

SOUTH AFRICA / JUDGMENT

Whyte v City Of Johannesburg (2022/5354) [2023] ZAGPJHC 185 (28 February 2023) [2023] ZAGPJHC 185

COURT

South Gauteng High Court, Johannesburg

BEFORE

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CASE / FILE NUMBER

2022/5354

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA,

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 2022/5354

(1)

REPORTABLE: NO

(2) OF

INTEREST TO OTHER JUDGES: NO

DATE: 28 February 2023

In the matter between:

NICOLA

HELEN WHYTE

Applicant

And

CITY

OF JOHANNESBURG

Respondent

(This judgment is handed

down electronically by circulation to the parties' legal

representatives by email and uploading to

the electronic file of this

matter on CaseLines. The date for hand-down is deemed to be 28

February 2023.)

JUDGMENT

MIA J:

[1] In February 2022, the applicant launched an urgent application, against the City of Johannesburg (the City / respondent) for an order in terms of Part A pending the decision in Part B, of the Notice of Motion. Part A requested that the application be entertained as a matter of urgency along with other relief and Part B sought various interdicts and orders relating to the historical arrears. The respondent opposed the application. Part A of the application was heard. On 22 February 2022, Mudau J granted an order by agreement between the parties. The court found that the matter was urgent and granted certain interdictory relief against the respondents.

[2] This application deals with Part B of the application in which the applicant seeks the following relief:

2.1 The applicant does not owe any historic arrears to the respondent in respect of City of Johannesburg account number 402828372 for any charge raised by the respondent in respect of any actual or estimated services rendered by the respondent to the applicant up to and including 27 January 2022.

2.2 The respondent is directed to reverse all the amounts raised on the applicant's City of Johannesburg account number 402828372 for historic arrears in respect of any actual or estimated services rendered by the respondent to the applicant up to and including 27 January 2022.

2.3 The respondent is directed to reverse all related charges, interest, penalties and VAT thereon on the amounts raised on the applicant's City of Johannesburg account number 402828372 for historic arrears in respect of any actual or estimated services rendered by the respondent to the applicant, charged to date and up to and including the date of the respondent reversing the charges in terms of this order.

2.4 The respondent shall not charge the applicant any reconnection charges for restoring the electricity services to the applicant's property.

2.5 The respondent shall not charge the applicant any grid fees, network charges and network surcharges for the period of the disconnection.

2.6 The respondent is interdicted from cutting off water to the applicant's immovable property in respect of any amount claimed by the respondent for actual or estimated services rendered by the respondent to the applicant up to and including 27 January 2022.

2.7 The respondent is interdicted from reporting the applicant to any credit bureau in respect of any amount claimed by the respondent or actual or estimated services rendered by the respondent to the applicant up to and including 27 January 2022.

2.8 The respondent is ordered to pay the costs of this application, such costs to include the reserved costs of the application being brought and heard on an urgent basis.

[3] The background to the dispute is as follows:

The applicant lodged a query regarding invoices received for electricity and water from October 2019 to August 2022. According to the applicant, the City rebilled her from 30 August 2020 back to 20 October 2019. In the process of rebilling her, the City retained an amount of R21 743.79 and brought it forward to her September 2020 invoice which the applicant contends the City overcharged her. In October 2020 the applicant wrote to the City, objecting to the 10 June 2020 invoice and 17 September 2020 invoices reflecting amounts she asserts reflected overcharges. She furnished reasons for her objections and received an automated response. She sent a further query to the City requesting reasons for their failure to address the query and the basis for carrying forward the amount of R21 743.79 which ought to have been cancelled as a result of the rebilling.

[4] During the period between June 2010 and September 2020 some accounts showed estimated readings and later actual readings. The applicant complained that the City issued an invoice dated 3 June 2020 based on an actual reading, which she paid. A few days later they issued an invoice dated 10 June 2020, for a meter reading period of over eight months from 26 September 2019 to 3 June 2020. This showed a previous account balance of R7 114.69. This amount was the current balance on the October 2019 invoice and was paid on 4 October 2019. The estimated end reading was 25 634.268 kWh and the charge reflected was an amount of R21 743.79. The applicant did not pay this amount, she paid only the current charge of R8 711.93 on the invoice dated 3 June

2020. The applicant states that the latter reading is factually incorrect and overstated. This she demonstrated this by attaching a photograph of the meter on 5 June 2020 (two days after the end of the metering period), showing an actual reading of 16 353.99 kWh, indicating a difference of 9 280.278 kWh.

