

SOUTH AFRICA / JUDGMENT

## Highlands CC v Matjhabeng Local Municipality (6835/2023) [2024] ZAFSHC 322 (19 September 2024) [2024] ZAFSHC 322

COURT

Free State High Court, Bloemfontein

BEFORE

Chesiwe

CASE / FILE NUMBER

6835/2023

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Reportable

/ Not reportable

Case

no: 6835/2023

In

the matter between

HIGHLANDS

COURT CC

APPLICANT

and

MATJHABENG

LOCAL MUNICIPALITY

RESPONDENT

Neutral

citation: Highlands Court CC v Matjhabeng Local Municipality

Coram:

Chesiwe J

Heard:

Heard on 16 May 2024

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| Delivered: | <p>This judgment was handed down in open court and electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 19 September 2024.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Summary:   | <p>Dispute with the Municipality in terms of Section 102 of the Local Government: Municipal Systems Act, 32 of 2000 – Municipality's unlawful installation of bulk electricity meter - Impermissible charges on the electricity bill - Unlawful disconnection of the individual electricity meters.</p> <p>ORDER</p> <p>1.</p> <p>The Respondent is ordered to immediately remove the bulk electricity meter it installed at the building known as Highland Court, 84 Highland Avenue, Virginia and at the same time (so as to ensure that there is no interruption in the supply of electricity to the building), reconnect the electricity supply to each separate and individual unit in the building through the existing separate individual electricity meters assigned to each unit.</p> <p>2.</p> <p>The Respondent to henceforth, and with effect from the date of this order, raise charges for the supply of electricity through each of the separate individual electricity meters according to the residential tariff which was applicable at the time that the Respondent disconnected the electricity supply to the separate and individual units on the property through the separate and individual electricity meters assigned to each unit;</p> <p>3.</p> <p>The Respondent to pay the costs of this application on a party and party Scale C.</p> |

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**JUDGMENT**

Chesiwe J

**Introduction**

[1] The Applicant launched an application in which it seeks the removal of the bulk electricity meters and the reconnection of the separate and individual supply of electricity to units in a building of flats. The application is opposed.

[2] The relief sought is as follows:

*“1. That Respondent be ordered to immediately remove the bulk electricity meter it installed at the building known as Highlands Court, 84 Highlands Avenue, Virginia (“the property”) and at the same time (so as to ensure that there is no interruption in the supply of electricity to the building), reconnect the electricity supply to each separate and individual unit in the building through the existing separate individual meters assigned to each unit;*

2. The Respondent be ordered to henceforth, and with effect from the date of this order, raise charges for the supply of electricity through each of the separate individual electricity meters according to the residential tariff which was applicable at the time that the Respondent disconnected the electricity supply to the separate and individual units on the property through the separate and individual electricity meters assigned to each unit;

3. The Respondent be ordered to reverse all bulk meter charges debited against the Applicant’s account with the Respondent of the supply of electricity to the property since the installation of the bulk electricity meter;

4. That such further and/or alternative relief as the above Honourable Court deems meet, be granted, and;

5. That the Respondent pay the costs of this on the scale as between attorney and client.”

[3] Before the commencement of oral arguments, prayer 3 of the notice of motion was abandoned by the Applicant and would therefore not be dealt with. Issues for determination by this Court are whether the disconnection of the individual electricity meters were unlawful and whether the installation of the bulk electricity meters was unlawful.

