

SOUTH AFRICA / JUDGMENT

Brokenshire NO v City Of Johannesburg Metropolitan (081420/2023) [2023] ZAGPJHC 1060 (18 August 2023) [2023] ZAGPJHC 1060

COURT

South Gauteng High Court, Johannesburg

BEFORE

Yacoob

CASE / FILE NUMBER

081420/2023

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 081420/2023

DATE: 18-08-2023

NOT REPORTABLE

OF INTEREST TO OTHER JUDGES

REVISED

In the matter between

GRAHAM JOHN BROKENSHIRE N.O Plaintiff And THE CITY OF JOHANNESBURG
METROPOLITAN Defendant

J U D G M E N T

YACOOB J:

The applicant is a trustee of a trust which is consuming electricity provided by the respondents although the account through which the electricity is provided is not in the name of the trust. A dispute between the parties dealing with amounts which have been debited on the account, is pending before this Court.

That application was instituted in 2021. In February this year, 2023 a pretermination notice was served on the property and the trust then engaged with the city regarding a resolution of the issue. The city then agreed to flag the account, meaning, that the supply would not be terminated while it was flagged and agreed to do so until 30 June.

The trust then received correspondence that the account was flagged again from 1 August. On 16 August, and with no additional notice, the electricity supply to the applicant's property was terminated. After the termination, the trust discovered that they had not been paying the amounts that were invoiced by the city, instead they had been paying an amount on their "check meter" which was incorrect. They had therefore been underpaying. They then paid an amount of R890000 into the account.

There are two issues here. The one is that the trust was not paying the full amount that was being invoiced, so they were not up to date on paying for current consumption. The second issue is the question of the pretermination notice, and whether the city could rely on the one served in February, or a new one was necessary before termination could take place.

Mr Sithole, for the city, referred me to authority in support of the proposition that, if there is a pretermination notice and it is not responded to, then the city is entirely entitled to act on it even if it is a long time after the service of that pretermination notice.

In this case however, I am satisfied that the applicants were in fact engaging with the city on the very issue which gave rise to the delivery of the pretermination notice, and that there is pending litigation dealing with the debt to which the pretermination notice applies. In fact, the respondents themselves point out that much of the relief sought today, or at least the issues dealt with in this application, are pending before another court.

I am, therefore, satisfied that there has been engagement, that the applicants have not simply ignored the pretermination notice, and that this disconnection was the result of a different issue than that which gave rise to the February pretermination notice. For these reasons, termination without serving a fresh pretermination notice was unlawful. Had the respondents served a fresh pretermination notice based on the current non-payment and there had been no response to that, then they would have been entitled to disconnect.

It is submitted for the respondent that the applicant cannot rely on the fact that they "discovered" their underpayment after the disconnection, and then paid the amount that had been underpaid, to claim that they were entitled not to be disconnected. However this is entirely the point. The pretermination notice is a means to bring the problem in the account to the notice of the account holder, and to give them an opportunity to fix the problem. Had a fresh pretermination notice been served, this would have prompted the trust to check its status. Instead, the termination itself resulted in the trust checking and finding the problem. If it had been the pretermination notice that resulted in this process, the termination would never have needed to happen. The trust's contentions in this regard are therefore entirely valid.

The applicant asks for an order of reconnection and also for an interdict. They cannot get an unconditional interdict in perpetuity because, obviously, they have to pay for the services that they consume. However, I am satisfied that it is in the interest of justice that the city refrain from terminating for the historic debt until the court proceedings dealing with that debt have been determined.

I therefore grant an order in the following terms:

1. That the forms and service provided for in the Uniform Rules of the above Honourable Court and the Practice Directives be dispensed with and that this matter be dealt with as one of urgency in terms of Rule 6(12)(b);
2. The disconnection of electricity supply to the Applicant's property on 16 August 2023 is unlawful;
3. The Respondent is ordered to restore the electricity supply to the Applicant's property within 2 (two) hours of this order being handed down;
4. If the Respondent fails to do the reconnection within 2 hours of the handing down of this order, the Applicant is entitled to enlist the services of a private contractor to reconnect the electricity supply and attend to all actions necessary in this regard, including but not limited to the installation of a replacement meter for the one that has been removed, and that the Respondent will not be able to take any action against such private contractor in relation thereto, and hold the Respondent liable for the costs associated with the use of such services;
5. The Applicants are directed to ensure that the Trust remains up to date with payment of the current charges for account number 221096029 in accordance with what is billed as current charges on the Respondent's invoices in respect of the property;
6. For as long as the Applicants remain up to date with payments of the current charges, the Respondent is hereby interdicted from disconnecting/terminating, or causing or instructing the disconnection/ termination of the electricity or water supply of the Property, for any reason whatsoever, at any time after the handing down of this order;
7. In the event that the Trust and /or the Applicants do not pay the current amount on a monthly basis and in terms of what is invoiced as the current amount on the Respondent's invoices, then the Respondent must serve a new pre-termination notice in respect of the property before terminating services supplying the property;
8. Any termination in respect of the historical debt is interdicted pending finalisation of the dispute under case number 2021-26601;

9. The Respondent may not charge any penalty or disconnection or restriction or meter tampering charge, whatsoever, to the Applicant's accounts, in respect of the disconnection carried out at the Property on or about 16 August 2023, whether in terms of the City's tariffs, by-laws, policies, or otherwise;
10. The costs of this application are to be paid by the Respondent.

YACOOB, J

JUDGE OF THE HIGH COURT

DATE: 21 September 2023

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Prepared on 12 October 2026 · Esheria