

SOUTH AFRICA / JUDGMENT

Maharaj N.O. and Others v Johannesburg Water SOC Limited (26816/2020) [2022]

ZAGPJHC 790 (7 October 2022)

[2022] ZAGPJHC 790

COURT

South Gauteng High Court, Johannesburg

BEFORE

Adams

CASE / FILE NUMBER

26816/2020

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REPUBLIC
OF SOUTH AFRICA
IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION,
JOHANNESBURG
CASE
NO: 26816/2020

REPORTABLE: NO
OF
INTEREST TO OTHER JUDGES: NO

REVISED: 7th
October 2022

In the matter between: MAHARAJ,
ROSHEN N O
First Applicant
MAHARAJ,
KOMARIE N O
Second Applicant
MAHARAJ,
RASHEN ROSHEN N O
Third Applicant
MAHARAJ,
ROSHEN
Fourth Applicant
MAHARAJ,

KOMARIE
Fifth Applicant
and
JOHANNESBURG
WATER SOC LIMITED
Respondent

Coram: Adams J

Heard: 3 October 2022

Delivered: 7 October 2022 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand-down is deemed to be 15:00 on 7 October 2022.

Summary: Interdictory relief – cancellation of ‘metering contracts’ – the municipality has the right to change the way it provides water services – consumer does not have the right to insist on a particular mechanism – public administrative law applicable and not private contractual law – no case made out for interdict – application dismissed.
ORDER
(1)
The applicants’ application against the respondent is dismissed with costs.

JUDGMENT

Adams J:

[1]. The first to third applicants (‘the Trustees’) are the duly appointed trustees of the Roshen and Komarie Maharaj Family Trust (‘the Trust’). The first and second applicants are husband and wife, who are also cited in their personal capacities as the fourth and fifth applicants. The Trust, together with the fourth and fifth applicants in their personal capacities, are the owners of a number of erven (six in total) in Lenasia South. These erven are contiguous and situated on adjoining distinct cadastral portions of land, but which form one big property, with mixed use, in that it houses eight residential units, six businesses and one office unit, all of which are rented out by the applicants and from which the fourth and fifth applicants earn rental income.

[2]. The respondent is a ‘municipal entity’ of the City of Johannesburg Metropolitan Municipal Council (‘the City of

Johannesburg'), as contemplated by the Local Government: Municipal Systems Act[1] ('the Systems Act'), read with s 86C(1)(a), and is the 'service utility' of the Municipality responsible for the provision of water and related services to the residents of Johannesburg. The applicants are such residents of Johannesburg and their aforementioned properties have for many years been and are at present supplied with water by the City via the respondent pursuant to and in terms of written 'Metering Agreements' concluded during or about 2010 between the applicants and the respondent.

[3]. In issue in this opposed application are these written 'Metering Agreements', in terms of which the respondent supplies water and municipal water services to the applicants, the usage of which and the charges relating to the supply thereof being managed and controlled by pre-paid meters. The respondent has given notice of its intention to cancel these agreements and to replace them with agreements in terms of which the applicants are to be supplied with water and related services to be regulated, managed and controlled by conventional meters as against prepaid meters. The applicants dispute the respondent's entitlement to cancel the existing agreements and in this application they apply for orders interdicting the cancellation of the said agreements.

[4]. It may be apposite to cite the relief sought by the applicants in their notice of motion, which, in the relevant part, reads thus: -

'Take notice that the applicants intend to make application to this Honourable Court for an order in the following terms:

(1). That the respondent be interdicted and precluded from terminating with effect from 11 September 2020:

1.1 the vending agreement;

1.2 the metering agreement,

1.3 removing any meters furnished to the applicants in terms of such agreements;

1.4 terminating the water supply pending the outcome of this action.

(2). That a declaratory order be made declaring the metering and vending agreements as one for an indefinite period, to exist in perpetuity;

and

(3). Costs as between own client and attorney.'

[5] The main issues to be decided in this application is whether the applicants are entitled to the interdictory relief sought against the City of Johannesburg and whether there is a legal basis for such relief.

