

SOUTH AFRICA / JUDGMENT

## Ngandlela and Others v King Sabata Dalindyebo Local Municipality and Others (1536/2022) [2022] ZAECMHC 48 (13 December 2022) [2022] ZAECMHC 48

COURT

Eastern Cape High Court, Mthatha

BEFORE

Notyesi

CASE / FILE NUMBER

1536/2022

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION, MTHATHA)

Reportable

Case

no: 1536/2022

Date

heard: 20/10/2022

Date

delivered: 13/12/2022

In

the matter between:

MADODOMZI  
NGANDLELA FIRST  
APPLICANT  
MVUYISI  
MATUNDO SECOND  
APPLICANT  
XOLISWA  
DYWILI THIRD  
APPLICANT  
MAYDENE  
FARM EXTENSION RESIDENTS FOURTH  
APPLICANT  
and  
KING  
SABATA DALINDYEBO LOCAL MUNICIPALITY FIRST  
RESPONDENT  
THE  
MUNICIPAL MANAGER: KING SABATA  
DALINDYEBO  
LOCAL MUNICIPALITY  
SECOND RESPONDENT  
THE  
INDIGENT COMMITTEE THIRD  
RESPONDENT

## JUDGMENT

Notyesi AJ

## Introduction

- [1] The applicants brought these proceedings by way of urgency, seeking interim relief for the reconnection of their electricity supply, pending the determination of a declarator on the lawfulness of the respondents' action in disconnecting the electricity supply to the applicants' residential places which are situated at Maydene Farm Extension, Mthatha.
- [2] The electricity supply is in relation to the first, second and third applicants' (collectively referred to as the applicants) residences, being house numbers 2[...] (first applicant), 2[...] (second applicant) and 2[...] (third applicant) and which was allegedly disconnected by the respondents during the month of April 2022.
- [3] The applicants contend that they are indigent persons and in this regard, they had applied, in terms of the first respondent's indigent policy 2021/2022, for an indigent subsidy. In terms of this

policy, all registered indigents, including consumers in the rural areas, will receive 50kwh of electricity per month fully subsidised

or an amount to be determined by Council on an annual basis.

- [4] The applicants further contend that while they were awaiting a response from the first respondent to their applications, the electricity supply to their residence was disconnected without notice or any form of hearing.
- [5] The fourth applicant contends that it is acting on behalf of the Maydene Farm Extension dwellers, and seeks for a future preventive interdict against any disconnections of electricity by the municipality in their Maydene Farm Extension area. Mr Siyabonga Mbangata states that he is authorised to depose to a confirmatory affidavit on behalf of the residents. There are no resolutions and minutes of a meeting held by the Maydene Farm Extension residents.
- [6] The respondents did not initially deliver opposing papers prior to the hearing of the interim relief. The respondents have subsequently delivered such papers consequent to the grant of the interim relief.
- [7] I am advised by counsel for the respondents that, at the hearing of the interim relief, the respondents made submissions on points of law pertaining to urgency in resisting the grant of interim relief.
- [8] Following the hearing of submissions regarding the granting or otherwise of the interim relief, the court on 12 April 2022, granted the following order:

‘(1) that leave is granted to the applicants to bring this application by way of urgency in accordance with the provisions of Uniform Rule 6(12);

- (2) that a rule nisi do hereby issued calling upon the first and second respondents to show cause, if any, on Tuesday, the 26th day of April 2022, why the following orders may not be made final:

2.1 that the applicant’s non-compliance within 72 hours’ notice as prescribed in section 35 of the General Law Amendment Act 63 of 1955 as amended be condoned.

2.2 that the electricity disconnection in the following house numbers 2[...] Maydene Farm belonging to first applicant, house number 2[...] Maydene Farm belonging to second applicant and house number 2[...] belonging to third applicant be and hereby declared unlawful, illegal and unconstitutional.

2.3 that the respondents be and are hereby interdicted from further disconnecting electricity supply unlawful to the fourth applicant.

2.4 That the respondent be directed to reconnect the electricity supply to the applicants forthwith.

2.5 That the respondent and anyone acting in his stead or employee be and hereby restrained and prohibited from further disconnecting and or interfering unlawfully with applicants’ electricity supply to the aforesaid premises other than by due process of law.

