied that the provision of electricity to the applicants per coupons paid for in advance held no disadvantage for the respondent. She still denied that the credit control policy and the municipal action taken on the basis thereof were in keeping with the current municipal legislation.

It is apparent from foregoing expositions that there are a few factual disputes. Firstly, there is a dispute as to whether the first respondent takes regular and accurate readings of the water meters. Secondly, there is a dispute as to whether the first respondent credits the applicants with all the payments they make. Thirdly, there is a dispute as to whether the first respondent gave the applicant a hearing before the measure was taken. Fourthly, there is also a dispute as to whether the applicants are indigent residents.

- [11] As regards the first dispute of fact it seems to me that the allegations of the applicants are more probable than those of the first respondent. The photographs of the water meters strongly suggest that the water meters are not frequently checked by the employees of the first respondent.

As regards the second dispute of fact, it seems to me that the probabilities favour the allegations of the first respondent. Besides making the bold allegations that they were not given credits for the payments they made, none of the eight applicants annexed any municipal account or a corresponding official receipt, in other words proof, of payment for which their accounts were not credited. This allegation of fact is totally unsubstantiated. An allied allegation by the applicants is that they were turned away when they wanted to pay their municipal debts. Yet again they gave no precise details of anything, not even one of the alleged several acts of rejection by the municipal employee(s). This allegation sounds quite improbable to me, bearing in mind that according to them there were at least eight such insensitive and hostile incidents.

- [12] As regards the third dispute of fact, it appears that the allegation of the first respondent is more probable than those of the applicants. The applicants were in the same boat with many other residents as far the arrears on municipal service accounts were concerned. The first respondent called upon the residents whose accounts were in arrears to settle their debts immediately. Those who could not afford to do so immediately were invited to negotiate with the first respondent for suitable arrangements that they could pay what they could afford over a specified period of time. Lastly, those who ignored the demand to settle or the invitation to negotiate, were forewarned about the action to be taken. Some debtors chose the second option, others the first option. But the respondent chose the third. They decided to withhold payments. In the light of all this the applicants cannot be heard to say that the first respondent acted unilaterally and ambushed them. The process appears to me to have been consultative, transparent and procedural. The critique raised by the first applicant, however, is valid. She is Afrikaans speaking but she was sent a letter of demand written in Sesotho. A municipality is a public organ. It must respect the language choice of its residents as far as possible.

As regards the fourth dispute of fact, I find that the probative value of the first respondent's allegation is higher than the probative value of the applicants' allegation taken together. Besides two respondents, the rest of the households to which the respondents belong, probably have a combined household income, which exceeds the official poverty bench-mark of R1 100,00 per month. Among the respondents are gainfully employed civil servants. In some cases the households we are here dealing with apparently have working inmates, such as prison warders, nurses and teachers, whose handsome earnings eliminate their households from the indigent benefit scheme.

- [13] The aforesaid facets of the factual dispute are to my mind not really material for the proper adjudication of this dispute. The central thrust of the decision, which I have to make, is a question of law and not really a matter of fact.

[14] On the final extended return day, Mr. Snellenburg, counsel for the applicants, submitted that the action of the first respondent whereby the third respondent was directed to sell no electricity coupons to the applicants on the grounds that they were indebted to the first respondent in respect of other municipal levies unrelated to electricity were unlawful and not in keeping with the prevailing spirit of the constitution. He asked that the rule nisi be finally confirmed. He then referred me to the following authorities in support of the various propositions he made during the course of his argument:

HIGHVELDRIDGE RESIDENTS CONCERNED PARTY v HIGHVELDRIDGE TLC AND OTHERS 2003

(1) BCLR 72 (T) especially p.73b, 77g-i and 78g-h;

MUNICIPALITY OF THE CITY OF PORT ELIZABETH v PRUT NO 1996

(9) BCLR 1240 (ECD) at 1247h and 1248a; BEUKES v KRUGERSDORP TLC 1996

(3) SA 467 (W); NQXUZA AND OTHERS v PERMANENT SECRETARY, DEPARTMENT OF WELFARE, EASTERN CAPE, AND ANOTHER 2001

(2) SA 609 (ECD);