- [6] On 10 June 2020 the respondent, through its attorneys, gave the applicants notice that it (the respondent) intended cancelling the prepaid metering contracts, with effect from 11 September 2020, in respect of each of the properties of the applicants. The rescission notices from the respondent gave the applicants three calendar months' notice of the cancellation and also indicated that all the prepaid meters would be removed and replaced with conventional water consumption reading meters.
- [7] The applicants dispute the respondent's entitlement to cancel the agreement and avers that the respondent should be held bound to each of the contracts, regardless of any problems, and regardless of the fact that it would be at the cost of, and to the prejudice of the respondent, and ultimately, the community.
- [8] The applicants seek to draw a distinction between the respondent and the City of Johannesburg and contends that the respondent is a separate and distinct legal entity, with a separate and distinct identity. The reason for this is obvious. The City of Johannesburg has the right to enforce certain of its credit control measures and debt collection processes by, for example, terminating the supply of municipal services to a recalcitrant consumer if the account of such consumer is in arrears. To that end the City has the right and is empowered by the Systems Act to consolidate all of the accounts, including the rates and taxes bills, of a consumer. The authority for the foregoing principle is *Rademan v Moqhaka Local Municipality*[2]. All the same, the distinction which the applicants wish to draw is misguided, if regard is had to the provisions of the Systems Act – the respondent is the City of Johannesburg, and the City of Johannesburg is the respondent.
- [9] Mr Van der Merwe, who appeared on behalf of the respondents, points out – correctly so, in my view – that the duty to provide water services is not in issue. All of the contracts were concluded, with a view to agree a system or mechanism that would be applied and followed by all interested parties, to ensure that all interested parties would comply with all their respective duties and obligations related to the provision of water services.
- [10] I agree with these submissions. The point is that, in order to comply with its constitutional and statutory duties, the respondent, as a services entity of the City of Johannesburg, is required to supply to their citizens at least the minimum level of basic municipal services, including municipal water services. The granting of a statutory power includes the power to do what is reasonably necessary to give effect to the statutory power. As submitted by the respondent, the manner in which a specific public duty is performed by the respondent is ancillary to the main duty to provide water and the respondent cannot be held to a particular method *ad infinitum*, just because it suits one person.
- [11] In terms of section 153 (a) of the Constitution a municipality must structure and manage its administration and budgeting and planning

processes to give priority to the basic needs of the community, and to promote the social and economic development of the community.

Moreover, the respondent is a 'Water Services Authority' and also a 'Water Services Provider' as defined in section 1 of the Water Services Act[3]. It is therefore enjoined to ensure access to clean drinking water by the residents of Johannesburg.

[12] Conversely, the respondent and the City of Johannesburg have the duty to implement and enforce the municipality's credit control and debt collection policy and any by-laws enacted. They have a duty to establish effective administrative mechanisms, processes, and procedures to collect money that is due and payable to the municipality. In that regard, these entities are empowered by statute

to consolidate any separate accounts of persons liable for payments to the municipality.

[13] Also, s 30(2) and (6) of the City of Johannesburg Bylaws provides that any measuring device through which water is supplied to a consumer by the Council, and its associated apparatus, must be provided and installed by the Council, and remains its property, and may be changed and maintained by the Council when deemed necessary by it.

[14] In sum, the respondent has a duty to supply municipal water services to the applicants, but is under no obligation to supply those services in a particular manner, except that delivery of those services must 'be equitable and accessible' and be provided in a manner that is 'conducive to ... the prudent, economic, efficient and effective use of available resources'[4]. These are the principles which govern the relationship between the applicants and the respondent and any contract concluded between

them.

[15] For these reasons, I am of the view that the cause of action of the applicants is not sustainable.

[16] The applicants also contend that the respondent is not entitled to cancel the contract if no breach has been committed. It is therefore submitted on behalf of the applicants that, according to the agreement between the parties, the contracts were to endure indefinitely. I am not convinced if regard is had to the authorities and the considerations that should be taken into account when deciding whether a contract is to endure indefinitely.

[17] Even if I am wrong in that regard, the applicants are still not entitled to insist on the continuation of the contracts on the basis that it is also the case of the respondent that that there are serious problems relating to the accounts of the applicants with the City of Johannesburg. According to a report commissioned by the City during 2014, there existed then a chaotic situation at each of the six properties despite the fact that the prepaid meters had already been installed for about three years. Similar problems were uncovered by a subsequent report dated 5 March 2015.

[18] I have no reason to reject this version of the respondent. The Plascon Evans rule find application. This then means that there were breaches of the contracts, which, in turn, entitles the respondent to cancel the agreement.

[19] For all of these reasons, I am of the view that the applicants have not made out a case for the relief claimed. There is no legal basis to grant such relief. Accordingly, the applicants' application falls to be dismissed.

Costs

[20] The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*[5].

[21] I can think of no reason why I should deviate from this general rule.

[22] I therefore intend awarding costs against the applicants in favour of the respondent.

Order

[23] Accordingly, I make the following order: -

L R ADAMS

Judge of the High Court of South Africa

Gauteng Division, Johannesburg

HEARD ON:

3rd October 2022

JUDGMENT

DATE:

7th October 2022

FOR THE FIRST TO FIFTH APPLICANTS: Advocate J C Viljoen

INSTRUCTED BY:

Stupel & Berman Attorneys,

Germiston

FOR THE RESPONDENT:

Adv C Van der Merwe

INSTRUCTED BY:

Moodie & Robertson, Braamfontein,

Johannesburg

[1] Local Government: Municipal Systems Act, Act 32 of 2000;

- [2] Rademan v Moqhaka Local Municipality 2013
- (4) SA 225 (CC)
- [3] Water Services Act, Act 108 of 1997;
- [4] S 73 (2) of the Systems Act;
- [5] Myers v Abramson, 1951(3) SA 438 (C) at 455.
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Prepared on 12 October 2026 · Esheria