

SOUTH AFRICA / JUDGMENT

Copper Sunset Trading 443 (Pty) Ltd v Centlec SOC Ltd (2189/2019) [2019] ZAFSHC 264 (15 November 2019) [2019] ZAFSHC 264

COURT

Free State High Court, Bloemfontein

BEFORE

N M Mbhele

CASE / FILE NUMBER

2189/2019

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IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Case No: 2189/2019

In the matter between:-

COPPER SUNSET TRADING 443 (PTY) LTD

Plaintiff

and

CENTLEC SOC LTD

Defendant

REASONS

FOR JUDGMENT

JUDGE:

N. M. MBHELE, J

DELIVERED ON: 15 NOVEMBER 2019

[1] The matter served before my brother Mhlambi, J, on an urgent basis, where the applicant prayed for an order in the following terms:

1. That this application be heard as an urgent application and that the Honourable Court condones the non-compliance with the rules

pertaining to form and service as set out in Rule 6(12).

2. That a rule nisi be issued, returnable on Thursday, 1 August 2019, calling upon the Respondent to show cause, if any, why the following orders should not be made final:

2.1 That the Respondent be ordered to reconnect the Applicant's electricity at 10 James Dick Street, Wilgehof, Bloemfontein (the "affected premises") within two hours of this Order being granted and provided to the Respondent.

2.2 That the Respondent be prohibited from disconnecting the electricity supply to the affected premises, or from disrupting supply of electricity for reasons pertaining to arrears allegedly owed with regards to electricity account number: 50000931381, until such time as the dispute lodged by the Applicant, and/or proceedings for statement and debate of account, to be lodged within 30 days of the dispute not being resolved, is finalised.

2.3 That the Respondent be ordered to attach a working locking mechanism on the affected premises' meter's electrical box within two hours of this Order being granted and provided to the Respondent.

2.4 That in the event of the Respondent failing to reconnect the Applicant's electricity supply at the affected premises, the Applicant is entitled to appoint an independent contractor to perform such reconnection, and the Respondent will be responsible for the cost thereof.

2.5 That the Respondent be ordered to pay the costs of this application.

3. That the Orders in prayers 2.1 – 2.4 above, shall serve as an interim interdict, with immediate effect, pending the final

adjudication of this application.

4. Further and/or alternative legal relief.

[2] Mhlambi J, made the following order per agreement between the parties;

1. The matter is postponed to the opposed roll of 13 June 2019;
2. The respondent is to file answering affidavit on or before close of business on 24 May 2019;
3. The applicant is to file its replying affidavit on or before close of business on 31 May 2019;
4. The parties are to file heads of argument in terms of practice rules;
5. The applicant will pay under protest an amount of R10 000.00 towards the electricity account, which remains disputed, and provide proof of payment by 17:30 on 17 May 2019;
6. The applicant will pay his monthly current account.

7. The respondent will reconnect the applicant's electricity to the affected premises before 22:00 on 17 May 2019. And will not terminate supply pending the finalisation of this application and/or payment in full of the applicant's current account with respondent.

8. Costs to stand over for later determination.

[3] The matter came before me for confirmation of a rule nisi.

After listening to the arguments I made the following order:

1. The Application is heard as an urgent Application and condonation is granted in respect of the non-compliance with the rules pertaining to form and service as set out Rule 6(12).

2. Subject to the applicant paying its monthly consumption of electricity, the respondent is prohibited from disconnecting the electricity supply to the premises known as the Copper Sunset Flats at 10 James Dick Street, Wilgehof, Bloemfontein, for the reasons

pertaining to arrears allegedly owed as a result of reconnection fees levied against the applicant for the period covering 12 March 2019 to 16 May 2019 with regards to electricity account number: 50000931381.

3. The Respondent shall install a working locking mechanism for the electricity meter box at the aforementioned premises within the 14 days from date of the order.

4. The Respondent is to attend to the issues raised by the applicant in relation to the disputed reconnection fees and finalise such within 60 days from the date of this order.

5. Each party to pay its own costs.

The parties requested reasons for my judgment. The reasons are set out below.

[4]

Background

The applicant is a legal entity acting as a landlord to tenants at a block of flats situated at 10 James Dick Street, Wilgehof,

Bloemfontein (the property).

The respondent is a state owned company and an entity of the Mangaung Metro Municipality (MMM) contracted by the latter to supply

electricity to citizens and entities within MMM's area of jurisdiction.