QOKOSE v CHAIRMAN, CISKEI COUNCIL OF STATE AND OTHERS 1994

(2) SA 198 (Ck);

SMYTH v USHEWQKUNZE AND ANOTHER 1998

(2) BCLR 170 (ZS) on 117h & 117i~j;

S v MAKWANYANE AND ANOTHER [1995] ZACC 3; 1995

(6) BCLR 665 (CC) on 709b-d; VAN WAVEREN v SWART 1994

(1) SA 579 (T); MASUKU v MINISTER VAN JUSTISTE EN ANDERE 1990

(1) SA 832 (AA);

SETLOGELO v SETLOGELO 1914 A.D. 221 on 227.

BEL PORTO SCHOOL GOVERNING BODY AND OTHERS v PREMIER, WESTERN CAPE, AND ANOTHER [2002] ZACC 2; 2002

(3) SA 265 (CC).

[15] On the other hand Mr. Edeling, counsel for the respondent, submitted that the action of the first respondent whereby the sale of electricity to the applicants was prevented was lawful. He argued that the applicants had not established a clear right and asked that the provisional order, in other words the rule nisi, be discharged. His list of authorities for the various propositions he made was as follows:

STELLENBOSCH FARMERS WINERY LTD v STELLENVALE WINERY (PTY) LTD 1957 (4) 234 (C); PLASCON-EVANS PAINTS LTD v RIEBECK PAINTS (PTY) LTD [1984] ZASCA 51; 1984 (3) SA 623 (A); WESTERN BANK BPK v TRUST BANK VAN AFRIKA BPK EN ANDERE NNO 1977 (2) SA 1008 (O) AT 1017D; SENEKAL INWONERSVERENIGING EN 'N ANDER v PLAASLIKE OORGANGSRAAD SENEKAL/MATWABENG 1998 (3) SA 719 (O).

I shall refer to some of these authorities later on if necessary.

[16] The issue which falls to be determined here is whether it is legally permissible for a local authority to withhold the provision of one service to a resident in order to enforce payment of arrears owing to the municipality by such a resident in respect of another service.

On behalf of the applicants it is contended that it is impermissible to do so. It is inequitable and unconstitutional to prevent a consumer from buying electricity from the respondents when she has nowhere else to buy. In developing that submission farther it was contended that the correct and legally permissible line of action the first respondent should have taken was to sue the applicants in order to enforce its claim in respect of the water accounts or else, to discontinue the supply of water to the applicants instead of discontinuing the supply of electricity.

On behalf of the first respondent it is contended that the municipal action taken is legally and constitutionally permissible. The applicants were lawfully indebted to the first respondent in respect of other services such as water, sanitation and refuse removal. They were repeatedly informed about the credit control policy of the municipality. They were called upon by way of letters of demand. They were asked to pay the arrears at once if they could afford or to make suitable arrangements to pay the arrears over an extended period of time, if they could not afford immediate one-off payments. They took no advantage of the first two options. In developing the submission further, it was contended that the action taken by the first respondent against the applicants was valid and justified on the grounds of the procedure followed. The resolutions adopted the credit control policy approved and the relevant statutory provisions.

[17] The law applicable to the matter is contained in the following provisions:

17.1 Section 11(b) Electricity Act No. 41/1987 reads as follows:

"Failure to carry out conditions of supply. A licensee shall not, except for reasons beyond his control, reduce or discontinue the supply of electricity to a consumer unless -

the consumer is insolvent; or

the consumer has failed to pay the agreed charges ..."

17.2 Regulation 11(1) Electricity Supply Regulations (ex Local Authorities Ordinance No. 8/1962 Free State Province) provides that an electricity supply can be disconnected if any levies due to the council or in connection with electricity supplied are in arrears.

17.3 Section 74(1) Municipality Systems Act No. 32/2000:

"A municipality council must adopt and implement a tariff policy on the levying of fees for municipal services provided ..."

Section 74(2) Municipal Systems Act No. 32/2000 provides that a tariff policy must reflect at least the following principles, namely that

- (a) users of the municipal services should be treated equitably;
- (b) the amount individual users pay should generally be proportional to their use of that service;
- (c) poor households must have access to at least basic services through special tariffs, cost tariffs and indigent subsidisation.