2.6 That the first, second and third respondents are ordered to pay costs of this application the one paying the other to be absolved.'

- [9] Paragraphs 2.3, 2.4 and 2.5 operate as interim relief with immediate effect pending the finalisation of this application. The confirmation of this interim relief is opposed.
- [10] In summary, the respondents' grounds of opposition are as follows.
- [11] First, the fourth applicant is not a legal person and thus has no locus standi to institute these proceedings.
- [12] Second, the fourth applicant has failed to make out a case on any relief and that the deponent is not authorised by the Maydene Farm Extension dwellers.
- [13] Third, the applicants did not apply for an indigent subsidy prior to launch of the application as their applications were never received by the respondents and that, even if the applicants had applied, until approval was granted, they were not entitled to the indigent benefits.
- [14] Fourth, the applicants were issued with termination notices prior to the electricity being disconnected and such notices were in terms of the Municipal Credit Control and Debt Policy of 2021/2022.
- [15] Fifth, the meter boxes in the homes of the applicants were tampered with in violation of the Electrical Installation Regulations promulgated under the Occupation Health and Safety Act 85 of 1993.
- [16] Finally, the respondents contend that their actions were lawful in disconnecting the electricity supply of the applicants.
- [17] The court must resolve the questions:
  - 17.1 Whether the fourth applicant has locus standi to institute these proceedings;
  - 17.2 Whether the respondents' conduct in disconnecting the electricity supply was lawful;
  - 17.3 Whether the applicants have made out a case for the grant of the final relief; and
  - 17.4 The issue of costs.

## Background

- [18] The first applicant is the main deponent to the founding affidavit and he has alleged that he is authorised to depose on behalf of all the other applicants who are residents of Maydene Farm Extension.

- [19] The applicants complain that on 10 March 2022, the first, second and third respondents caused a shutdown of electricity supply to the applicants' respective homes and other residents of Maydene Farm Extension. Prior to the shutdown of electricity supply, the applicants allege that they were never served with notices informing them about the first respondent's intention to disconnect the electricity supply.
- [20] The applicants impugn the conduct of the respondents on the basis that they had applied for indigent subsidy in accordance with the policy of the first respondent and that the first respondent did not respond to the applications. Based on the submission of such applications, the first respondent was not entitled to disconnect the electricity until a decision was made. Under the circumstances, the applicants complained that their constitutional rights to basic services had been infringed by the conduct of the respondents.
- [21] In summary, the applicants' case is that the respondents disconnected the electricity supply without affording them a hearing as there was no notice prior to the act of disconnection of electricity. The applicants had submitted applications for an indigent subsidy and the first respondent never responded to those applications. The applicants allege that, in bringing these proceedings, they are asserting their constitutional right to basic services and that the first respondent has a constitutional obligation to provide the basic services to local communities.
- [22] The respondents denied these allegations and contended that the actions of the first respondent was lawful and in accordance with the policies of the municipality.
- [23] The respondents provided reasons for the disconnection of the electricity supply for each of the applicants.
- [24] In respect of the first applicant, the respondents contend that the disconnection was as a result of the first applicant tampering with the meter box and that the disconnection was carried out in terms of clause 19(2) and (3) of the first respondent's credit control and debt collection policy of 2021/2022:

24.1 In this regard consumers, including where the first applicant resides, purchase electricity on a pre-paid basis. The mechanism of a pre-paid meter is that each meter has an identification number and the consumer is issued with a card bearing a number that entitles him or her to purchase electricity. When the consumers purchase electricity from various outlets, the receipt for payment has a numerical code that must be entered into the meter in order to activate the electricity supply. The first respondent uses a system known as contour technology to track and record all transactions on the meters of consumers. Contour technology enables the first respondent to know when electricity for a specific meter was purchased and for how much.

24.2 The first applicant's meter number is 07[...]. According to contour technology, the first applicant last bought a loaded pre-paid electricity for his meter on 10 October 2018. The transaction was for a sum of R20. Based on this, the first respondent authorised its service provider, Khanyo Electrical Contractors to conduct an inspection at the first applicant's

residence. There was a suspicion that the meter was tampered with. Mr Luyanda Mabandla, is an inspector in terms of the Electrical Installations Regulations promulgated under the Occupational Health and Safety Act 85 of 1993 and he conducted the inspection on behalf of Khanyo Electrical Contractors.

