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

CASE NO: 2023-031774

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED: YES / NO

DATE: 3/1/2025

SIGNATURE:

In the matter between:

BODY CORPORATE THE STRAIGHT

Applicant

And

JANSEN MADIKE KATISI

Respondent

Summary

Practice – application for money judgment for arrear levies to a body corporate under section 2(1) of the Sectional Titles Scheme Act 8 of 2011 and authorisation to disconnect electricity until arrear electric charges and interest are satisfied – Tacit agreement between body corporate and unit owner – Relief competent.

JUDGMENT

WINDELL, J:

Introduction

[1] The applicant (“the Body Corporate”), approached the opposed motion court for a monetary judgment against one of its members, Jansen Madike Katisi (“the respondent”). It sought judgment in the amount of R107 940.63 in respect of unpaid and arrear levies and electricity charges together with interest and costs.¹

[2] Coupled with the request for monetary judgment, the Body Corporate sought authorisation to engage the services of an electrician to disconnect the electricity supply (“the authorisation relief”) to the respondent’s immoveable residential property described as Unit 7[...], The Straight, (“the unit”) until the judgment amount was paid for in full.

[3] On 14 November 2024, this court granted an order in favour of the applicant and granted the Body Corporate permission to disconnect the electricity supply to the respondent’s section. It further authorised that the electricity supply remains disconnected until the judgment amount with interest was paid for in full. This was, however, an error, as it had been my intention all along to grant an order that the electricity supply remain disconnected until the outstanding electricity charges are paid. I only realised the error in preparation of my written reasons.

[4] Rule 42(1)(b) of the Uniform Rules of Court provides that the court may, in addition to any other powers it may have, mero motu, or upon the application of any party affected, rescind or vary an order or judgment in which there is ambiguity, or a patent error of omission, but only to the extent of such ambiguity, error or omission.

¹ The amount was amended during the hearing to adjust the claim from R106 447.79 to R107 940.63.

[5] I thus proposed to amend the order for the electricity supply to remain disconnected until the outstanding electricity charges and interest on that amount were paid. In terms of Rule 42(3), the parties were advised of the proposed order and were invited to comment thereon on or before Wednesday, 18 December 2024.

[6] The Body Corporate subsequently informed the court that they have no objection to the amendment of the order granted on 14 November 2024. The amendment is thus made to reflect that the electricity supply will remain disconnected until the electricity charges, with interest thereon have been paid. What follows are the reasons for the order granted.

Background

[7] The elected board of trustees authorised the institution of the application in this matter on 15 March 2023 in accordance with a resolution signed by two trustees. This resolution stipulated that litigation could be initiated to recover all sums due, owing, and payable to the Body Corporate by the respondent, as well as a prayer for the disconnection of the electricity supply to the unit. Bernadette van Wyk, a bookkeeper employed by the managing agent of the Body Corporate deposed to the founding and replying affidavits.

[8] The application was launched on 4 April 2023 and the respondent delivered a notice of intention to oppose on 26 May 2023. The respondent served his answering affidavit on 19 June 2023. The Body Corporate delivered its replying affidavit and heads of argument on 26 July 2023 and 16 August 2023 respectively. The Body Corporate obtained a court order on 7 February 2024 compelling the respondent to deliver his heads of argument, practice note, chronology and list of authorities in compliance with Chapter 9.8, paragraph 12 of the Practice Manual.² After a perusal of the court documents, it appears as if none of the court documents that the respondent was ordered to file in accordance with the court order granted by Adams J were delivered. On 10 April 2024, the respondent was advised that the matter was set down for the week of 19 August 2024.

² Practice Manual – Gauteng Local Division, Johannesburg – February 2018

[9] On 21 August 2024, the respondent addressed email correspondence to the Body Corporate's instructing attorney advising that he was unable to attend the scheduled court appearance on 22 August 2024, due to 'unexpected circumstances'. He advised that he was currently out of the country on a work project and that he was unable to return home in time for the proceedings.