17.5 Section 95 Municipal Systems Act No. 32/2000 reads as follows:

"Credit control and debt collection. 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 at creating a positive and reciprocal relationship;
- b) establish a feedback mechanism by service users;
- c) take reasonable steps to ensure that the users of the service are informed of the cost 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) 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;
- f) provide accessible mechanisms for users to query and verify accounts and metered consumption and provide appeal procedures, which allow such aggrieved persons to receive prompt redress for inaccurate accounts;
- g) provide accessible mechanism for dealing with complaints together with prompt replies and corrective action."

17.6 Section 96 Municipal Systems Act No. 32/2000;

Debt collection responsibility of municipality. A .municipality

- a) must collect all monies that is due and payable to it, subject to this act and any other applicable legislation; and

- b) for this purpose must adopt, maintain and implement a credit control and debt collection policy, which is consistent with its rates and tariff policies and complies with the provisions of this legislation.

17.7 Section 97(1) Municipal System Act No. 32/2000 reads as follows:

"A credit control and debt collection policy must provide for -

credit control procedures and mechanisms;

debt collection procedures and mechanisms;

provision for indigent debtors:

(d)

(e)

(f)

- (g) termination of services or restrictions of the provision of services when payments are in arrears."

17.8 Section 151(3) of the Constitution Act No. 108/1996 reads as follows:

"A municipality has a right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the constitution."

17.9 Section 152(1) of the Constitution Act No. 108/1996 reads as follows: "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;
- c) to promote social and economic development;
- d) to promote a safe and healthy environment;
- e) to encourage the involvement of communities and community organisations in the matters of local government."

[18] A local municipality is the last point of the service delivery chain. It is the point of contact between the governor and the governed in a three tier system of government, which obtains in our country. It is at this important point where services have to be rendered; where levies for the services have to be imposed and where payments for the services have to be made. A municipality is in a way a community services provider.

[19] The municipal functions include, among others, providing electrical service, water service, sanitary service, sewerage service, housing service, streets maintenance service, transport service, primary health service, emergency service, refuse removal service, recreational parks service, to mention but a few well-known municipal functions. As we have seen it is

the constitutional imperative of the local municipality to provide these various community services and many more to its own community, and to ensure that these services are provided in an effective systematic and a sustainable manner.

[20] Section 96 of Municipal Services Act No 32/2000 provides as follows:

"A municipality -

- a) must collect all money that is due and payable to it subject to this Act and any other applicable legislation; and
- b) for this purpose must adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariff policies and complies with the provisions of this Act."

On 5 October 2001 the first respondent adopted a credit control policy. The municipal council of Kopanong Local Municipality approved the written credit control guidelines as the policy of the municipality. The policy was fully set out in an official document called "Credit Control Principles and Measures". The document appears on p.127 of the record. The tariff policy was adopted by resolution on 30 October

2001. Clause 7.2.4 of the credit control policy reads as follows:

"7.2.4 As envisaged in the systems act over and above the listed credit control measures, the electricity supply will be disconnected if any of the services delivered by Council or rates and taxes due to Council are in arrears. In cases where pre-paid electricity meters have been installed, the purchase of electricity coupons will be blocked."

The computers of the distributing agent were adjusted so that the machine operator could quickly be alerted of the affected or blacklisted individuals. The underlying purpose for blocking the electricity supply was to recover debts owed to the first respondent in respect of unpaid municipal service accounts. The eight applicants are some of the casualties of the municipality's action. The first respondent took this step on the strength of its aforesaid credit control policy. The applicants were aggrieved.

[21] In the case of *SENEKAL INW ONERSVEREENIGING v PLAASLIKE OORGANGSRAAD* {supra} the residents as in the instant case were not happy with the quality of the municipal services, which were rendered to the community. The current account was rendered to every member of the applicant. It was a composite account sent in arrears and not in advance. It consisted of two distinct components, namely an electricity component and a water component. The unhappy residents decided to pay the full municipal service account into a special bank account instead of paying to the local authority, which provided the services. The bank was then mandated by the aggrieved residents to pay over to their transitional local council only the electricity component of the municipal service account. It follows from this mandate that the water component of the municipal service account was withheld.

