

SOUTH AFRICA / JUDGMENT

Makhavu and Another v Makhado Local Municipality and Another (7776/2024) [2024] ZALMPPHC 132 (18 September 2024) [2024] ZALMPPHC 132

COURT

Limpopo High Court, Polokwane

BEFORE

N Gaisa

CASE / FILE NUMBER

7776/2024

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REPUBLIC OF SOUTH
AFRICA

IN THE HIGH COURT OF
SOUTH AFRICA

LIMPOPO DIVISION,
POLOKWANE

CASE NO: 7776/2024

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO THE JUDGES: YES/NO

(3)

REVISED.

DATE 18/9/2024

SIGNATURE

In the matter between: PAUL
 MAKHAVHU
 First Applicant
 PAULINE
 MAKHAVHU
 Second Applicant
 and
 MAKHADO LOCAL
 MUNICIPALITY
 First Respondent
 ESKOM SOC
 LTD
 Second Respondent

JUDGMENT

GAISA AJ

INTRODUCTION

[1] This matter comes before me, again, on the return date of a Rule Nisi issued on 19 July 2024. The Applicants seek to have the interim orders granted on that date made final. The First Respondent opposes the application, arguing that the matter lacks urgency and has become moot.

BACKGROUND

[2] The Applicants are joint owners of two properties within the jurisdiction of the First Respondent, Makhado Local Municipality:

2.1 Erf 1[...] B[...] Street, Louis Trichardt (the primary residence)

2.2 Erf 2[...] S[...] Street, Louis Trichardt (an unmetered property)

[3] On 18 July 2024, the First Respondent disconnected the electricity supply to the Applicants' primary residence, citing arrears of R154,577.30. The Applicants contend this disconnection was unlawful as it was done without proper notice.

[4] The Applicants brought an urgent application on 19 July 2024, seeking reconnection of their electricity supply and an interdict against future disconnections without proper notice. An interim order was granted, and a Rule Nisi was issued, returnable on 14 August 2024. The parties were granted an opportunity to file their heads of argument up to 12 September 2024.

ISSUES FOR

DETERMINATION

[5] The primary issues for determination are:

5.1 whether the application was urgent;

5.2 whether the matter has become moot;

5.3 whether the First Respondent's actions in disconnecting the electricity were lawful;

5.4 whether the consolidation of the Applicants' accounts was lawful and properly executed;

5.5 whether the interim orders should be made final.

LEGAL FRAMEWORK

[6] The relevant legal framework includes:

6.1 Sections 152 and 153 of the Constitution of the Republic of South Africa, 1996;

6.2 Sections 95 and 102 of the Local Government: Municipal Systems Act 32 of 2000;

6.3 The First Respondent's Credit Control and Debt Collection By- laws, 2020/2021 “(Approved by Council Resolution A.59.26.06.20)”.

ANALYSIS

[7] Urgency

7.1 The First Respondent argues that the matter lacks urgency as the Applicants were aware of the consolidated debt since 16 June 2024. However, I find that the disconnection of electricity to a residential property without proper notice creates an urgent situation that justifies approaching the court on an expedited basis. The potential harm to the Applicants and their family, including health and security risks, supports the finding of urgency.

7.2 The test for urgency, as established in *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*, requires that the applicant cannot obtain substantial redress in due course. Given the immediate and severe impact of electricity disconnection on the Applicants' daily lives, I am satisfied that this test has been met.

[8] Mootness

8.1 The First Respondent contends that the matter has become moot as they have complied with the interim order. However, there remain disputed issues regarding the consolidation of accounts, allocation of payments, and the lawfulness of the disconnection procedure. These are matters of public importance that may recur. As held in *MEC for Education: Kwazulu-Natal and Others v Pillay*,^[1] the court may decide a moot case if there is a possibility of the infringement being repeated in the future.

[9] Lawfulness of Disconnection

9.1 The First Respondent's Credit Control and Debt Collection By- laws require that final notices be delivered before disconnection. The Municipality's own by-law reads:

"4.13.3 Electricity services of the defaulters will be suspended ten days after the suspension notice is served".