- [5] The respondent supplies electricity in bulk and bills applicant for such supply. The applicant supplies electricity to its tenants, comprising of 18 households, through the use of prepaid meters. On 15 April 2019 the respondent terminated supply of electricity to the property. The electricity was reconnected on 16 April 2019. The applicant avers that the reconnection was as a result of the dispute he lodged with the respondent regarding its bill wherein the applicant demanded reinstatement of electricity supply.
- [6] On 16 May 2019 the Respondent terminated electricity supply to the premises. On the same day a notice, dated 3 May 2019 informing the applicant that its electricity supply has been disconnected due to its account being in arrears was received at the premises. It is this termination of electricity supply that prompted the applicant to approach this court on an urgent basis.
- [7] The applicant thereafter lodged a dispute with the Respondent as the Municipality's service provider regarding the arrear amount which included reconnection fee. The dispute was lodged in terms of section 102 of the Local Government: Municipal Systems Act 32 of 2000. The respondent has at the time of hearing of this application not responded to the above complaint.
- [8] The applicant disputes the reconnection fees charged by the respondent and submits that the disconnection was in itself unlawful

as it was done in contravention with the applicable by laws. It is the applicant's case that the notice informing it of the

disconnection was only delivered on 16 May, the date on which the electricity supply was terminated. The notice, although it was delivered on 16 May 2019, it was dated 3 May 2019. The disconnection fees were levied in advance together with interest thereon.

- [9] The issues in question are whether the respondent's disconnection of electricity supply to the property was lawful and

whether section 102 of the Municipal Systems Act is applicable to the respondent. On 16 May the outstanding balance owing to the respondent by the applicant, according to the notice, was R 14 296. 39 including reconnection fees, notice fees and interest thereon. The applicant paid an amount of R10 000.00 in response to the court order granted by Mhlambi, J after which electricity supply was reconnected.

- [10] The respondent resists the interim relief sought by the applicant on the basis that it is of the view that section 102 of the Municipal Systems Act is not applicable to the respondent and since the objection was lodged against it such objection is not valid. The first respondent denies that the reinstatement of electricity supply at the applicant's premises during the month of April was done by the respondent in response to the dispute lodged by the applicant. It is the respondent's case that the electricity was disconnected on 11 April 2019 and when its employee, Hloni Ntsane, visited the property on 30 April 2019 he found that the electricity was illegally reconnected where after he disconnected it again and locked the

electricity meter box. According to the respondent, on 30 April the meter had the same readings it had when the electricity was disconnected on 11 April even though there had been consumption of electricity on the property before the 30th April. No further evidence was supplied on how this came about. On 16 May the electricity was again found reconnected.

[11] The applicant denies that Ntsane visited the premises on 30 April and disconnected electricity. It is not clear why on 3 May 2019 when the respondent wrote a notice informing the applicant of its reasons for disconnection it did not state that the electricity was disconnected because the applicant had tampered with the meter box which information was within the respondent's knowledge on 30 April 2019 already. The applicant submitted that the disconnection of electricity supply requires a reasonable notice by the supplier of such service. There is no evidence to gainsay the applicant's version that on both 15 April and 16 May 2019, when the electricity supply was disconnected, no prior notices were served on the applicant.

[12] Section 9 (1) and (2) of the Mangaung Local Municipality by Laws relating to electricity supply reads as follows:

"Right to disconnect supply

1. The service provider shall have the right to disconnect the supply of electricity to any premises if the person liable to pay for such supply fails to pay any charge due to the service provider in connection with any supply of electricity which he may at any time have received from the service provider in respect of such premises, or, where any of the provisions of this by-law are being contravened, provided the service provider has given the person 14 (fourteen) days' notice to remedy his default and the person has failed to remedy such default after notice has been given, or in the case of a grave risk to person or property, or as envisaged in terms of section 44 of this by-laws, without notice. After disconnection for non-payment of accounts or the improper or unsafe use of electricity, the fee as prescribed by the service provider shall be paid."

[13] The respondent is bound by the above provisions. It had to give the applicant a 14 days pre-termination notice. For the notice to be adequate it must contain all the relevant information including the date and time of the proposed disconnection, the reason for the proposed disconnection and the place at which the affected parties can challenge the basis of the proposed disconnection. See (*Joseph and Others v City Of Johannesburg An Others* 2010 (4) SA 55 (CC)).