[5] The respondent does not dispute the veracity of reading in the photograph. It concedes that “the estimated readings in respect of meter number 14350144110 were rebilled as reflected in the 17 September 2020 invoice”. [1] Counsel however submitted that it was not a complete rebilling from October 2019. The respondent submitted that the City reversed charges as it was entitled to do in terms of the By-law which amounted to R57 470.00. The applicant did not dispute the reversal of charges. Counsel argued that the applicant would receive a double benefit if the reversed charged were allowed and the balance reverted back to the October 2019 balance. This would be incorrect he submitted and would afford the applicant a double benefit. Furthermore, counsel submitted the water meter reading was not reversed but continued to reflect each month. He explained that the City took the October 2019 meter reading and credited the applicant with reversed charges and VAT as well.

- [6] The City accepts that the applicant lodged a dispute with the City however it avers this was only in August 2021, a prior dispute lodged on 12 June 2021 was resolved on 18 June 2021. It notes that the applicant took issue with the City's issuing invoices on an estimated reading and subsequently issuing invoices when the City conducted an actual reading on the meters for the consumption of electricity by the applicant. The City denies that this amounts to rebilling or generating more than one invoice in a month. The City maintains that it issued the correct invoices after actual readings. It maintains applicant was in arrears due to non-payment. The City caused a notice of termination of services to be delivered, which afforded the applicant a period of 14 days to make payment. When the applicant failed to make payment, or to negotiate a payment plan, the City terminated the services of the applicant, which it was lawfully entitled to do.
- [7] According to the City the applicant did not lodge an appeal against the outcome of the resolved query in June
2020. The City has a credit control policy that makes provision for an appeal procedure for a customer who is not satisfied with the outcome of queries or complaints and provides for a further internal dispute mechanism counsel argued. The City's credit control policy provides for it to send a final demand to the customer to pay the arrear amount and affords the customer 14 days to comply with the notice or allow the customer to enter into an agreement with the City with regard to a payment plan to pay the arrears in instalments.
- [8] Whilst City maintains that the applicant did nothing after she lodged a dispute which they maintain was resolved, the applicant states the City did not acknowledge her communication or resolve her dispute. Instead she received a telephone call in July 2021, from the City's attorney, requesting payment on the outstanding account. The attorney followed up with a letter. She advised the attorney of the dispute lodged but was unable to furnish a reference number. The attorney enquired from the City and obtained the reference number for her. In August the City send a notice indicating that there is no query on the water or electricity from their Regional B Customer Services Team. In September the City send an "sms" notifying the applicant of a cut off due to non-payment. The applicant's attempts to contact the City's attorney were unsuccessful. The City carried forward the "arrears" which had increased to R24 332.85.
- [9] On 1 December 2021 the City's attorney sent an "sms" to the applicant notifying her of an intention to list on ITC in the event that the account is not settled in 20 working days. The applicant contacted the attorney, the City, Joburg Connect as well as the new mayor and the applicant's ward councillor. She set out the history and requested answers to questions. There was no response. An employee from the City, Mr Thabiso Seemela, arrived on 14 February 2022 to the applicant's home. In order to gain access to the property he informed the applicant he is there to read the meter. Once he has access to the meter Mr Seemela produced a municipal "Customer Electricity Connection Card" dated 10 February 2022. The card stated the City was disconnecting the electricity for an outstanding balance of R23 219.83, and informed the applicant the reconnection will have a 72-hour "turnaround time"

on payment of the above amount plus an additional R955. The applicant called Mr Seemela's supervisor who was unreachable. The applicant lodged an urgent application three days later on 17 February 2022. The interim relief was granted as indicated above.

[10] The issues for determination in this hearing are agreed as follows:

10.1 The status of the applicant's account as far as the historical arrears reflecting on the account is concerned.

10.2 The entitlement of the applicant to the declarators sought;

10.3 The entitlement of the applicant to the interdicts sought;

10.4 The reserved costs in respect of the urgent application (Part A).

[11] Counsel for the applicant argued that the applicant paid her account regularly and even before the due date. The amount disputed and in arrears stemmed from an invoice dated 10 June 2020 which the City issued a few days after it issued the invoice dated 3 June 2020 which the applicant paid. The second account was issued after the applicant brought to the City's attention that the applicant was being billed on an account number 14304627095 whilst the correct meter number to be billed was 14350144110. The 10 June 2020 reading is based on estimated reading and debits and amount of R57 661.85 for electricity whilst crediting an amount of R51 452.20. When a query was logged, the response from the City was to disregard the query and to direct that the amount be paid. The City did not acknowledge the query and no investigation was conducted based on the query logged. No explanation is furnished in relation to the deductions and estimates on the bill.