- [22] The withholding of the payment in respect of the water component of the bill by the unhappy residents agitated the transitional local authority. The transitional local authority reacted by publishing a notice threatening to disconnect the credit supply of electricity to any resident whose composite municipal service account had not been paid in full. They relied on the decision of the municipal council for this. The court per Van Cotter, J found that the decision and the threat by the municipality to discontinue the electricity supply to the residents who were not owing any levies in respect of the electricity component as such was unlawful. Accordingly the court came to the conclusion that the unhappy residents were entitled to an interdict restraining the transitional local council from cutting off the energy supply (vide p.278B-C).
- [23] The court arrived at this conclusion on the strength of the provisions of section 11(b) Electricity Act No. 41/1987. As we have already seen this section bars the municipality from reducing or discontinuing the service of supplying a resident consumer with electricity unless such consumer has failed to pay the agreed charges, The court restrictively interpreted the phrase : 'the agreed charges' to mean the unpaid due levies relating to the supply of electricity and nothing else. Where there were no such outstanding levies due to a local municipality by a resident consumer, the former was precluded by law from depriving the latter with the credit supply of electricity. By credit supply I mean providing electricity service first and demanding payment afterwards. I am in respectful agreement with the interpretation of Van Coller, J.
- [24] In that case, counsel for the transitional local council contended that Regulation 11(1) Electricity Supply Regulations (ex Local Authority Ordinance No. 8/1962, Free State Province) empowered a municipality to disconnect the supply of electricity to a consumer if any levies due to the council were in arrears. The crux of the argument was that the regulation envisaged two different scenarios concerning the provision of electricity service by a municipality to a consumer. The first scenario was the direct supply of electricity to a particular consumer for his/her exclusive domestic use or consumption. This was explicit in the electricity component of the municipal service bill. The second scenario was the indirect supply of electricity to the general community for its inclusive communal and social use or consumption. This indirect supply of electricity was implicit in the other part of the municipal service account, namely the general component commonly called the water component.
- [25] Van Coller, J was not persuaded by the aforesaid interpretation of Regulation 11(1). He recognised that the electricity levy had two facets in terms of this regulation. Firstly, the one facet was expressed in the words "any levies due to the council for electricity supplied". He interpreted these words to mean levies imposed for the actual supply of electricity itself to a particular consumer. Secondly, the other facet was expressed in the words "any levies due to the council in connection with electricity supplied". He interpreted this second category of words to mean levies imposed (not for the actual electricity supply itself) but levies imposed on the basis of some ancillary services rendered to a particular consumer in connection

with the main service of electricity supply.

[26] These ancillary' services of electrical nature may relate for instance to the excavation of a trench for the electrical cable, the electrical wiring of the consumer's dwelling, the tubing of the walls, the supplying and fitting of electrical meters, the repairing and maintaining of electrical systems, the installation of special devices such as the coupon electricity measuring instruments or the replacing of worn out electrical spare parts or testing of the installations. Van Coller, J came to the conclusion that even though the key words "in connection with" in regulation 11(1) did not have a precise meaning, they had to be given their ordinary literal meaning, regard been had to the nature of the regulation, the context in which they were used and the intention of the legislative organ - vide p.727B-E. The court held that the levies, which the regulation envisages, are the levies imposed in connection with the electricity supplied to a particular consumer. Again I am in respectful agreement with this interpretation of Regulation 11(1).

[27] The case of SENEKAL INWONERSVEREENIGING (supra) is distinguishable from the instant case in certain respects. There electricity was supplied on regular credit basis. Here electricity

was supplied on irregular cash basis. There the threat was based on a decision. Here the action is based on a legal enactment. The foundational theme of the case for the residents here is that if it was legally impermissible for a municipality to disconnect supplying electricity to consumers on credit where there was an inherent risk of irrecoverable loss, then it was legally as a matter of logic, absolutely impermissible and unjustifiable for a municipality to discontinue the supplying of electricity to consumers who purchase such electricity for cash since the cash purchase of a commodity totally eliminates the risk of bad debts! Mr. Snellerburg made this submission repeatedly in his able argument.