24.3 During the inspection, Mr Mabandla discovered that the first applicant's meter box was indeed tampered with and that there was an illegal diversion and supply of electricity to the first applicant's residence. Upon such inspection, he then concluded that the illegal connection of electricity was a danger to the first applicant's family and neighbouring residents, as the illegal connection could potentially cause a fire which could break out without any warning due to the tampering of the electrical wiring.

24.4 Mr Mabandla, determined that the first applicant's meter box was defective and that defect constituted an immediate danger to persons. As a result, the electricity supply to the first applicant's residence was immediately disconnected.

24.5 On 21 January 2022, the first respondent received a report that the first applicant has personally reconnected the supply of electricity to his property. Mr Mabandla, visited the first applicant's residence and established that the first applicant had indeed reconnected the electricity supply. Mr Mabandla disconnected the electricity once again.

24.6 The respondents contend that the first applicant's electricity supply was disconnected based on tampering with the meter boxes.

[25] In respect of the second applicant, the respondents dispute that it disconnected the second applicant's supply of electricity.

25.1 In this regard, the first respondent had received a complaint from the ward councillor that the second applicant's meter box was faulty and that the second applicant does not have electricity supplied to his residence. On 6 April 2022, the first respondent dispatched its officials to attend to the complaint. An inspection was conducted at the second applicant's

residence and it was discovered that the meter box was faulty. The second applicant was advised to apply for a replacement meter box.

25.2 The second applicant applied for a replacement meter box. Based on that application, the second applicant's meter box was then replaced and the electricity was restored to his home.

[26] In respect of the third applicant, the respondent contends that on 17 November 2021, the third applicant was issued with a final demand in respect of which the third applicant was required to settle her arrears within ten days, failing which debt enforcement proceedings would be commenced with against her. The arrear amount was R5 556.92.

26.1 In this regard, the final demand was hand delivered by Mr Muleki Mhlongwe of Khanyo Electrical Contractors to the third applicant. The third applicant did not respond to the final demand notice.

26.2 On 19 January 2022, after the lapse of the ten days, the first respondent issued the third applicant with a disconnection notice in terms of which the third applicant was called upon to settle her arrears, within a period of 14 days. The disconnection notice was hand delivered to the third applicant by Mr Mhlongwe. There was no response from the third applicant. The notice contained a warning that should the third applicant fail to settle her arrears, the third applicants electricity supply would consequently be disconnected without further notice.

26.3 On 8 February 2022, and after the lapse of the 14 days' period, the first respondent disconnected the electricity supply to the third applicant's residence. The respondents contend that the disconnection was in terms of the credit control and debt collection policy and therefore justified.

[27] In respect of the fourth applicant, the respondents contend that the fourth applicant is not a legal person and is not properly before court. The respondents submitted that the confirmatory affidavit by Siyabonga Mbangata is unhelpful. The court's attention was drawn by the respondents to the allegations made by Mr Mbangata in which he says:

'I am an adult male person residing at Maydene Farm house no 2[...] duly authorised by all applicants and residents marked as annexure XM5 to depose to this confirmatory affidavit.'

[28] The respondents submitted that annexure 'XM5' is a list of names. There is no resolution nor minutes to evidence proof of authority for the existence of the fourth applicant.

[29] On this basis, the respondents submitted that the residents of Maydene Farm Extension, as an association or a group, are not before court, bearing in mind that the fourth applicant is not a universitas. In essence, the respondents submitted that there is no evidence to substantiate the allegations that the residents of Maydene Farm Extension have authorised the institution of the proceedings on their behalf or name.

#### Legal framework

[30] Section 152 of the Constitution sets out the objects of Local Government.[1] In terms of Section 152(b) and (d), the objects of Local Government are:

'(b) To ensure the provision of services to communities in a sustainable manner;

. . .

(d) To promote a safe and healthy environment.'

[31] Electricity is one of the basic services that section 152(1)(b) of the Constitution demands from the municipality to provide to the communities.

[32] The safety and healthy environment referred to in section 152(1)(d) of the Constitution, includes an environment that is free from dangerous illegal connections for the supply of electricity which

often cause dangerous power surges.

[33] Section 152(2) of the Constitution provides that a municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).