[14] The applicant submits that although the respondent is not a municipality, it is a service provider tasked by the Mangaung Metro

Municipality to fulfil its statutory obligation of supplying electricity to its population. The respondent contends that the respondent is not a municipality and that section 102 of the Municipal Systems Act is restricted to municipalities and finds no application on the respondent.

[15] Section 1 of the Municipal Systems Act defines a municipal entity as a private company referred to in section 86 B (1) (a). A private company is defined as follows in Section 86B (1) (a):

- (a) a private company-
- (i) established by one or more municipalities in terms of Part 2; or
- (ii) in which one or more municipalities have acquired or hold an interest in terms of Part 2;

[16] In *City Power Ltd v Grinpal Energy Management Services (Pty) Ltd and Others* 2015 (2015) 36 ILJ 1423 (CC) at paragraphs 20 and 23 the constitutional court said the following when it dealt with the applicability of the Municipal Systems Act to entities performing functions on behalf of state organs.

“(20) A mere reliance on the fact that City Power is a private company does not take into account that these entities are usually established for the sole purpose of performing public functions as required in terms of section 86E. In terms of section 86E (1) a municipality may establish a municipal entity only for the “purpose of utilising the company as a mechanism to assist it in the performance of any of its functions or powers” and where the functions of such a municipal entity would benefit the local community. The public nature of the functions performed by City Power and the restrictions imposed on such municipal entities by Municipal Systems Act distinguish them from other private entities.

(23) For the purposes of the present dispute, Grinpal and City Power are organs of state that perform public functions akin to those of a municipality. The Johannesburg Municipality cannot avoid its constitutional obligations and public accountability for the rendering of public services by forming a municipal entity like City Power. It remains accountable to the people of South Africa for the performance of those functions by City Power. Likewise, City Power cannot avoid its constitutional obligations and public accountability by delegating its functions to Grinpal.”

[17] The argument by Mr. Snyman that the applicant’s dispute should have been lodged with the Municipality does not appreciate that Mangaung Municipality outsourced its constitutional obligation of supplying electricity to the people in its area of jurisdiction to the respondent. The respondent like City Power in *City Power v Grinpal* supra renders a public function that would have otherwise been performed by Mangaung Municipality in terms of the constitution. It follows that the respondent substituted the Municipality as the service provider and that the applicant was justified to lodge its dispute with the respondent.

[18] All billing queries relating to electricity supply in the area of jurisdiction of Mangaung Municipality should be directed to the respondent. It follows that the applicability of the Municipal Systems Act to the respondent includes section 102 thereof. The respondent has a duty to consider the applicant’s dispute. It would be wrong to say that the respondent has an obligation to provide a service that it cannot be held accountable for. In as much as it is empowered to supply electricity and render bills to consumers for the electricity supplied it also has a duty to explain its tariffs and where there are queries to explain how amounts

were levied on the impugned accounts.

[19] Section 102 (1) and (2) of the Municipal Systems Act provides as follows:

“(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.”

[20] The applicant disputes the reconnection fees, notice fees and interests charged thereon. The respondent adopted the ostrich

approach when handling the applicant’s dispute. It is clear from the above that the respondent had to consider the dispute before implementing credit control measures available to it.

[21] It is trite that the following are requisites for an interim interdict to be granted:

- i. a prima facie right, although open to some doubt;
- ii. a well-grounded apprehension of irreparable harm if interim relief is not granted and ultimate relief is eventually granted;
- iii. the balance of convenience favours the granting of the interim interdict, and
- v. the applicant has no other satisfactory remedy. See: *Webster v Mitchell* 1948 (1) SA 1186 (W)

[22] The respondent contends that the balance of convenience does not favour the granting of an interim order in that the applicant had other remedies available to him including settling the account in full. This argument seeks to take away the right of the applicant to question the service offered to it by the respondent. It further seeks to enforce the suggestion that the respondent as an organ of state does not owe its consumers fair and just administrative action.

It is for the above reasons that the aforementioned order was issued.

NM MBHELE, J

On behalf of the plaintiff: Adv J.F. Mitchley

Instructed by: Pieter Skein Attorneys

BLOEMFONTEIN

On behalf of the defendant: Adv C Snyman

Instructed by: Phatsoane Henney Inc

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Prepared on 8 October 2026 · Esheria