[28] It is significant to bear in mind yet another important factor between that case and this case. That case was decided in 1998, 19 February, over five years ago. Meanwhile an important new national legislation was enacted. This local government legislation, known as the Municipal Systems Act No. 32/2000, became operative on 1 March 2001. Section 97(1) Municipal Systems Act No.32/2002 provides that a credit control and debt collection policy of a municipality must, among others, provide for termination of services or restriction of the provision of services when payments are in arrears. Mr. Edeling argued that this statutory provision empowers a municipality to terminate the provision of any service to a consumer if the municipal services account of such a resident consumer is in arrears. I am persuaded by this submission. Notwithstanding his able argument, Mr. Snellenburg could not persuade me to see this section differently from the interpretation attributed to it by his opponent.

[29] 'There appears to be no hidden or obscure meaning that can be attributed to the relevant words "termination of services" when the payments are in arrears. These words simply mean what they say. Giving tire words their ordinary literal interpretation, they mean putting an end to the provision of any service whatsoever nature nothing excepted when the

municipal service account in respect of levies which had become due and payable by a resident consumer in favour of the local municipality still remain unpaid. It is common cause in casu that the applicants are all indebted to the first respondent. This section does not make any distinction between the electricity

component of a municipal service account on the one hand, and the general component of a municipal service account on the other. It is my considered opinion that dichotomizing a municipal service account between the special component relating to a single type of service, electricity and the general component consisting of a great variety of other services such as water service, sanitary service, garbage service and numerous other services as I have mentioned elsewhere during the course of this judgment is artificial, cosmetic and obstructive. This artificial dichotomy or hurdle merely hampers many local municipalities from using effective and meaningful methods, procedures or mechanisms of debt collection and credit control in a sustainable manner in order to promote the economic, the health and social development of the communities they govern. The first respondent averred that a substantial amount of money is owed to it by the residents.

[30] The local municipality will not attain its objects or discharge its primary constitutional imperative of ensuring the provision of services to communities in a sustainable manner unless they also have practically, effective and adequate statutory powers to withhold the provision of services to identified members of their communities with evasive, delinquent or parasitic tendencies. Of course, it is very important to distinguish between such parasitic residents from genuine indigent persons in our communities. The municipal service account should be seen treated and settled as a composite but single account for various services provided. It should not be seen, browsed and. treated as if it were a restaurant menu from which the resident have the right freely to choose what they like to consume and to partially settle the service account only for that which they freely chose to consume. Allowing the splitting of the municipal service account and recognising the consumers' alleged right of freedom to select which service to buy from the municipality menu of services can lead to absurd legal consequences. If X is allowed to choose paying for electricity supply only why can Y be denied a similar right to choose paying for say garbage removal service only and Z for say sewerage service only. The municipal service account is a composite bill of services. A local government provides a single

municipal service. A municipal service consists of multiple facets. It is a package of a wide range of facets, which together form an integral and indivisible single service. It must be seen as such.

[31] The residents of any town community enjoy communal facilities such as public recreational parks, community sports centres, public streets, social community halls, street lamps and community health clinics to mention a few. The provision of these amenities and their maintenance require financing. The levies relating to these amenities are never specified on the municipal service account. But two things are certain. The first thing is that these amenities are not provided free of charge. The second thing is that a local authority provides the service, which is more extensive than the mere provision of water and energy. The

inescapable but logical deduction that can be made is that in adopting and implementing a tariff policy in terms of section 74(1) Municipal Services Act No. 32/2000, the costs of providing these indirect municipal services are in one way or another built into the levies to be imposed for the two common facets of municipal service accounts, namely provision of electricity service and provision of water service. The provision of water and electricity are obviously among the major sources of municipal revenue.

[32] It should therefore be clear that a resident who pays for the electricity supply only, because he is unhappy with the water service, in fact withholds payments not only for water but for many other facets of a municipal service in respect of which no good cause exists for withholding payment. If that situation continues the defaulting residents who partially pay their municipal service accounts will continue to enjoy the full provision of such indirect municipal services at the expense of the non-protesting residents who unselectively pay their municipal service accounts in full on a regular basis. In such a situation it cannot be said that the users of such municipal services are equitably treated as section 74(2) Municipality Systems Act No. 32/2000 requires.