[34] The Constitutional Court emphasized that the collection of charges for electricity is an imperative for Local Government to ensure that it can provide services in a sustainable manner.

[35] Services may be disconnected to ensure the collection of arrears.[2] In *Mkontwana v Nelson Mandela Metropolitan Municipality*,[3] the Constitutional Court held:

‘The basic reason for the accumulation of consumption charges due in connection with any property occupied by non-owners is non-payment by those occupiers. However, it is ordinarily possible for both the municipality and the owner to guard against an unreasonable

accumulation of outstanding consumption charges. The municipality has a duty to send out regular accounts, develop a culture of payment, disconnect the supply of electricity and water in appropriate circumstances, and take appropriate steps for the collection of amounts due. The owner’s ability to protect her own interest by ensuring that consumption charges are kept within reasonable limits, depends to some extent on the nature of the relationship between her and the occupier. If that occupier is on the property with the knowledge and consent of the owner, the latter can, among other things, choose the occupier carefully and stipulate that proof of payment in relation to consumption charges be submitted monthly on paying of some sanction including ejectment.’

[36] Section 229 of the Constitution provides for municipal fiscal powers and functions. Section 229(1) provides that – subject to subsection (2), (3) and (4), a municipality may impose—

‘(a) rates on property and surcharges on fees for services provided by or on behalf of the municipality; and

(b) if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax or customs duty.’

[37] Section 96 of the Local Government: Municipal Systems Act 32 of 2000[4] provides for debt collection responsibility of the municipalities. In terms of section 96, a municipality ‘(a) must collect all money that is due and payable to it, subject to this Act and any other applicable legislation; and (b) for this purpose, must adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariff policies and complies with the provisions of this Act’.

[38] Section 97 provides for what must be the content of the policy.

‘Contents of policy

(1) A credit control and debt collection policy must provide for—

- (a) credit control procedures and mechanisms;
  - (b) debt collection procedures and mechanisms;
  - (c) provision for indigent debtors that is consistent with its rates and tariff policies and any national policy on indigents;
  - (d) realistic targets consistent with—
    - (i) general recognised accounting practices and collection ratios; and
    - (ii) the estimates of income set in the budget less an acceptable provision for bad debts;
  - (e) interest on arrears, where appropriate;
  - (f) extensions of time for payment of accounts;
  - (g) termination of services or the restriction of the provision of services when payments are in arrears;
  - (h) matters relating to unauthorised consumption of services, theft and damages; and
  - (i) any other matters that may be prescribed by regulation in terms of section 104.
- (2) A credit control and debt collection policy may differentiate between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters as long as the differentiation does not amount to unfair discrimination.’ (Emphasis added.)

[39] Regulation 7(7) of the Electrical Installations Regulations promulgated under the Occupational Health and Safety Act No 85 of 1993 reads—

‘If an inspector, an approved inspection authority for electrical installations or supplier has accrued out an inspection or test and has detected any fault or defect in any electrical installation, that inspector, approved inspection authority for electrical installations or supplier may require the suer or lessor of that electrical installation to obtain a new certificate of compliance: Provided that if such fault or defect in the opinion of the inspector, approved inspection authority for electrical installations or supplier constitutes an immediate danger to persons, that inspect, approved inspection authority for electrical installations or supplier shall forthwith take steps to have the supply to the circuit in which the fault or defect was detected, disconnected . . .’

[40] In compliance with the Constitution and the Systems Act, the first respondent has adopted a policy on credit control and debt collection.

[41] Clause 19(3) of the policy reads—

‘(3) If the customer fails to pay any account within a period of fourteen

(14) days after the expiry of the due date, then—

- (a) without further notice, the municipality may disconnect or discontinue the supply of electricity to the immovable property in question;
- (b) the chief financial officer or any duly authorised person may instruct attorneys to recover the outstanding amounts. . . .’

[42] In terms of clause 19(8), of the credit control and debt collection policy of the first respondent, it is provided that:

‘In case of an indigent debtor, when the account of such indigent is outstanding and his or her electricity supply has been disconnected

or discontinued, the chief financial officer or any person duly authorised thereto may into an agreement in terms of which the

indigent debtor effects immediate payment of at least five percent (5%) of the outstanding amount and pays the balance over a period of twenty-four months (24 months).’

