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

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: NO

10 July 2024

DATE

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SIGNATURE

**CASE NO: 2023-127119**

In the matter between:

**METIER MIXED CONCRETE (PTY) LIMITED**

Applicant

and

**JOHANNESBURG WATER SOC LIMITED**

1<sup>ST</sup> Respondent

**CITY OF JOHANNESBURG METROPLITAN MUNICIPALITY** 2<sup>ND</sup> Respondent  
**A**

**GOLD RUSH TRADING 24 (CC)**

**(REGISTRATION NO: 2002/076312/23)**

3<sup>RD</sup> Respondent

**TRGK INVESTMENT (PTY) LIMITED**

4<sup>TH</sup> Respondent

**JUDGMENT**

CAJEE AJ:

1. On the 5<sup>th</sup> of June 2024 I handed down an order in the following terms:
  - “1. The Application is dismissed
  2. The Applicant shall pay the 1<sup>st</sup> and 2<sup>nd</sup> Respondent’s costs on a party and party scale”

These are my reasons for doing so.

2. The matter, initially set down for the 4<sup>th</sup> of December 2023, came before me as an urgent application on the 6<sup>th</sup> of December 2023 being the date I said I would hear the matter. In the Notice of Motion the Applicant sought the following substantive relief:

“2. That an interim order be granted against the first Respondent to forthwith:

- 2.1. Restore the municipal water supply; and
- 2.2. Install a water meter

In respect of account number: 5[...] pertaining to the immoveable property known a Portion [...] or erf 8[...] K[...] Township, Registration Division I.R Province of Gauteng situated at 2[...] T[...] Road, K[...] (the property)”

3. The Applicant also asked for orders condoning non-compliance with the rules of court pertaining to service and time limits, that the application be treated as one of urgency, and that the interim order sought operate as a rule nisi until a return date when the Respondent was called upon to show cause why it should not be made final. The Applicant also sought costs and alternative relief.
4. The facts of the matter appear to be common cause in material respects.
5. The founding affidavit was deposed to on the 30<sup>th</sup> of November 2023 by one Glen Stuart Talmage, a Regional Manager employed by the Applicant. The Applicant, a private company, is the manufacturer and supplier of ready mixed

concrete and provides concrete pumping services. It operates from the property in terms of a lease it has with the previous owner thereof, namely another company Ikarus Investments (Pty) Ltd. In terms of the lease agreement the applicant is liable for all municipal rates, taxes, levies and charges in respect of the property. The municipal account is however in the name of the 3<sup>rd</sup> Respondent, which is the current owner of the property. The 3<sup>rd</sup> Respondent is for all intents and purposes the lessor of the property to the Applicant. I am satisfied that the Applicant has the necessary locus standi to bring this application.

6. The material facts of the matter are these. On the 14<sup>th</sup> of August 2023 the municipal water meter in respect of the property was stolen by a person or persons unknown to the Applicant. The theft was immediately reported to the 1<sup>st</sup> Respondent<sup>1</sup> and it was asked to replace the section of the missing pipe and water meter. While waiting for technicians from the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to attend to the disruption caused by the theft and to install a new meter, on the 15<sup>th</sup> of August 2023 the Applicant took it upon itself to restore the connection to the property without the water meter. The reason for this is that given the nature of its business operations, the Applicant requires large amounts of water on a daily basis and could not wait for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
7. The Applicant has its own internal sub-meters on the property. One sub meter is in respect of domestic consumption, the other is for its industrial consumption. According to the deponent to the founding affidavit, the sub meters show exactly what is consumed on the property. The reason for these sub meters, according to the deponent, is so that the Applicant can monitor and claim a rebate in respect of its industrial usage separate from its domestic usage, which it claims it is entitled to.
8. As to whether the Applicant is entitled to a rebate or what the extent of such rebate is, is immaterial to this application. There appears to be some dispute

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<sup>1</sup> As per an email sent to the customer services department of the 2<sup>nd</sup> Respondent

and contestation on this aspect. In fact, there is a court action between the parties pending in the High Court on the issue. What is important however, is that the sub-meters do not belong to the 1<sup>st</sup> Respondent and neither are they approved by it.

9. During the period August to October 2023 the Applicant continued to pay the municipal account rendered by the 2<sup>nd</sup> Respondent. These are based on readings provided to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by the Applicant. The water meter number reflected on the invoice dated the 2<sup>nd</sup> of November 2023<sup>2</sup>, appears to be stolen water meter, even though the reading date reflected on the statement is the 16<sup>th</sup> of September 2023 to the 16<sup>th</sup> of October 2023.
10. On the 21<sup>st</sup> of November 2023 technicians or consultants employed by the 1<sup>st</sup> Respondent disconnected the water supply to the property. This was a level 1 disconnection apparently done because according to the job card presented to the Applicant, the account was in arrears, which is denied by the Applicant. According to the copy of the job card<sup>3</sup> however, the disconnection was to be effected in respect of a neighbouring property. This was brought to the attention of an attorney representing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in a letter of demand dated the 28<sup>th</sup> of November 2023 to no avail and lead to the launching of the present application.<sup>4</sup> According to this letter of demand representatives of the 2<sup>nd</sup> Respondent did inform representatives of the Applicant that they would attend to the reconnection but that the temporary reconnection made by the Applicants was illegal and that they would be fined. The Applicants accepted their liability for the fine. However, a representative of the 2<sup>nd</sup> Respondent allegedly tried to solicit a fine in order to reconnect the water supply but the Applicant refused to do so.
11. According to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, after disconnecting the water supply to the property on the 21<sup>st</sup> of November 2023, it sent out technicians to rectify the situation. However, it discovered that the original connection was illegal as