[33] The danger of allowing such selective payment of municipal service accounts lies in the fact that it will encourage more and more residents to resort to every flimsy and frivolous reasons to evade paying for the so-called water component of the municipal service account knowing that the local government is obliged to provide them with six kilolitres of free water every month. Granting this final interdict or the relief sought by these eight residents of Ha-Rasebei will have far-reaching consequences on the sustainable

development of the communities by the local government. The opportunistic residents will see it as an open invitation or judicial license to subvert the laudible social programmes by the state to uplift the poor. The indigent subsidy scheme should not be

exposed to serious exploitation and abuses. The benefit of the social upliftment programme will evaporate into thin air. Such

exploitation, abuses and greed should not be allowed to derail noble efforts to cultivate social justice in all communities. In the long run a stage may be reached when Kopanong Local Municipality might find itself financially unable to pay the account of the Water Board, the bulk supplier of this essential commodity. When the Water Board decides to discontinue the supply of water to a local municipality all the residents, including those whose municipal service accounts are fully paid up, will be adversely affected as if they were all defaulters. I have lived in a disadvantaged community most of my life. I know the pain of being deprived of a service that you have paid for. I have no doubt that the introduction of coupon electricity sales and the special electricity measuring apparatus installed by the first respondent were aimed at preventing such social injustices. Before me it was contended that instead of cutting off the electricity supply the first respondent should have cut off the water supply. I have already indicated that the so-called water levy is utilised for the provision of multiple other unspecified but important community services. Probably the same may be true for the energy levy. On that score alone this argument is

flawed. But there is another aspect, which makes it untenable. Disconnecting the water supply to defaulters entails serious health hazards, not only for the defaulters themselves, but for the entire community. It must be remembered that the provision of sanitary service requires water. Social evils such as thieving of water from neighbours is a possibility, which can never be discounted when the water supply is shut down. Disconnecting water is an option, which has the potential to cause social conflict in the community. It was also suggested that the first respondent should have sued the applicants instead of depriving them of electricity. But resorting to civil court process is notoriously a cumbersome method of collecting small debts due to a municipality. In casu, none of the debts owed to Kopanong Local Municipality exceeds R3 000,00. Suing the debtors via the lawyers is therefore not a cost effective and a sustainable method of collecting such small debts. It is an expensive and a protracted procedure.

- [35] The matter which now remains under the spotlight is the impact of section 97(l)(g) Municipal Systems Act No. 32/2000 on section 11(b) of the Electricity Act No. 41/ 1987. The primary legislative guidelines concerning the running of any community affairs by a local government is the current national legislation, the Municipal Systems Act No. 32/2000. A municipality has a constitutional right to govern on its own initiative, the local governmental affairs of its community according to the applicable national legislation and provincial legislation
- section 151(3) Act No.108/1996. Neither a national government nor a provincial government may Impede the right of a municipality to exercise its powers or perform its functions - see section 151(4) Act No. 108/1996. I understand this section to imply that the national government organ or any of the nine provincial government organs may not be too prescriptive by way of legislation or otherwise to a local government organ. On its own initiative the first respondent took certain resolutions in conformity with section 97(l)(g) Municipal Service Act No. 32/2000 which empowers it to discontinue providing any service to a consumer who is indebted to a local municipality in respect of the municipal service rendered. The provision. of electricity was not expressly exempted from the operation of this section. Unlike in the Senekal case, here the resolution of the municipality and the action taken in pursuit of such resolution were expressly permissible by law.
- [36] in the light of the reciprocal relationship between a municipality and a resident (section 95(a) Municipal Systems Act No. 32/2000), the equitable treatment of all members of the community (section 74(2)(a) Municipal Systems Act No. 32/2000), the cultivation of a culture of social justice (section 97(1)(e) Municipal Systems Act No.32/2000) and the awesome responsibility of the municipality to devise procedures and mechanisms in order to implement an effective debt collection policy and a credit control policy, the right of a consumer to demand the provision of a municipal service must be considered with its corresponding duty. Such right is implicitly limited by the reciprocal and equitable obligations to pay the municipal service account in an unfragmented manner. The first respondent was entitled to discontinue the sale of energy coupons to the applicants by virtue of the breach of their reciprocal obligations, which they had committed. I am moved