[43] The first respondent has adopted an indigent policy. Some of the objectives of the policy are to ensure the provision of basic services to the community in a sustainable manner within the financial and administrative capacity of the council and to establish a framework for the identification and management of indigent households including a socio-economic analysis and an exit strategy.

[44] I turn to consider the parties’ submissions.

## Discussion

### Locus standi of the fourth applicant

[45] Mr Ntikinca, counsel for the respondents, has submitted that the first question to be decided is the locus standi of the fourth applicant in these proceedings. In this regard, Mr Ntikinca submitted that if the fourth applicant failed to establish locus standi, then that must dispose the case of the fourth applicant as he would have failed to establish a prima facie or any right to the relief sought. The fourth applicant is not an association nor a body corporate. In addition to those challenges, there is no evidence

to show that there was a meeting of the residents at Maydene Farm which was convened to launch the proceedings. The locus standi of the fourth applicant in the founding affidavit is set out as follows:

‘The fourth applicant is Maydene Farm Extension residents who have authorised Siyabonga Mbangata to depose confirmatory affidavit herein these proceedings on behalf of the residents herein.’ (Emphasis added.)

[46] Mr Siyabonga Mbangata has deposed to a confirmatory affidavit where he makes the following allegation:

'I am an adult male person residing at Maydene Farm house no 2[...] duly authorised by all applicants and residents marked as annexure XM5 to depose this confirmatory affidavit.'

[47] This court considered annexure XM5. Annexure XM5 is a register dated 14 November 2021. The register simply lists the names of persons. There are no minutes nor resolutions. It is not apparent from annexure XM5 that the register has any link to the meeting by the residents of Maydene Farm Extension. I am unable to accept the annexure as proof of authority for Mr Siyabonga Mbangata. On a proper scrutiny, the averments made by Mr Mbangata in his confirmatory affidavit, do not support a conclusion that he had been authorised to institute the proceedings on behalf of the Maydene Farm Extension dwellers. He merely asserts that he has been authorised to depose to the confirmatory affidavit. This assertion is ill advised because a witness does not need authority before he or she can depose to an affidavit. The essence of the respondents' challenge is not about authority to depose to affidavits, but it concerns the legal standing of the fourth applicant. There was no answer to the respondents' challenge of locus standi of the fourth applicant.

[48] I conclude in this regard that the fourth applicant has failed to establish its legal standing and accordingly, fails to make out a case for the relief sought in the notice of motion on behalf of the fourth applicant. The relief sought by the fourth applicant was on its own not legally competent. The fourth applicant was seeking for an interdict against the future disconnection of electricity supply to the community of Maydene Farm Extension. I would not have granted such a relief. The municipality is empowered by legislation and its policies to discontinue provision of services including electricity in appropriate circumstances of discharging its responsibilities relevant to debt collection. It is inconceivable that a municipality must be interdicted against future disconnection of electricity, even in circumstances where it would have acted lawfully in doing so. I

find the relief sought by the fourth applicant to be rather absurd.

The lawfulness for the disconnection of the electricity

[49] The applicants are seeking final relief. A final order will only be granted in motion proceedings if the facts as stated by the

respondents, together with the facts alleged by the applicants that are admitted by the respondents, justify such order.[5] Mr Mkhongozeli, counsel for the applicants, had difficulties in understanding this principle, although he had urged this Court to determine the

application on papers irrespective of any factual disputes between the parties. On application of the Plascon Evans rule, I agree with the submissions of Mr Mkhongozeli and proceed to deal with the matter irrespective of any disputed

facts.

[50] The first applicant's property was inspected by Mr Mabandla, an inspector envisaged by regulations promulgated in terms of the Occupational Health and Safety Act 85 of 1993. The meter box in the house of the first applicant was found to have been tampered with twice. First in November 2021 and again in January 2022. The inspector, Mr Luyanda Mabandla, determined that there was an illegal supply of electricity to the first applicant's property and that illegal supply of electricity posed a danger to the first applicant, his family and neighbouring residents. That was the reason for the disconnection of the electricity. I accept these facts by the respondents.

