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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2024-054911

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.

.....
DATE

.....
SIGNATURE

In the matter between:

AJ MURPHY FLOWERS (PTY) LTD

Applicant

and

MOGALE CITY LOCAL MUNICIPALITY

Respondent

Coram: Maenetje AJ

This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploading on Caselines. The date and time for hand-down is deemed to be 10h00 on 10 June 2024.

JUDGMENT

Maenetje AJ:

Introduction

- [1] The applicant seeks urgent interim relief to protect itself and its business against an apprehended disconnection of municipal services (water and electricity) by the respondent pending the outcome of certain disputes between the parties.
- [2] The applicant conducts the business of a hotel, a spa and a cosmetic surgery. It obtains the supply of water and electricity from the respondent. It also pays rates and taxes to the respondent. It alleges that it faces a threat from the municipality of an interruption of water and electricity services. There are pending disputes between the applicant and the respondent over amounts that the respondent has charged the applicant for rates and taxes. There is a pending action in respect of the amounts charged for rates and taxes, a pending objection, appeal and review application against the municipal valuation of the applicant's properties in respect of which rates and taxes are charged by the respondent.
- [3] There is a pending notice of disconnection issued on 10 May 2024 by the respondent to disconnect municipal services to the applicant, including water supply. Prior to this notice, the respondent disconnected municipal services to the applicant on 17 February 2023 notwithstanding the pending disputes. On 13 May 2024, and based on the notice of disconnection issued on 10 May 2024, the respondent threatened to disconnect municipal services to the applicant.

- [4] Counsel for the respondent submitted that the disconnection of municipal services is not connected to the pending disputes over rates and taxes. Counsel for the applicant countered this. He referred to an email of 13 May 2024 from the respondent to the applicant which shows that the threat of disconnection relates to charges for both water supply and property valuation, i.e., rates and taxes. The email confirms the submission of the applicant's counsel in this regard. The email states inter alia the following:

"Good morning CFO, Anushka [Dr Reddy],

...

According to the attached accounts namely **00[...]** – **R790,999.79** and Account No. **00[...]** **R4,629,426.52**, a total debt outstanding and payable **now** to Mogale City is **R5,420,426.41**.

...

We have received **R500,000** for which we are very thankful for, however, the amount equates to only **9% of the outstanding debt of R5,420,426.41**.

Therefore, in order to prevent any further disconnections of our water services, an amount of **R2,210,213.21** is payable today.

We thank you,

Regards,

Shirly van Niekerk

Manager: CC & DC".

- [5] The applicant anticipated that the respondent might disconnect municipal services on 20 May 2024. Had that happened, it intended to supplement its affidavits and seek more urgent relief. Some of the pending disputes were to be resolved on 27 May 2024 when the outcome of the appeal was anticipated to be released. They have not

been resolved. The outcome of the appeal had not been released when this matter was heard on 4 June 2024.

[6] Although the applicant alleged in the founding affidavit that it had a reasonable belief that the respondent would still carry out its threat to disconnect services notwithstanding the pending dispute, given that it had disconnected services previously, the respondent has not said it would not do so pending the outcome of the pending disputes. It simply asserts its right to implement its credit control measures. It also does not state on oath that it will not act on the disconnection notice issued on 10 May 2024. That, instead, it would issue a new disconnection notice should it decide to disconnect the municipal services to the applicant in the near future.

[7] In this context, the applicant applies for the following specific relief on an urgent basis (and I refer only to the relief that remains relevant as there was no disconnection of municipal services on 20 May 2024 as the applicant had anticipated):

“2. That an interim interdict be granted, prohibiting the Respondent from disconnecting or in any way whatsoever restricting the supply of municipal services (water and electricity) to Portions 7 and 8 of Erf 687 and Erf 688 Featherbrooke Ext 8 (“the subject properties”) pending the finalisation of:

2.1. The pending action instituted by the Respondent against the Applicant under case number: 2023/119901; and

2.2. An objection and appeal against the municipal valuation of the subject properties and a review application brought by the Applicant against the Respondent challenging such municipal valuation.

3. ...
4. That the Applicant be directed to pay for its monthly consumption of municipal services (water and electricity) whilst the aforesaid interim interdict remains operative.
5. That the Respondent be ordered to pay the costs of the application.
6. Further and/or alternative relief.”