9.2 The evidence before me suggests that the First Respondent failed to provide adequate notice as required by its own by-laws and Section 95 of the Municipal Systems Act.

9.3 The Constitutional Court in *Joseph and Others v City of Johannesburg and Others*^[2] emphasized the importance of procedural fairness before disconnecting essential services. The failure to provide proper notice in this case renders the disconnection procedurally unfair and thus unlawful.

^[10] Consolidation of Accounts

10.1 While Section 102 of the Municipal Systems Act allows for the consolidation of accounts, the process must be transparent and communicated clearly to the account holder. The evidence suggests that the Applicants were not properly informed of the consolidation or given an opportunity to dispute the consolidated amount before disconnection.

10.2 Furthermore, the consolidation appears to have included an unmetered property, which requires a different procedure according to the First Respondent's by-laws. The First Respondent has not demonstrated that it followed the correct procedures for dealing with unmetered properties.

10.3 The discrepancies in the billing amounts and unallocated payments raised by the Applicants require further investigation. While this court cannot make determinations on the merits of the amounts owed, these issues highlight the need for proper communication and dispute resolution procedures.

FINDINGS

^[11] I make the following findings:

11.1 The application was properly brought on an urgent basis.

11.2 The matter is not moot as there are ongoing issues of public importance.

11.3 The disconnection of electricity on 18 July 2024 was unlawful due to lack of proper notice.

11.4 The consolidation of accounts was not properly executed or communicated to the Applicants.

11.5 The interim orders should be made final, with modifications to address the ongoing issues.

ORDER

In light of the above, I make the following order:

1. The Rule Nisi issued on 19 July 2024 is hereby confirmed and made final, subject to the modifications in paragraphs 2-6 below.
2. The First Respondent is ordered to reconnect and/or cause to be reconnected the electricity supply to the Applicants' property situated at 1[...] B[...] Street, Louis Trichardt, within 24 hours of this order, if not already done.
3. The First Respondent is ordered to furnish the Applicants with a detailed breakdown and explanation of the consolidated amount of R154,577.30, including all transactions and allocations for both properties, within 14 days of this order.
4. The First Respondent is interdicted from disconnecting or disrupting the electricity supply to the Applicants' property without first providing at least 10 days' written notice, detailing the amount due and providing a reasonable opportunity for payment or dispute resolution.
5. The First Respondent is ordered to review the consolidation of the Applicants' accounts and provide a clear explanation of the process followed, particularly with regard to the unmetered property, within 30 days of this order.
6. The Applicants are granted leave to approach this court on the same papers, duly supplemented, should any disputes arise from the implementation of this order.
7. The First Respondent is ordered to pay the costs of this application on a party and party scale.

N GAISA

Acting Judge

High Court of South Africa

Limpopo Division, Polokwane

APPEARANCES FOR THE APPLICANT : MR T MALULEKE (HEADS OF ARGUMENT BY ADV. Z D MALULEKE) : MULULEKE (T) ATTORNEYS c/o LEDWABA M ATTORNEYS EMAIL : reception@m-tattorneys.co.za : terrancemaluleke@gmail.com : ledwaba@ledwabamattorneys.com FOR THE 1ST RESPONDENT : ADV. U B MAKUYA INSTRUCTED BY : DABISHI, THAMBELENI INC c/o : TSHIGOMANA ATTORNEYS EMAIL : mbm@dninc.co.za : admin5@dninc.co.za FOR THE 2nd RESPONDENT : EMAIL : DATE OF HEARING : 19 July 2024 & 14 August 2024 DATE OF JUDGEMENT : 18 September 2024

This judgment is handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 18 SEPTEMBER 2024 at 10:00 PM.

[1] (CCT 51/06) [2007] ZACC 21; 2007 (3) BCLR 287 (CC); 2007 (2) SA 106 (CC);

(2007) 28 ILJ 133 (CC) (5 October 2007) at para [32].

[2] 2009 ZACC 30 (9 October 2009).

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Prepared on 10 October 2026 · Esheria