

SOUTH AFRICA / JUDGMENT

New Model Private College CC v City of Johannesburg Metropolitan Municipality (2025/050470) [2025] ZAGPJHC 417 (25 April 2025) [2025] ZAGPJHC 417

COURT

South Gauteng High Court, Johannesburg

BEFORE

M V Noko

CASE / FILE NUMBER

2025/050470

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

Case

Number: 2025 – 050470

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED: NO

25 April 2025

In

the matter between: NEW
MODEL PRIVATE COLLEGE CC
Applicant
and
CITY
OF JOHANNESBURG METROPOLITAN
MUNICIPALITY
First Respondent
CITY
POWER (SOC) LIMITED
Second Respondent

JUDGMENT

Noko, J.

Introduction

- [1] The applicant instituted an urgent application for an order directing the respondents to immediately restore electricity supply to the applicant's property situated at [...] S[...] Street, D[...], Johannesburg, (Erf 1[...], D[...] Township) ("property"). The first respondent is opposing the application and second respondent has delivered a notice to abide with the order of court. Reference to respondent in this lis will refer to the first respondent.

The parties

- [2] The applicant is New Model Private College NPC, a non-profit company, duly incorporated in terms of the laws of the Republic of South Africa with its business address at [...] S[...] Street, D[...], Johannesburg.
- [3] The first respondent is City of Johannesburg Metropolitan Municipality duly established in terms of the Local Government: Municipal Structures Act[1] carrying its business at 61 Jorissen street, Johannesburg.
- [4] The second respondent is City Power (SOC) Ltd, a state owned company incorporated in terms of the laws of the Republic of South Africa, with its address situated at 4[...] H[...] Road, R[...], Johannesburg.
- [5] The applicant has incorrectly identified the second respondent as a private company and I guess this should have been an error.

Background.

- [6] The following background is common cause between the parties. The respondent supplies services to the applicant which includes provision of electricity.[2] The applicant is the registered owner of the property and has let it to a school known as Key to Succes School.
[3]

- [7] The respondent terminated supply of electricity to the applicant's premises on 27 March 2025 as a result of applicant's failure to pay for the charges relating electricity, water & sanitation and property rates. The total amount due is R2 710 567.66 (Two Million Seven Hundred, Ten Thousand Five Hundred and Sixty Seven rand and Sixty six cents).
- [8] The applicant then launched these proceedings to interdict the respondent to reinstate the supply of electricity.

Parties' version and submissions.

Urgency

- [9] The applicant contends that the termination was effected on Thursday, 27 March 2025 and immediately thereafter the applicant's board of directors convened a meeting where a resolution was taken to launch these urgent application. The applicant appointed a firm of attorneys and consulted with counsel in the following week and subsequently issued the application on 10 April 2025. In the circumstances the applicant submits that the application could not have been enrolled earlier and the foregoing is a comprehensive

account of what transpired before the papers were launched. In addition, applicant argues, if the normal court process is followed

no substantial redress will be attained.

- [10] The respondent on the other hand contends that the applicant took a laissez faire posture and failed to attend to the matter with the requisite urgency. In addition, there is a confusion in how the applicant accounted for the activities since the supply of electricity was terminated. The applicant's papers state that the termination was on 25 March 2025 and in another instance states that it was terminated on 26 March 2025. There is an indication that the board took a resolution on 27 March 2025. According to the respondent the applicant waited for 16 days before the application could be heard. In view of the confusion the court is therefore not properly appraised as to what transpired and should find that there is no urgency alternatively that urgency was self-created.
- [11] The counsel for the applicant contends, in reply, that there is an error with regard to the date on which the termination took place and the court should get a cue from reference to Thursday as the correct day on which the supply of the electricity was terminated by the respondent.
- [12] It is noted, the applicant's counsel continued, that maybe the application could have been enrolled on the second week of the April 2025, but having regard to the circumstances of this case, the fact that there are children indirectly affected and the unlawful termination in continuing, the court should not over emphasise the dates and conclude that the delay is inordinate. In any event the respondent confirms that the termination took place on Thursday, 27 March 2025.

- [13] I had regard to the submissions by both parties and find that the application satisfies the requirements for urgency and deserves the attention of the urgent court.

Merits

- [14] The applicant contended that there are children who are attending school and their rights are being infringed by the termination of the supply of the electricity which was not preceded by serving a pre-termination notice in accordance with judgment of the

Constitutional Court in Joseph[4]. In terms of the said judgment the respondent would be required to serve all the parties whose rights would be affected by the

termination of the supply of the electricity. The applicant's counsel impressed on the court that since the High Court is the upper guardian of the children it should direct the respondent to reinstate the electricity supply as the children's rights are negatively affected by the unlawful termination of the supply of the electricity.