## Background

- [4] The Applicant is the owner of all the sectional title units in a building since 1984. The Applicant had separate electricity meters installed in all the sectional title units. The electricity was billed and charged by the Applicant according to residential tariffs. This remained the position until November 2017 when the Respondent disconnected the electricity supply through the individual electricity meters to each separate unit and installed a bulk electricity meter.
- [5] Since the installation of the bulk electricity meter, the Applicant found it difficult to allocate the total charges for electricity supplied by the Applicant via the bulk electricity meter by way of pro-rata allocations to each separate unit. Further that, the billing and the items and charges raised on the bills submitted by the Respondent for electricity supplied via the bulk electricity meter. [1]
- [6] The Applicant proceeded to raise the dispute with the Respondent by sending a letter to the Municipal Manager on 13 July 2023, but with no success. [2] The Applicant denied any knowledge as to how and who gave consent to the installation of the bulk meter. Applicant alleged that the Respondent therefore entered the premises without consent and installed the bulk electricity meter unlawfully.
- [7] Counsel on behalf of the Applicant in oral argument as well as in the written heads of argument submitted that the Respondent disconnected the individual meters without consent. The Respondent was however, unable to show evidence or records for the application to remove the individual meters and install the bulk electricity meter. Counsel further submitted that the deponent of the Respondent's opposing affidavit cannot confirm the fact as it is hearsay since the deponent was not employed during the period the bulk electricity meter was installed. Further that the individual metering is more beneficial to the Respondent. [3] The Applicant has been struggling for the past years to resolve the dispute with the Respondent nor does the Respondent have a policy on dispute resolution. Counsel further indicated that the Applicant has abandoned prayer 3 that the bulk tariffs be written off.
- [8] Counsel on behalf of the Respondent submitted that the Applicant waited for five (5) years before approaching court and it is unacceptable. Counsel said the Respondent denies that it entered the premises unlawfully to install the bulk meters. Counsel denied that there was forceful entry to the premises and if there was forceful entry, the Applicant should have approached the police to lay criminal charges against the Respondent. Counsel further submitted that the Respondent is an organ of state, that it has its own authority and regulation when dealing with the installation of electricity meters.

- [9] The Applicants in the founding affidavit contends that the Respondent's unlawful conduct in installing the bulk electricity meter and refusing to install the separate electricity meters in the units has been the Applicant's objection since this installation. The Applicant had lodge several complaints in respect of the bulk meter system, but these were not attended to. The Respondent has provided the Applicant with inaccurate and incorrect accounts.
- [10] The Respondent in its opposing affidavit contends that the bulk meter was installed on the request of the Applicant. The Respondent gave details of the application in which a client makes the application for the changing of the metering system and if the application is approved, the individual meters would be removed and the bulk metering system installed. The Respondent indicates that the Applicant's representative made such an application during November 2017. [4]
- [11] The Respondent stated that the records of such an application are no longer available and the municipality official who received the application is no longer in the employment of the Respondent. [5] Thus, the record of the application is not available. The Respondent further contends that the Applicant waited for six (6) years before taking any action with regard to the installed bulk meter system.
- [12] Counsel for the Applicant submitted that Plascon-Evans rule is applicable as the facts stated by the Respondent together with the Applicants affidavit which are admitted or denied. The Court is therefore entitled to reject it on the papers.
- [13] It is trite that an Applicant in motion proceedings must make out the evidence to use in support of its affidavit that it filed with the notice of motion and is not permitted to supplement it in the replying affidavit, nor make out a case in the replying affidavit. [6]
- [14] In *National Director of Public Prosecutions v Zuma* [7], the Court said motion proceedings were designed for the resolution of legal disputes based on common facts.
- [15] Dispute do arise in motion applications whether minor or substantial, as a result f the Uniform Rules guide litigants in order to determine the facts upon which disputes of fact are determined.
- [16] The Respondent's version consists of denials and are palpably implausible and clearly untenable and the Court ought to reject it merely on the papers.
- [17] Section 84 of the Local Government Municipal Systems Act [8], (the Systems Act) provides as follows:

*“(1) A district municipality has the following functions and powers:*

(a)...

(b)...

(c Bulk supply of electricity, which includes for the purposes of such supply, the transmission, distribution and, where applicable, the generation of electricity.”