Urgency

[8] The respondent disputes that the matter is urgent. It also disputes that the applicant is entitled to the relief that it seeks. In essence, the respondent submits that the matter is not urgent because there is no threat of disconnection of municipal services and that it is entitled by law to implement its credit control measures. It may not be interdicted from implementing its credit control measures. The latter contention also applies to the merits of the relief sought.

[9] I am persuaded by the applicant that given that the respondent has not stated on oath that the notice of disconnection issued on 10 May 2024 is no longer in place and effective, its apprehension that the respondent may disconnect its municipal services (water and electricity) in the absence of an interim interdict is reasonable. The respondent has also not stated on oath that notwithstanding the notice of disconnection issued on 10 May 2024, should it now wish to disconnect municipal services to the applicant it would have to issue a new notice of disconnection, affording the applicant the opportunity to seek urgent relief should it be so advised. The respondent has simply

more than once asserted its right to implement its credit control measures. These credit control measures include the disconnection of municipal services (water and electricity) to the applicant notwithstanding the pending disputes between the parties.

[10] The applicant has no other remedy to prevent the reasonably apprehended disconnection of municipal services other than by obtaining interim relief. The applicant would suffer immense prejudice given the nature of its business if the supply of water and electricity is disconnected. If that happens, it may not obtain substantial redress in due course.

[11] The applicant allowed the respondent reasonable time frames to file opposing affidavits.

[12] I conclude that on the facts and circumstances that the applicant has presented to the Court, and which the respondent cannot genuinely dispute, the matter is urgent.

The merits

[13] In my view, the applicant has made out a case for relief on the well-known test for interim relief. It is not necessary to repeat the test here. My reasons for this conclusion follow below.

[14] I am satisfied on the facts that the applicant has raised genuine disputes regarding the rates and taxes that the respondent has charged. Those disputes are pending. The applicant has also established that the respondent's threatened disconnection of municipal services relates also to the disputed amounts for rates and taxes and not just for charges for the supply of water. The applicant is contractually entitled to receive the supply of water and electricity by the respondent for which it pays. It has a right, even if open to doubt, not to have the supply of water and electricity disconnected for purposes of enabling the municipality to collect on the disputed amounts for rates and taxes which are the subject matter of the pending proceedings.

[15] The applicant has demonstrated that it would suffer irreparable harm if water and electricity services are disconnected. Its business, which I have described above, would suffer significant prejudice. That prejudice cannot be reversed later. The balance of convenience favours the applicant. It does not favour the respondent. The applicant will continue to pay monthly charges by the respondent for municipal services that it consumes. If the pending disputes are resolved in the respondent's favour, it will recover the disputed amounts for rates and taxes. Also, pending the outcome of the disputes, the respondent will be entitled to apply its other credit control measures except for the disconnection of water and electricity to the applicant.

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

- (1) The matter is heard as one of urgency, non-compliance with the prescribed forms, manner of service and time frames are condoned in accordance with the provisions of Rule 6(12) of the Uniform Rules of Court.
- (2) Pending the outcome of the action instituted by the respondent against the applicant under case number 2023/119901 and the objection and appeal against the municipal valuation of Portions 7 and 8 of Erf 6[...] and Erf 6[...] Featherbrooke Ext 8 (**the subject properties**) and a review application brought by the applicant against the respondent challenging such municipal valuation (**the pending proceedings**):
 - (2.1) the respondent is interdicted and restrained from disconnecting or in any way restricting the supply of municipal services (water and electricity) to the subject properties; and
 - (2.2) the applicant is directed to pay for its monthly consumption of municipal services (water and electricity).
- (3) The interim interdict in paragraph 2.1 above does not preclude the respondent from lawfully disconnecting the supply of municipal services to the applicant as part of its credit control measures in respect of any other outstanding amounts due and payable by the applicant save for the disputed amounts that form part of the pending proceedings.

- (4) The respondent is directed to pay the costs of the application, including the costs of two counsel where two counsel were employed.

**NH MAENETJE
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Date of hearing : 4 June 2024

Date of judgment : 10 June 2024

For the applicants: JA Venter
T Qhali

Instructed by Fairbridges Wertheim Becker

For the respondent: R Ramatselela

Instructed by Madhlopa & Thenga Inc