- [15] The second contention advanced by the applicant is that ordinarily the respondent is not entitled to implement debt collection process where there is a dispute which has been declared in relation to the amounts charged by the respondent. To this end there is a lis which is pending in this Court with regard to the disputed billing and as such the termination of the supply of electricity is unlawful and should be set aside. The applicant stated further that the applicant has demonstrated its own bona fides and has been making payments, though under protest, and this assertion has not been disputed by the respondent in its answering affidavit.
- [16] Lastly, the applicant contended that the evidence presented satisfies the requirements for mandament van spolie as there was possession and same was terminated by the respondent unlawfully.
- [17] The respondent on the other hand contended that on proper reading of the Joseph's judgment it would be sufficient if the respondent can demonstrate that the pre-termination notice was delivered at the property and not necessarily on each and every child at the school. The pre-termination notice was delivered to the secretary at the school who acknowledged receipt and replied that to her understanding there should not be termination as there is a pending legal matter. The respondent's counsel contended further that the Joseph's judgment is distinguishable as the parties in that case were paying customers whereas in this case the school is not paying any monies to the respondent.
- [18] The counsel for the respondent argued that the pending litigation referred to by the applicant's counsel relates to the dispute that the applicant is being billed for the electricity on the minimum demand tariff basis whereas in fact it is on a business tariff. As such the argument underpinning the submission that there is a cogent dispute is unsustainable. However, the counsel conceded that this argument relates to an issue which is pending in before another court and I cannot not make any pronouncement on the merits of that dispute.

- [19] Counsel for the respondent further stated that the dispute pending elsewhere relates only to the charges for the electricity whereas the amount which appears in the pre-termination notice includes the charges for other services. In response to my view that the pre-termination notice is not correct as it also relates to the disputed the amount, he persisted that the bulk of the amount appearing in the notice is not for the electricity and to this end the court should overlook charges for other services and consider the notice to be valid. In any event, the respondent argues, it may be unreasonable to expect this Court to consider what the notice generally entails and to further interrogate the certificate of balance including having to look into at the meter readings. To this end, he argued, the court should only consider whether there is a notice or not and not the contents of the notice. I must mention that this argument is untenable.
- [20] During the discussion with the court the counsel for the applicant acknowledged that indeed there is an amount which is due and payable for services apart from the electricity charges and the respondent would ordinarily be entitled to terminate for that amount. The respondent on the other hand, accepted that the right to terminate should not include the amount due for the electricity charge which is included in the pre-termination notice. To this end the parties were amenable to an order in terms of which the applicant be granted a grace period to settle the corrected amount which exclude the amount due for electricity charge. In the meantime, the respondent should reinstate the supply of electricity and if no settlement is made then termination would be reinstated.
- [21] The parties further agreed that settlement of the outstanding charges would have to be in accordance with the policies of the respondent. The respondent's policy provides that if the applicant wishes to pay the arrears over a period of time such arrangement would have to be preceded by payment of 30% or 50% of the arrear amount and the balance to be payable over a period of time.

Legal principles and analysis.

- [22] The counsel for the applicant contended that on proper reading of Joseph's judgment the respondent is required to serve each child at the school. Reference was made of paragraph 75 of the

judgment

where Skweyiya J stated that "... that pre-termination notice must be send to all persons whose rights may be materially and adversely affected by the termination of a municipal services." As was alluded to by the respondent it would be overly extreme to interpret this paragraph in such a way that each child should be served with a pre-termination notice. The interpretation by the respondent is sustainable having regard to the fact that in Joseph the court considered service of a notice to the owner of the property and excluded the tenants or occupiers of the property. In this instance service was also effected at the tenant (school) and this was sufficient notice to the community of the school.

[23] The provisions of Section 102 (2) of the Local Government: Municipal System Act[5] need not be discussed in detail except to state that it is axiomatic that the respondent cannot implement debt collection measures in respect of amount due for which a dispute has been raised by the customer.

[24] There was a reference by the applicant of the common law remedy of spoliation and referred to the Constitutional Court in Ngqukumba[6] where it was stated that the respondent would have to “... restore before all else of unlawfully deprived possession to the possessor.” The contention that the applicant would fail in its application as it does not satisfy the requirements for mandament van spolie appears to be misplaced. Whilst it is correct that one may not claim restoration of the electricity supply if such supply is not

incidental to the possession[7] the applicant’s relief sought would not have been successful had it been exclusively predicated on the common law remedy of mandament van spolie.

