

SOUTH AFRICA / JUDGMENT

Maseule and Others v Grove and Others (2024/135845) [2024] ZAGPJHC 1299 (18 December 2024) [2024] ZAGPJHC 1299

COURT

South Gauteng High Court, Johannesburg

BEFORE

Badenhorst

CASE / FILE NUMBER

2024/135845

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case

Number: 2024- 135845

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

18

December 2024

In

the matter between: MICHAEL
 THINAVHUYO MASEULE and OTHERS
 Applicants
 and
 JACQUES PIETER
 GROVE and OTHERS
 Respondents

JUDGMENT

BADENHORST AJ:

- [1] This is an urgent application by several owners of sectional title units in a residential block of flats known as “K[...] L[...]” at [...] P[...] N[...] & Q[...] Streets Hillbrow in Johannesburg (“the building”). The application initially came before the urgent court (after hours) between 21 and 22 November 2024. The upshot was an order dealing with only one of the prayers in the notice of motion, as follows:
- “1. *The matter is treated as urgent in terms of Rule 6(12).*
2. The applicants who have been denied access to the building and the units which have been locked are immediately to be allowed access to the units and building in question.
3. Costs are reserved.”
- [2] It is clear that the previous court dealt only with the most pressing issue at that time, namely restoring applicants’ access to the building. The rest of the relief claimed was stood over for later. I note that the respondents only answered on 2 December 2024 which means that when the previous order was made, they had not yet been afforded an opportunity to answer. It is conceivable that this fact may have contributed to the decision.
- [3] The applicants re-enrolled the application for hearing as a matter of urgency on 3 December 2024. The balance of the relief originally claimed turns, in essence, on their objection against the debt collection “mechanism” implemented by the sixth respondent (on the instructions of the first respondent) [“the mechanism”]. The sixth respondent denies that it has anything to do with the issues in the case because it is no more than a service provider which provides prepaid metering to the Body Corporate (of the building) and implements tariffs, fixed fees or debt recoveries as determined by the Body Corporate. When the matter was first called in this court, the sixth respondent gave notice that it abides the decision of the court, and its counsel was excused from further attendance. I shall refer to the other respondents jointly as “the respondents”.

- [4] The first applicant accuses the first respondent of taking control of the building without a meeting of the Body Corporate; that he has appointed himself as the chairperson of the Body Corporate; and that no trustees exist or have been appointed; that he has without authority appointed his own company, the third respondent, to act as the managing agent of the scheme; similarly, he says, that the sixth respondent was irregularly appointed without authority.
- [5] The key complaint, relevant at this stage of the matter, is described as follows in paragraph 13 of the founding affidavit:

“The First Respondent presently uses this entity to implement an unauthorised and/or unlawful debt collection mechanism, placing restrictions on the purchase of electricity, each time the Applicants attempt to purchase prepaid electricity, the electricity units received are restricted, with the balance being allocated to a purported debt amount reflected as arrears. By way of an example, I attach a sample of a prepaid slip depicting the above as “K-004”.

K-004 is reproduced below:

As can be seen from K – 004, the person who purchased R100 worth of pre-paid electricity, was in the end only credited with R 4.35 for electricity. The balance of about R 95 was systematically (automatically) diverted to reduce other “debt”

by reason of “arrears”.

- [6] The respondents filed a brief affidavit, raising the following defences:
1. That no urgency exists and that the application should accordingly be struck from the urgent roll;
 2. The respondents’ principal defences on the merits are stated as follows in the answering affidavit:
 - i. “The first applicant is but a dormant owner, never participates in the administration of the building, as long as he is collecting his rentals and turns the building into a squatter camp, he sees no reason at all to get involved in meetings, enforcement of rules or the administration of the building and its maintenance.”
 - ii. “Some of the person cited as applicants cannot tell the court on how they occupied the building because they hijacked it, some are illegal occupiers turned landlords, some inherited the units through unorthodox means, however for some of us who invested money to develop the property, we live to pay the price of unscrupulous property owners like the applicants herein.”
 - iii. “The first two applicants have never written to us requesting anything save to hire the current Attorneys to protect their interests which is to illegally house undocumented persons in order to collect money. They are the chief instigator of chaos and disorder at the property herein a subject matter.

