

**IN THE HIGH COURT OF SOUTH AFRICA,  
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

**Case No: 656/2023**

In the matter between:

**OLYMPIC FLAME (PTY) LTD**

Applicant

and

**MATJHABENG LOCAL MUNICIPALITY**

Respondent

**HEARD ON:** 07 NOVEMBER 2023

**JUDGMENT BY:** MHLAMBI, J

**DELIVERED ON:** 16 NOVEMBER 2023

[1] On 30 March 2023, a *rule nisi* was issued calling upon the respondent to show cause, if any, why the following orders should not be made final:

2.1. *That the Respondent be ordered to immediately restore the electricity supply to the Applicant's immovable property at 2[...] 1[...]<sup>th</sup> S[...], Industria, Welkom, Free State Province ("the Premises").*

2.2. *That the Sheriff of the High Court, be authorised to take any and all actions necessary to effect the reconnection of electrical supply to the Premises should the Respondent fail to adhere to the terms set out in prayer 2.1. hereof.*

- 2.3. *That the Respondent be interdicted and restrained from disconnecting the electricity supply to the Premises pending the dispute resolution processes and/or action envisaged in paragraphs 2.4. and 2.5. hereof.*
- 2.4. *That the Applicant be ordered to lodge a formal dispute against the electricity charges billed on its tax invoice and/or electricity fees bill in respect of such charges issued to it by the Respondent, in terms of Section 11 of the Respondent's officially adopted Debt and Credit Control Policy, within 30 days from date of confirmation of the aforesaid rule nisi, failing which, the relief granted in paragraph 2.1, 2.2 and 2.3 shall lapse.*
- 2.5. *Alternatively, to paragraph 2.4, that the Applicant within 30 days, from date of finalisation of this application, be ordered to institute declaratory proceedings against the Respondent relevant to its indebtedness to the Respondent, failing which, the relief granted in paragraphs 2.1, 2.2 and 2.3 shall lapse.*
- 2.6. *That the Respondent should be ordered to pay the costs of this application.*
3. *The orders in paragraphs 2.1 to 2.3. supra shall serve as interim interdict with immediate effect pending the aforesaid return date."*

- [2] The application was opposed by the respondent on the basis that the applicant was the registered owner of the property situated at 2[...] 1[...]<sup>th</sup> S[...], Welkom, also known as erf 9[...], Welkom Extension 2[...] which was bought from the previous owner on 31 October 2001 and transferred to the applicant on 24 May

2005 under title deed number: T15[...]. The previous owner was a company known as Bluedust (Pty) Ltd which made an application to the respondent for the supply of electricity to the property. The respondent complied and Bluedust (Pty) Ltd paid for the electrical supply under the municipal account number 121[...]. The applicant, subsequent to the transfer of the property into its own name, failed to transfer and/or make an application for the electricity meter to be registered into its own name. The electricity meter (EL A[...]) remained in the name of Bluedust (Pty) Ltd to whose property the municipality continued to supply electricity through a metering system for the actual consumption of electricity.

- [3] On 30 December 2022, the respondent delivered and/or served a notice for the disconnection of the electricity supply to the premises due to non-payment. The notice stated that the electricity would be disconnected on 13 January 2023 if the amount of R 202 885.60 was not paid on/or before 12 January 2023,
- [4] The applicant, in reply to the respondent's opposition, admitted that it failed to register the electricity meter into its own name and contended that the respondent failed to mention in its founding affidavit that the applicant had on numerous occasions attempted to register the meter in its own name. According to the applicant, the respondent refused to assist with the registration until such time that the applicant had settled Bluedust (Pty) Ltd's arrear electricity account. By so doing, the respondent was holding the applicant liable for another company's debt.
- [5] The applicant contended that the respondent could not use the notice of disconnection<sup>1</sup> dated 30 December 2022 as a basis for the electricity

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<sup>1</sup> Annexure "OP1" to the replying affidavit.

disconnection which took place on 13 February 2023. The notice was defective and invalid in the following respects:

5.1 It was not addressed to the applicant but to Bluedust (Pty) Ltd;

5.2 It notified Bluedust (Pty) Ltd that the electricity/water supply to the premises would be disconnected/reduced if it failed to pay the amount of R 202 885.60 before or on 12 January 2023.

5.3 The disconnection would be effected on 13 January 2023.

5.4 The notice was only valid for a period of 14 days as indicated also at the bottom of the said notice.

5.5 The electricity supply was only disconnected on 13 February 2023.

[6] The applicant's contention was that when the electricity supply was disconnected on 13 February 2023, no pre-termination notice was given for the electricity disconnection as the one dated 30 December 2022 had lapsed and was of no force and effect.