[51] The first respondent has an obligation, in terms of the Constitution, to promote a safe and healthy environment. This obligation includes the duty to prevent illegal connections of electricity supply to residences. A safe environment includes one that is free from dangerous illegal connections for the supply of electricity, which often cause dangerous power surges. The first respondent was entitled to disconnect the electricity supply to the first applicant's residence and that disconnection was in accordance with the Constitution, the System's Act and regulation 7 of the Electrical Installation Regulations. The rights of the first applicant were justifiably infringed, because he had acted unlawfully and dishonestly. The first applicant did not seriously challenge the allegations of tampering, even in the replying affidavit. In fact, the first applicant conceded that he last bought electricity in

2018. All what the first applicant stated in reply is that:

'It is true that I last bought electricity in 2018, but what is not correct is the issue that I tampered with the meter box.'

[52] The version of the respondents contains serious allegations which had called for a reply rather than bare denials and general statements.

[53] The response of the first applicant was scanty in this regard, whilst faced with serious and scathing allegations from the respondents. The entire case of the applicants was not easy to understand or follow. The applicants' case is not a model of pleadings. The first impression about the first applicant's case is that the electricity supply to his residence was terminated without notice and later, this contention changed to the first applicant having applied for an indigent subsidy and that there was no response from the respondents. No proof of the application for subsidy was submitted. I therefore reject the assertion that there was an application for an indigent subsidy. For the sake of completeness, I do point out that, even if there was such an application for an indigent subsidy, the first applicant would still be prohibited from illegally connecting

the electricity supply. In this case, the first applicant's electricity supply was disconnected because of the illegal connection

of electricity and tampering with the meter box. Clause 30 of the policy makes it an offence for any person who:

‘(d) tampers with or breaks any seal on a meter or any equipment belonging to the municipality, or causes a meter not to register properly the service used . . . And upon conviction such person would be liable for a fine not exceeding R60 000 or to imprisonment for a period not exceeding 12 (twelve) months, or both.’

[54] The offence committed by the first applicant is indeed serious and the first applicant would not even have benefitted from the indigent subsidy, and if it was already given, in terms of the policy, the subsidy would have been withdrawn under these circumstances. That is a provision of the policy. This is the extent to which the offence of tampering with meter boxes is viewed by the first respondent.

[55] Regarding the disconnection to the second applicant, there is no evidence of electricity disconnection to his house. The evidence is that the ward councillor reported to the first respondent that the second applicant’s meter box was faulty. An inspection was conducted on 6 April 2022 and the faulty meter box was replaced. The second applicant did sign an application form for the replacement of a meter box. I have considered the application form of the second applicant which was attached to the respondents’ papers. The identity number of the second applicant is reflected in his application for a new meter box with other details that include his cellphone. It is improbable and inherently false that the first respondent would, within two days of replacing the meter box that was faulty, disconnect the electricity supply in the manner suggested by

the second applicant. I say within two days because the application was launched on 8 April 2022 which is within two days of 6 April

2022. I am satisfied by the version of the respondents that the second applicant’s electricity was never disconnected. There is overwhelming evidence to support the version of the respondents. The relief sought by the second applicant lacks merit.

[56] In respect of the third applicant, the evidence is that a final demand in terms of which the third applicant was required to settle her arrears within ten days, was served on her on 17 November 2021 by an employee of the first respondent. The final demand was received by the third applicant personally. Again, a disconnection notice was served on her on 19 January 2022. In terms of the disconnection notice, the third applicant was in arrears for an amount of R5 556.92 and she was required to settle the arrears within 14 days, failing which the electricity supply to her house would be disconnected without any further notice.

[57] The electricity supply to the house of the third applicant was disconnected after the lapse of 14 days in accordance with the disconnection notice. In disconnecting the electricity supply, the respondents relied on the credit and debt collection policy. Clause 19(2) and (3) entitles the first respondent to disconnect the electricity once the clauses have been complied with. According to sub-clause (3)(a)—

'If the customer fails to pay any account within fourteen (14) days after the expiry of the due date, then – without further notice, the municipality may disconnect or discontinue the supply of electricity to the immovable property in question . . .'

[58] The third applicant had simply not denied the service of the disconnection notice in her replying affidavit. The applicants' replying affidavit has been deposed to by the first applicant and in response to the detailed allegations regarding the service of the notice to the third applicant, there is no response. The third applicant merely files a confirmatory affidavit in which she fails to dispute the allegations that she was served with a notice prior to disconnection. This Court must accept the version of the respondents.