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<sup>2</sup> Attached to the founding affidavit as annexure FA4

<sup>3</sup> Annexure FA6 of the Founding affidavit

<sup>4</sup> Annexure FA11 to the Founding affidavit

there was no water meter in place. It responded by effecting what is called a level three disconnection to the property. This is a more extreme disconnection and makes it far more difficult for any party to effect an illegal reconnection as was done by the Applicant previously. It is alleged that in effecting the illegal connection, the Applicant acted in contravention of the Respondents by laws, in particular section 20(1)(c) which states that:

“no person may effect a connection or reconnection to the water supply system or sewerage disposal system unless he or she has been authorised by the Council to do so”

12. It is alleged in the answering affidavit that upon discovery of the illegal connection and carrying out of the level 3 disconnection, a compliance notice was issued to the Applicant in terms of section 101 of the Water by laws calling upon the Applicants, as persons in control of the property to pay an amount of R132 107-00 before the water supply was reconnected. The date on the notice is reflected as the 30<sup>th</sup> of November 2023 but the Applicants allege in the replying affidavit that they only received it on the 4<sup>th</sup> of December 2023 after this urgent application was launched. In my view nothing turns on this.
13. On the 1<sup>st</sup> of December 2023 a copy of the present application and founding affidavit was emailed to the Respondents. Service by Sheriff was effected on the 1<sup>st</sup> of December 2023 on the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and on the 4<sup>th</sup> of December 2023 on the 4<sup>th</sup> Respondent.
14. By the time I got to hear this matter the Applicants had already paid the sum reflected in the notice dated the 30<sup>th</sup> of November 2023. The Respondents undertook to immediately reconnect the water supply. I was informed from the Bar by counsel for the Applicant that payment was made under protest and duress as the Applicants needed the water supply to be urgently reconnected to the property. It was not prepared to wait another two days until I heard the matter even though almost two weeks had passed from the time the water had been cut off.

15. It is common cause between the parties that the Applicant illegally connected the water supply to the property after the theft of the water meter. Whatever its reasons for doing so may have been, the fact remains that it did so without any express prior permission from the Respondents. Nor was any subsequent ratification for the connection obtained from the Respondents following this illegal connection. It is highly unlikely that such permission would have been granted.
16. In my view, the 1<sup>st</sup> Respondent were fully entitled to effect the level three disconnection to the property once they became aware of the illegal connection. While it may have informed the 1<sup>st</sup> Respondent that the water meter was stolen, the Applicant at no time informed it that it would be reconnecting the water supply to the property without a meter until such time as a new water meter was installed. It is no defence to claim that it has sub meters accurately monitoring the water usage on the property, especially as these are not council approved or monitored.
17. A court would perhaps have had more sympathy for the Applicant had they brought an application compelling the 1<sup>st</sup> Respondent to install a new water meter after the theft of the old one, or had it sought ratification from the 1<sup>st</sup> Respondent for its act of reconnecting the water supply without one. It failed to do so. The Applicant was content to sit back and do nothing further in respect of the water supply it had illegally connected to the property.
18. A party does not acquire a right to a municipal service illegally connected<sup>5</sup>. Any right the Applicant had was forfeited by the illegal connection it effected. It

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<sup>5</sup> Occupiers of Industry House 5 Davies Street v City of Johannesburg and Others (2022/8750) [2022] ZAGPJHC 941 (25 November 2022) and 39 Van Der Merwe Street Hillbrow CC v City of Johannesburg Metropolitan Municipality and Another (2023-069078) [2023] ZAGPJHC 963 (25 August 2023) at paragraph [29] where it was held:

“Having discovered the illegal connection, the respondents are not, in my view, obliged to supply the applicant with any more electricity. Articulated differently, the applicant has no right, real or *prima facie*, to having electricity sold to it by the respondents. To the extent that the applicant or its tenants had a right in terms of s73(1)(c) of the Systems Act to have access

was up to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to decide whether or not to enter into a new contract for the supply of water to the Applicant. This is not something the court can order. There is no suggestion in the papers of any constitutional right to water by the Applicants or any of their employees and that this right was violated.

19. As to whether the amount charged by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to the Applicant to reconnect the water supply is justified or not is another issue. I note from the disconnection notice that it has charged the Applicant the costs of replacing the prepaid meter and the costs of bypassing/tampering with the prepaid meter when the Applicant alleges that this was stolen. Be that as it may, the Applicant is free to claim any of these costs from the 1<sup>st</sup> Respondent via another court application or action.
20. I hand down this judgment in support of the order I previously granted as set out in paragraph 1 above.

**CAJEE AJ**  
**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG LOCAL DIVISION**  
**JOHANNESBURG**

For the Applicant: Adv. C. Denichaud  
083 578 7822

For the 1<sup>st</sup> and 2<sup>nd</sup> Respondent: Adv. S. Mutemwa  
083 523 8216

Date of hearing: 5<sup>th</sup> December 2023  
Date of Order: 5<sup>th</sup> June 2024  
Date of Judgment: 10<sup>th</sup> July 2024

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to the electricity supply provided by the first respondents, such right has been forfeited by their unlawful conduct.”