Conclusion.

[25] In view of the stance adopted by both parties that the pre-termination notice is partly correct and that it should be

rectified and the respondent be allowed to pay or enter into an arrangement predicated on the respondent’s policy over a

certain period of time, it is not required of me to make any pronouncement on the legal issues raised save what I have outlined

above.

Costs

[26] It is trite that the question of costs is within the discretionary enclave of the court which should be exercised judicially. Having regard to the conclusion reached subsequent to the court engagement it is not warranted that one of the parties should be made to pay the costs of the other party.

Order

[27] In the premises I make the following order:

1. The Applicant’s non-compliance with the rules and /or practice directives relating to service and time periods is condoned and the application is allowed to be heard in accordance with Rule 6(12) of the Uniform Rules of Court.
2. The Respondent is ordered to deduct the charges for the electricity consumption from the pre-termination notice and afford the applicant a period of 14 days thereafter to pay or make arrangement payment of the remaining amount due in accordance with the Respondent’s By-Laws and or policies.

3. The Respondent is ordered to reinstate the supply of electricity immediately and terminate the supply if the applicant fails to pay or make arrangement for payment as envisaged in 2 above.
4. No order as to costs.

M V NOKO

Judge of the High Court,

Gauteng Division, Johannesburg.

This judgement was prepared and authored by Noko J and is handed down electronically by circulation to the parties / their legal

representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 25 April 2025.

Dates:

Hearing: 17 April 2025

Judgment:

25 April 2025

Appearances

For the Applicant: D Lebethe.

Instructed by: Ditheko Lebethe Attorneys

For the First Respondent: QM Dzimba.

Instructed by:

[1] Local Government: Structures Act 117 of 1998.

[2] The account number allocated to the applicant by the Respondent is 550509049.

[3] The lease arrangement is not known by the respondent but not in dispute.

[4] Joseph and Others v City of Johannesburg and Others

[2009] ZACC 30.

[5] Section 102 (2) of the Municipal Systems Act provides that collection measures cannot be invoked where there is a dispute between the parties regarding the quantum of the bill. In 3[...] V[...] D[...] M[...] Street H[...] CC v City of Johannesburg Metropolitan Municipality and Another (2023-069078)[2023] ZAGPJHC 963 (25 August 2023) this Court explained that in Croftdene Mall the SCA imposes the following five requirements before a consumer of municipal services may rely on the protection against disconnection

provided by section 102(2) of the Systems Act: 1.1 “there must be a dispute, in the sense of a consumer, on the one hand, and the municipality, on the other, advancing

irreconcilable contentions; 1.2 the dispute must be properly raised, which would require, at least, that it be properly communicated to the appropriate authorities at the municipality and that this be done in accordance with any mechanism and appeal procedure provided in terms of section 95(f) of the Systems Act for the querying of accounts; 1.3 the dispute must relate to a specific amount or amounts or a specific item or items on an account or accounts, with the corollary that it is insufficient to raise a dispute in general terms; 1.4 the consumer must put up enough facts to enable the municipality to identify the disputed item or items and the basis for the ratepayer's objection to them; 1.5 it must be apparent from the founding affidavit that the foregoing requirements have been satisfied.”

[5] Section 102 (2) of the Municipal Systems Act provides that collection measures cannot be invoked where there is a dispute between the parties regarding the quantum of the bill. In 3[...] V[...] D[...] M[...] Street H[...] CC v City of Johannesburg Metropolitan Municipality and Another (2023-069078)[2023] ZAGPJHC 963 (25 August 2023) this Court explained that in Croftdene Mall the SCA imposes the following five requirements before a consumer of municipal services may rely on the protection against disconnection

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1.3 the dispute must relate to a specific amount or amounts or a specific item or items on an account or accounts, with the corollary that it is insufficient to raise a dispute in general terms;

1.4 the consumer must put up enough facts to enable the municipality to identify the disputed item or items and the basis for the ratepayer's objection to them;

1.5 it must be apparent from the founding affidavit that the foregoing requirements have been satisfied.”

[6] Ngqukumba v Minister of Safety and Security and Others

[2014] ZACC 14.

[7] Eskom Holdings SOC Ltd v Masinda 2019

(5) SA 386 (SCA), Simons v The City of Johannesburg Forensic DPT 2019 JDR 2664.

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