[59] In light of the respondents' compliance with the credit control and debt collection policy regarding service of notice in terms of clause 19(2) and (3), the disconnection of the electricity to the residence of the third applicant was lawful.

[60] In all the instances, the respondents had lawfully disconnected the electricity supply to the residence of the first and third applicants and there was never any disconnection of electricity supply to the house of the second applicant. The evidence is overwhelming in each regard as I have set out.

[61] The applicants' reliance on indigent subsidy policy is misplaced and cannot aid the case of the applicants. The remedies based on indigent policy are only available to persons whose applications in terms of the policy have been approved. None of the applicants have demonstrated that they were the beneficiaries of the indigent policy when the electricity supply was disconnected. The submissions of Mr Mkhongozeli, counsel for the applicants, that once a person has submitted an application, he or she automatically qualifies for the subsidy, has no merit. The submission was simply a misguided one, which I accordingly reject.

[62] Under these circumstances, I find that the applicants have not made out a case for the grant of the final relief and confirmation of the rule nisi issued on 12 April 2022 and therefore, the application should fail.

#### Costs

[63] My initial view was that the applicants were genuinely asserting and raising important Constitutional issues relating to the municipality's

obligation to provide basic services to communities. I had held a prima facie view that the principles regarding costs in public

litigation as set out in *Harrierlall v University of KwaZulu Natal*[6] and *Affordable Medicines Trust & Others v Minister of Health and Others*[7] and *Biowatch*, were applicable. On a proper scrutiny of the papers, it became clear to me that the application was an abuse of court process. The applicants' case had been premised on concoctions. The applicants have been dishonest and disingenuous in many respects.

They were never entitled to any relief. This Court must send a clear message that litigants who approach courts must act in good faith and be bona fide in advancing their litigation. The applicants in these proceedings failed to meet that minimum requirement.

[64] In the circumstances of this case, costs should be awarded even if the matter, on its face value, is a public litigation. I will therefore award costs against the applicants.

## Conclusion

[65] For all the reasons, the applicants' application must fail and the rule nisi granted on 12 April 2022 must be discharged with costs. For the reasons that Mr Siyabonga Mbangata had not purported to act for the non-existent fourth applicant, but merely confirmed his authority to depose to the confirmatory affidavit, I will not order costs against him in person, although I must send a warning that had he purported to institute the proceedings on behalf of the

residents in these circumstances, he would have been also liable for costs.

## Order

[66] In the results, I make the following order:

- (1) The rule nisi issued on 12 April 2022 is discharged;
- (2) The applicants' application is dismissed; and
- (3) The first, second and third applicants shall pay the costs of the application, including all costs reserved and the costs of 12 April 2022, such costs to be paid jointly and severally, the one paying the others to be absolved.

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M NOTYESI

ACTING JUDGE OF THE HIGH COURT

## Appearances

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Mthatha

Counsel for the respondents : L Ntकिनca together with T Bikitsha

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- [1] The Constitution of the Republic of South Africa, Act 108 of 1996.
- [2] Deidre Leanda Darries and Others v City of Johannesburg and Others [2009] ZAGPJHC 6; 2009 (5) SA 284 (GSJ); [2009] 3 All SA 277 (GSJ) para 19.
- [3] Mkontwana v Nelson Mandela Metropolitan Municipality  
[2004] ZACC 9; 2005 (1) SA 530 (CC); 2005 (2) BCLR 150 (CC) para 47.
- [4] The Systems Act.
- [5] Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] ZASCA 51; 1984  
(3) SA 623 (A) at 634, see Erasmus and Van Loggerenberg Superior Court Practice  
(2) 2 ed (2016) at D1-70, notes under Uniform rule 6(5)(g).
- [6] Harrierlall v University of KwaZulu Natal  
[2017] ZACC 38; 2018 (1) BCLR 12 (CC).
- [7] Affordable Medicines Trust and Others v Minister of Health and Another [2005] ZACC 3; 2006(3) SA 247 (CC)[2005] ZACC 3; ; 2005 (6) BCLR 529 (CC) para 138; Biowatch v Registrar Genetic Resources and Others (CCT 80/08)  
[2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC).

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Prepared on 11 October 2026 · Esheria