[7] As to the adequacy of the pre-termination notice prior to the termination of basic municipal services, both parties referred me, albeit for different reasons and

approaches, to the case of *Joseph and Others v Johannesburg and Others*<sup>2</sup>. The relevant passage that I was referred to reads as follows:

*"[61] I agree that affording notice to the applicants would not undermine City Power's ability to provide an efficient service. Accordingly, City Power must afford the applicants pre-termination notice. For the notice to be 'adequate' it must contain all relevant information, including the date and time of the proposed disconnection, the reason for the proposed disconnection, and the place at which the affected parties can challenge the basis of the proposed disconnection. Moreover, it must afford the applicants sufficient time to make any necessary enquiries and investigations, to seek legal advice and to organise themselves collectively if they so wish. At a minimum, it seems to me that 14 days' pre-termination notice is fair, and is consistent with the provisions of the credit control bylaws."*

[8] The respondent held the view that it complied with the 14-day pre-termination notice period that it was required to afford to the customer. There was no legal and contractual relationship between the parties for the supply of electricity to the premises as the applicant never applied for such services. Consequently, the applicant did not have the necessary *locus standi* to enforce contractual rights it never had. The current consumer of electricity on the premises was the applicant's tenant, Industrial Materials and Services Trust. The applicant failed to make out a proper case for the relief it sought.

[9] The applicant on the other hand contended that the termination of electricity constituted an administrative action which materially and adversely affected the rights of a person. Accordingly, such administrative action must comply with the minimum procedural fairness requirements of section 3(2)(b) of the Promotion of Administrative Justice Act, 3 of 2000 (PAJA), which entails, *inter alia*, the adequate notice of the nature and purpose of the proposed administrative action and the reasonable opportunity to make representations. The respondent, *in casu*, failed to give adequate notice for the electricity disconnection of 13

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<sup>2</sup> 2010 (4) SA 55 (CC).

February 2023 as the one issued in December 2022 had, even *ex facie* the document, become invalid.

[10] The applicant contended furthermore that a new property owner should not be held liable for the historical debt of the previous owner<sup>3</sup>. The supply of electricity and water are basic municipal services whose termination adversely affects the rights to such services.<sup>4</sup>

[11] It is evident from the contents of the answering affidavit that the respondent was, for a considerable period, aware of the circumstances surrounding the premises: that the applicant held the property as an investment property that it leased to the current lessee.<sup>5</sup> The applicant paid the rates and taxes, refuse and water supply to the property.<sup>6</sup> Despite the transfer of the property from the previous owner, Bluedust (Pty) Ltd., to the applicant in 2005, the respondent continued to supply electricity to the property in the name of the previous owner who for all intents and purposes, was no longer in charge of the premises. This led to the large amount demanded in the pre-termination notice. This is mindboggling as the provisions of the respondent's credit control and debt control policy<sup>7</sup> determines that should any account in respect of services not be paid by due date, a final demand for payment within 7 days should be issued. Failure to respond to the demand would entitle the respondent's officials to discontinue or reduce the level of service rendered.

[12] The respondent's policy is based on human dignity which must always be upheld<sup>8</sup> and implemented with equity, fairness and consistency.<sup>9</sup> Why was this

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<sup>3</sup> Jordaan and Others v City of Tshwane Metropolitan Municipality and Others [2017] ZACC 31.

<sup>4</sup> Joseph and Others, *supra*.

<sup>5</sup> Paras 10-19 of the AA.

<sup>6</sup> Para 20 of the AA.

<sup>7</sup> 2020/2021; paras 7.1.2 and 7.1.3.

<sup>8</sup> Para 4.1.

<sup>9</sup> Para 4.3.

debt allowed to escalate for so long? Paragraph 4.2.7 of the policy provides that if there is an outstanding debt on the property, this debt must be settled in full, or suitable payment arrangements must be made by the owner of the property, before any customer/owner is registered for services. Does this explain why the applicant was unable to register for the electricity services as the previous owner's debt had not been settled in full.

[13] The applicant has, in my view, sufficiently demonstrated that he has sufficient interest to launch this application. The crucial question that is dispositive of this controversy is whether proper notice was given by the respondent. The answer is no. It was emphatically recorded in the pre-termination notice that "*Notice is valid for 14 days!!!!*"<sup>10</sup> and the disconnection would be effected on 13 January 2023.

[14] In the founding affidavit, the following was said: "*Just to iterate, the electricity supply to the property was disconnected after due notice was given because of the failure to pay for the electricity consumed on the property.*"<sup>11</sup> In the written heads of argument, it is conceded that 46(forty-six) calendar days lapsed since the delivery of the aforesaid disconnection notice. It is therefore crystal clear that no pre-termination notice was given and addressed to the applicant prior to the disconnection of the electricity supply on 13 February 2023. This failure to give the applicant the requisite proper notice was fatal to the respondent's case. It would not be correct to allow the respondent to apply self-help to enforce its rights. The applicant must succeed in its application.

[15] The costs must follow the event.

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<sup>10</sup> Annexure "OP1" on page 62 of the Indexed papers.

<sup>11</sup> Para 42.

[16] In the circumstances, I make the following order:

**Order:**

The rule nisi is confirmed with costs which shall include the reserved costs of the drafting of the affidavits in the interlocutory application.

**MHLAMBI, J**

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