[12] Counsel's submission was correct that the invoice reversed charges and VAT, the lack of clarity lies in the what the reversal related to. It appears arbitrary unless it is matched to an overcharge of usage or an overpayment in relation to usage. The applicant has demonstrated above that the City has utilised estimates for a period in excess of thirty days, namely for eight months. The City however cannot explain the actual usage for the relevant period and relies on estimates for the rebilling. The invoice cannot be correct using estimated readings especially where there are estimated readings and arbitrary reversals. There was no supplementary affidavit filed by the City to address this despite an undertaking to do so in the answering affidavit. Where the previous metres were decommissioned and the rebilling cleared the previous invoicing the City is unable to show a correct reconciliation of the account and afford the applicant a proper debatement of the account as permitted in terms of the By-law.

[13] The account cannot be correct based on estimated readings for August. If the applicant paid on the estimated bills this had to be reconciled as against the actual readings. The City was not able to do so as its system does not allow for this. Once the City rebills all previous invoices are lost. The By-law provides for a rebilling to be done on the basis of actual reading not on the basis of estimated readings. On the accounts, the City failed to show how they have determined accurate readings and that the payments are correctly applied to the

accurate readings. It was common cause that the usage was actually lower than the estimated reading.

- [14] On the City's version that the 3 June 2020 bill fell away when they rebilled it on the 10 June 2020 invoice, the balance carried forward continuously without an explanation is inexplicable. If the applicant paid her account each month there should have been no arrears. The arrears carried over was disputed based on the estimated billing. This is evident in that the applicant corresponded with the City's attorney. Even if the City failed to lodge a dispute, their attorney acknowledged the applicant's dispute and furnished a reference. Once the invoices were sent based on the actual billing the arrears based on the estimate billing could not be carried forward, thus the arrears and interest accumulated was unlawfully carried over for the applicant's account.
- [15] Counsel for the City submitted that the City was compliant with the By-laws. They are entitled to terminate the supply of electricity to recover amounts due to it. However, in the present matter they did not apply the Bylaw where they failed to adjust the applicant's account after establishing actual readings. They did so based on estimates and did so to her detriment. They carried forward a balance based on estimates. They terminated the applicant's supply based on the incorrect calculation based on estimates furnishing a rebill after eight months. The City failing to lodge her query and dispute whilst their attorney engaged the applicant regarding the issue. The City obtained access to terminate the supply without furnishing her with the written notification card and despite the applicant timeously indicating that there was a query and a dispute. The City's conduct falls short of what is expected. The applicant was not a recalcitrant payer but paid the account consistently. The City cannot use the By-law demanding payment and to settle the dispute as a show of arms to extract additional amounts beyond a customer's fair usage. The City is guided by service delivery and the Municipal Finance Management Act. Section 62 of the Local Government: Municipal Finance Management Act 56 of 2003, provides that the accounting officer of the City is responsible for managing the financial administration of the municipality and must for this purpose take all reasonable steps to ensure, amongst others, the following:
1. that the resources of the municipality are used effectively, efficiently and economically;
 2. that the municipality has and maintains effective, efficient and transparent systems of financial and risk management and internal control;
 3. that the municipality has and implements, amongst others, a credit control and debt collection policy.

In applying the above policy conscientiously, the City should be in a position to explain the billing the arrears without difficulty. There is no dispute that the City has such a policy. The difficulty lies in the lack of an explanation regarding the arrears.

- [16] In granting the interdict the court must be satisfied that there are grounds for granting the relief requested.[2] As submitted on behalf of the respondent, the legislation that governs the City, together with its policies, place an obligation on the City to have measures in place to recover the revenue that is due, owing and payable to the City. The respondent may act in accordance with its policies and the legislation. Section 2 of the By-law reflects that the City may

“During any meter reading period render to the consumers a provisional account in respect of any part of such period(which part shall as close as practically possible be a period of thirty days and the amount of which account shall be determined as provided in subsection(4) and shall as soon as possible after the meter reading at the end of such period render to the consumer an account based on the actual measured consumption and demand during that period, giving credit to the consumer for any sum paid by him on a provisional account as aforesaid. “ [3]