by considerations of social justice, equity and law to find that clause 7.2.4 of the Credit Control Principles and Measures, the municipal council resolutions which were adopted, and the final municipal action taken against the applicants were permissible and justified. In my view the administrative action was lawful reasonable and procedurally fair (sec 33 Constitution Act No. 108/96), regard been had to the circumstances of the case. I am not persuaded by the contention that the applicants constitutional right had been violated. [37] According the rule nisi is hereby discharged. The applicants, unless otherwise previously ordered, are ordered to pay the costs of this application jointly

and severally, the one paying the others to be absolved. M.H. RAMPAL, J On behalf of Applicants: Adv. N. Snellenburg Instructed by: Honey & Partners On behalf of Respondents: Adv. W.J. Edeling Instructed by: Bokwa Attorneys

[28] It is significant to bear in mind yet another important factor between that case and this case. That case was decided in 1998, 19 February, over five years ago. Meanwhile an important new national legislation was enacted. This local government legislation, known as the Municipal Systems Act No. 32/2000, became operative on 1 March 2001.

Section 97(1) Municipal Systems Act No.32/2002 provides that a credit control and debt collection policy of a municipality must, among others, provide for termination of services or restriction of the provision of services when payments are in arrears.

Mr. Edeling argued that this statutory provision empowers a municipality to terminate the provision of any service to a consumer if the municipal services account of such a resident consumer is in arrears. I am persuaded by this submission. Notwithstanding his able argument, Mr. Snellenburg could not persuade me to see this section differently from the interpretation attributed to it by his opponent.

[29] 'There appears to be no hidden or obscure meaning that can be attributed to the relevant words "termination of services" when the payments are in arrears. These words simply mean what they say. Giving tire words their ordinary literal interpretation, they mean putting an end to the provision of any service whatsoever nature nothing excepted when the municipal service account in respect of levies which had become due and payable by a resident consumer in favour of the local municipality still remain unpaid. It is common cause in casu that the applicants are all indebted to the first respondent. This section does not make any distinction between the electricity

component of a municipal service account on the one hand, and the general component of a municipal service account on the other. It is my considered opinion that dichotomizing a municipal service account between the special component relating to a single type of service, electricity and the general component consisting of a great variety of other services such as water service, sanitary service, garbage service and numerous other services as I have mentioned elsewhere during the course of this judgment is artificial, cosmetic and obstructive. This artificial dichotomy or hurdle merely hampers many local municipalities from using effective and meaningful methods, procedures or mechanisms of debt collection and credit control in a

sustainable manner in order to promote the economic, the health and social development of the communities they govern. The first respondent averred that a substantial amount of money is owed to it by the residents.

[30] The local municipality will not attain its objects or discharge its primary constitutional imperative of ensuring the provision of services to communities in a sustainable manner unless they also have practically, effective and adequate statutory powers to withhold the provision of services to identified members of their communities with evasive, delinquent or parasitic tendencies. Of course, it is very important to distinguish between such parasitic residents from genuine indigent persons in our communities.

The municipal service account should be seen treated and settled as a composite but single account for various services provided. It should not be seen, browsed and. treated as if it were a restaurant menu from which the resident have the right freely to choose what they like to consume and to partially settle the service account only for that which they freely chose to consume. Allowing the splitting of the municipal service account and recognising the consumers' alleged right of freedom to select which service to buy from the municipality menu of services can lead to absurd legal consequences. If X is allowed to choose paying for electricity supply only why can Y be denied a similar right to choose paying for say garbage removal service only and Z for say sewerage service only. The municipal service account is a composite bill of services. A local government provides a single

municipal service. A municipal service consists of multiple facets. It is a package of a wide range of facets, which together form an integral and indivisible single service. It must be seen as such.

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