They incite violence, blockages, and hold illegal meetings in cahoots with other hijackers. I attach the interdict granted by this honourable court marked JG 007.” [This refers to an order granted by this court on 16 August 2022 to prevent certain named parties from interfering with the current respondents’ rights to enter the building and conduct their business thereat.]

iv. “I have invited owners and tenants alike recently in August via a notice on order to iron out issues and the way forward. I attach the said Notice marked JG 008. None of the persons herein pitched up nor participated at all. It is then surprising that when decisions are made in their absence they cry foul and run to urgent court.”

v. “The building is dilapidated, it owes municipality rates and taxes and services, and to circumvent the cutting off of electricity, the Seventh Respondent was hired to assist in keeping the lights on while slowly recovering the debt to be paid to the 8th Respondent. There is nothing foul or illegitimate there save for the fact that the applicants simply do not want to pay for the services.” [There is no 8th respondent. I suspect the reference should be to the 7th respondent, City Power (Johannesburg).]

vi. “Their distaste for paying for the water and electricity is not a ground to approach the urgent court. I do not own the 7th Respondent therefore I have no any other tie to them save for a service they have been hired to give.” [Again, the reference appears to be incorrect – I suspect the correct reference is the 6th respondent.]

vii. “Instead of working together to save the property herein a subject matter, the applicants are only concerned with issues that affect their purse as opposed to the bigger issues.”

[7] The undisputed facts, as they emerge from the papers and on which this court is required to adjudicate the matter are the following:

1. The applicants have the right to occupy flats in the building (and some rent these out to tenants);
2. Electricity is supplied on a prepaid basis;
3. The mechanism put in place and maintained by the 6th respondent (on instructions of the respondents), enables moneys paid by the applicants towards their desired electricity purchases to be set off against older debts (for services supplied by the local authority) claimed by the respondents to be owing by the applicants. The consequence hereof is that only a small portion of the applicants’ funds (intended to pay for electricity use into the future) is converted into electricity supplies. This is clearly demonstrated by K-004 above (which was introduced by the respondents): of the R 100 paid for future electricity supplies, only R 5 is applied for future electricity supplies. The bulk of the payment (supposed to be for future electricity consumption) is in fact applied towards clearing alleged “arrears” (which typically included any municipal services, including water, electricity and so on).

4. The applicants argue for urgency because they say that because their payments are irregularly intercepted in this way, they and their families are literally kept in the dark because they have limited means to spend on electricity.
- [8] I am persuaded that the matter remains urgent. The applicants (and their tenants, families or guests) who are affected by the unavailability of electricity obviously suffer ongoing hardship. The court's urgent attention is justified.
- [9] The respondents have not taken the trouble to explain the legal grounds for their application of the mechanism, more particularly on what basis they are entitled to recover arrears allegedly owed by the applicants by diverting payments intended for purchase of future electricity usage (or credits) towards the reduction of such historical debts (arrears). It may well be that there is a legal foundation or justification for this practice, but the respondents have chosen not to explain it in the papers filed in this matter. General statements made by the respondent such as the following: "(t)here is nothing foul or illegitimate there save for the fact that the applicants simply do not want to pay for the services" do not pass muster as a viable defence in these proceedings.
- [10] The respondents do not have the right, absent an agreement between the parties or an order of court, to apply moneys paid by the applicants for future electricity supplies towards the reduction of another (historical) debt. Nowhere in the respondents' affidavit is there an attempt to explain or justify the diversion of applicants' payments or to even justify the set-off that was applied. Absent a legal basis, the respondents' practice will be a form of illegal parate executie or spoliation.
- [11] It follows that there is no answer to the essence of applicants' remaining complaint in the application.
- [12] I confine my order to only the part of the complaint which I consider to be genuinely urgent. I also refrain from making a final order thus intentionally leaving the door open for the parties to pursue other remedies or to take the issue up in ordinary court proceedings with reference to any of the issues raised in the papers before me. I do so mindful of the pressing circumstances in which these proceedings were necessarily dealt with by all concerned.
- [13] I accordingly make the following orders:
1. The respondents (excluding City Power) are prohibited with immediate effect, either directly or indirectly, from diverting or setting off moneys earmarked by the applicants for the purchase of prepaid electricity usage by them (or their tenants, family or guests) at the K[...] L[...] Building (number [...] corner P[...] N[...] and Q[...] Streets, Hillbrow, Johannesburg) ["the building"], for recovery of arrears arising from alleged historical debts claimed by the respondents to be owing by the applicants;
 2. The order in paragraph 1 above shall be interim in effect and apply only until it is set aside, replaced, reviewed or varied by any of the following:

- i. a Ruling by the Rental Housing Tribunal with jurisdiction over the building, established under the Rental Housing Act 50 of 1999;
 - ii. an Order by an Adjudicator with jurisdiction over the building, issued under Chapter 5 of the Community Schemes Ombud Service Act 9 of 2011; or
 - iii. an order of court.
3. The first, second, third, fourth and fifth respondents (who opposed the application) are liable, jointly and severally, for the costs of the application including the costs reserved in terms of the order dated 22 November 2024.

BADENHORST AJ

JUDGE OF THE HIGH COURT

JOHANNESBURG

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