- [17] The invoicing does not accord with the precepts in that the applicant is rebilled for estimates rather than actual readings. This does not cover the period of thirty days and as close as practically possible to thirty days as suggested in the By-law in section 9(2). Moreover, the photograph which is appended and not disputed by the City indicates that the reading on the meter reflects a usage end reading of 16 359.99 whilst the estimated end reading cited by the City is 25 634.268. There is a substantial discrepancy in the estimated as compared to the actual reading. In correcting the meter reading and rebilling the applicant, the City ought to have applied the By-law above correctly. Not only did it issue a rebill for a period of 221 days which is not as close as possible to the thirty day billing. When it rebilled on the correct meter it failed to use the actual reading.
- [18] The By-law permits the City to render an account by having regard to previous usage on the same premises alternately to similar premises in the area which it considers to be reasonable. The applicant had written to the City to enquire about the arrears without a response. She also indicated that sending through photograph and captured images of the meter reading indicating usage to assist the City in recording usage has not resulted in an accurate recording of the usage and invoices. The City has not rectified the invoice despite receiving the letter and the image. In doing so the City has failed to satisfactorily address the historical arrears and to correct the account as required in terms of the By-law. It has not filed a supplementary affidavit indicating how the rebill was calculated and to satisfactorily explaining the arrears brought forward. The applicant was threatened with termination and in fact had her electricity supply terminated when she queried the account and lodged a dispute.
- [19] The applicant’s apprehension of harm is reasonable in the circumstances. The court hearing the urgent matter found sufficient grounds to grant an urgent order to restore services and to grant an interdict. The applicant attempted to address the matter with the City. The suggestion that the amount is a small amount and can be paid without difficulty when considering the usage ignores that the amounts were estimated amounts which the City determined and were higher than the actual usage when compared to the reading having

regard to the photograph of the meter a few days later. It also ignores that charges change as usage increases. The applicant is thus prejudiced by higher estimated readings and the interest it incurs.

- [20] The City's employee gained access by indicating he wished to read a meter and then terminated the supply. There was no adequate warning and notice prior to this termination of supply. This in addition to the City's complacency or refusal to lodge a dispute or appeal when the applicant queried the invoice reflects negatively in the City's application of the law and service delivery. In addition the City had through their attorney threaten to report the applicant to the credit bureau despite that she was paying her account each month. Where a client is paying regularly, queries an invoice, receives no response, lodges a dispute, and is faced with an unresponsive Local Government Service provider and is compelled to approach a court for restoration of services, I am of the view that both the declaratory orders and interdicts are warranted.
- [21] The City indicates that all payments made toward the invoices on the account are in the amount of R 51 452.20 and were credited to the account. This does not account for the estimated account. It is not possible to assess and compare this. It only lies within the knowledge of the City if at all based the City's own version that previous invoices are lost. These payments were deductible in terms of the By-law in any event. The City is required to indicate how the arrears was calculated to be carried forward. The applicant is not.
- [22] The costs reserved in Part A are required to be determined herein. In view of the interim interdict being granted and my view that it should remain the in place, the usual order should follow.
- [23] For the reasons above I make the following order:
1. The applicant does not owe any historic arrears to the respondent in respect of City of Johannesburg account number 402828372 for any charge raised by the respondent in respect of any actual or estimated services rendered by the respondent to the applicant up to and including 27 January 2022.
 2. The respondent is directed to reverse all the amounts raised on the applicant's City of Johannesburg account number 402828372 for historic arrears in respect of any actual or estimated services rendered by the respondent to the applicant up to and including 27 January 2022.
 3. The respondent is directed to reverse all related charges, interest, penalties and VAT thereon on the amounts raised on the applicant's City of Johannesburg account number 402828372 for historic arrears in respect of any actual or estimated services rendered by the respondent to the applicant, charged to date and up to and including the date of the respondent reversing the charges in terms of this order.

4. The respondent shall not charge the applicant any reconnection charges for restoring the electricity services to the applicant's property.
5. The respondent shall not charge the applicant any grid fees, network charges and network surcharges for the period of the disconnection.
6. The respondent is interdicted from cutting off water to the applicant's immovable property in respect of any amount claimed by the respondent for actual or estimated services rendered by the respondent to the applicant up to and including 27 January 2022.
7. The respondent is interdicted from reporting the applicant to any credit bureau in respect of any amount claimed by the respondent for actual or estimated services rendered by the respondent to the applicant up to and including 27 January 2022.
8. The respondent is ordered to pay the costs of this application, such costs to include the reserved costs of the application being brought and heard on an urgent basis.

S C MIA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

Appearances:

On behalf of the applicant: Adv. T Ossin

Instructed by: Werthschroder

Inc

On behalf of the respondent: Adv. Du Toit Maritz

Instructed by: Mohamed

Randera & Associates

Date of hearing: 22

February 2023

Date of judgment: 28

February 2023

[1] Caselines, Answering Affidavit, 014-11, paragraph 57

[2] Setlogelo v Setlogelo 1914 AD 221

[3] s 9(2) Greater Johannesburg Metropolitan Council By-law

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