- [18] The Respondent on its own version, could not substantiate this evidence that an application was made by the Applicant to remove the individual metering and install the bulk metering system. The Applicant denied having applied for the bulk system. The Respondent cannot rely on speculation and probabilities that the Applicant may have applied. Even if the Applicant had applied, the Respondent ought to keep a record of such an application. The explanation that the official that may have received the application is no longer in the employment of the Respondent is not acceptable more so with technological advancements. The Respondent could easily trace the official to enquire about the application and make a request to be furnished with an affidavit that could explain what happened to the application.
- [19] The Respondent filed a draft Credit Control and Debt Collection Policy (Policy 2023/2024) which policy could not assist this Court as it is a draft. In any event, the draft deals with debt control and debt collection. The Applicant has abandoned the prayer on the debt account for the electricity supply.
- [20] The Applicant further raised an issue with the Respondent having entered its property unlawfully and without consent. Section 101 of the Municipal System Act [9] provides as follows:

*“101 Municipality’s rights of access to premises*

The occupier of premises in a municipality must give an authorised representative of the municipality or of a service provider access at all reasonable hours to the premises in order to read, inspect, install or repair any meter or service connection for reticulation, or to disconnect, stop or restrict the provision of any service.”

- [21] The Applicant denied giving the Respondent access to the property. In a letter dated 13 July 2023, the following is noted:

*“6. Our client did not consent to the installation said bulk meter, ...*

9. Our client has approached the municipality personally in this regard, but the municipality officials failed and/or refused to assist to resolve these disputes and to provide assistance.”

- [22] The Applicant’s founding affidavit, at paragraph 7.5, states as follows:

*“...approximately November 2017, when the Respondent, without the Applicant’s consent and without having any power or authority to do so, disconnected the electricity supply through the individual electricity meters to each separate unit and installed a bulk*

*electricity meter. (bulk electricity meter).”*

- [23] Indeed, the Applicant's evidence is that it did not apply for the installation of the bulk electricity system. Even if Section 101 provides that the occupier of a premises must (my emphasis), give an authorised representative permission to enter the premises, the Applicant denies ever giving such permission. The Respondent's situation worsened by not having any evidence with regard to the application nor on how entry was gained to the premises.
- [24] Further, the Applicant had attempted to have the matter resolved, but to no avail. Section 73 of the Municipal Systems Act provides that municipality services must be equitable and accessible. In this instance, it appears that the Applicant had no access to the services of the Respondent as the officials were not willing to assist with the dispute.
- [25] Therefore, the Applicant ought to be granted the relief sought. Respondent failed to resolve the complaint of the Applicant as per the annexed letters citing non assistance with the request to have the bulk electricity meter removed and the reconnection of the individual electricity meters situated at the premises in respect of each unit. [10]

#### Costs

- [26] The general rule is that costs follow the event.

#### Order

1. The Respondent is ordered to immediately remove the bulk electricity meter it installed at the building known as Highland Court, 84 Highland Avenue, Virginia and at the same time (so as to ensure that there is no interruption in the supply of electricity to the building), reconnect the electricity supply to each separate and individual unit in the building through the existing separate individual electricity meters assigned to each unit;

S. CHESIWE, J

Appearances For the Applicant: Adv. M C Louw Instructed by: Noordmans Attorneys.

Bloemfontein For the First and Second Respondents: Adv. N Nyezi Instructed by: Mahlokonya Attorneys Bloemfontein

- [1] Founding Affidavit, page 11 at para 8.3
- [2] Annexure "FA2", page 22
- [3] Answering Affidavit, page 38 at para 2.3
- [4] Ibid, 38
- [5] Answering Affidavit, page 39 at para 2.8
- [6] (See Minister of Land Affairs and Agriculture and Others v D & F Wevell Trust and Others 2008
- (2) SA 184 (SCA) at 200 C-E)

[6] (See Minister of Land Affairs and Agriculture and Others v D & F Wevell Trust and Others 2008

(2) SA 184 (SCA) at 200 C-E)

[7]2009

(2) SA 277 (SCA),

[8] Act 117 of 1998

[9] Act 32 of 2000

[10] Annexure “FA2” and “FA3”, pages 21 – 27.

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