[10] A copy of the email correspondence dated 21 August 2024 was made available to the court on 22 August 2024. The court was satisfied that the respondent had received a copy of the notice of set down and that he was aware of the nature of the proceedings scheduled on the date of the hearing. Consequently, the hearing proceeded in his absence.

The Body Corporate

[11] The Body Corporate is a sectional title scheme established and incorporated in terms of 2(1) of the Sectional Titles Schemes Management Act³ (the Act). The scheme was established in 2007 and it consists of 86 units. The respondent bought the unit on 30 June 2014 for the purchase price of R1 025 000.00. As the owner of a unit of the scheme, the respondent is automatically a member of the Body Corporate.

[12] The Body Corporate is managed and represented by a body of trustees. A fiduciary relationship exists between the trustees and the Body Corporate. The nature of the relationship between the trustees and the Body Corporate compels the trustees to manage the affairs of the Body Corporate in a manner that is beneficial for all its members in terms of section 8 of the Act.

[13] The obligations of the trustees include the recovery of monthly levies which are charged by the Body Corporate to its members on a monthly basis. The purpose of the levies is to procure funds in order to manage and administer the affairs of the Body Corporate, predominantly the maintenance and upkeep of the common

³ Act 8 of 2011

property within the sectional title scheme. The Body Corporate is a non-profit association and is precluded from deriving income from sources outside of the Act. It is therefore almost completely dependent on the recovery of levies and municipal charges for its continued existence and financial sustainability.

[14] The Body Corporate asserts that their functions are governed by section 3 of the Act whereby provision is made for the passing of a resolution by trustees authorising the total amount of levies that the Body Corporate can charge its members. Such resolutions are passed annually pursuant to the ratification of the estimated income and expenditure for the ensuing financial year during the annual general meeting.

[15] It is accepted that the Body Corporate is entitled to recover legal expenses incurred in the enforcement of the Act (including the Management Rules and their own Conduct Rules). This includes instances where the Body Corporate commences legal proceedings for the recovery of arrear levies and municipal consumption charges. Further, in terms of the empowering provision contained in section 29(1)(b) of the Community Schemes Ombud Service Act⁴ (“CSOS”) and the regulations promulgated thereunder, the Body Corporate must recover contributions from members in respect of levies which are payable by the Body Corporate to the ombud service on a quarterly basis.

[16] Section 4(i) of the Act read with Management Rule 25 in Annexure 1 of the Sectional Titles Schemes Management Regulations 2016 (“the Regulations”), the Management Rules listed in Annexure 1 together with the Conduct Rules set out in Annexure 2 of the Regulations entitles the Body Corporate to claim judgment against the respondent for the outstanding levies.

Money payment and arrear levies and utilities

[17] The Body Corporate alleged that the respondent had breached his obligations regarding the payment of the levies and utilities due to the Body Corporate over a

⁴ Act 9 of 2011

period of 25 months since February 2021 to March 2023. During that period, the respondent's arrears escalated to R107 940.63, of which R16 610.68 is in respect of unpaid and arrear electricity consumption charges.

[18] In the answering affidavit, the respondent conceded his indebtedness to the Body Corporate. The respondent explained that the effects of the covid 19 pandemic impacted him negatively as the breadwinner in his household and that a lack of income had placed him in an unfavourable position since 2020. The respondent tendered a payment arrangement on the basis that he would pay R8000.00 per month to extinguish the outstanding levies and utilities. The respondent stated that he had informed the Body Corporate that he was amenable to making the unit available for rental purposes in order to derive income that would be allocated towards settling the arrears.

[19] The respondent therefore conceded his indebtedness to the Body Corporate. He had not put up a valid defence against the relief sought by the Body Corporate. The Body Corporate is entitled to the relief claimed in prayer 1 of its notice of motion.

Disconnection of electricity supply to the unit

[20] The contentious issue raised in this application is the relief sought by the Body Corporate in prayer 3 of its notice of motion. The Body Corporate seeks authorisation to engage the services of an electrician to disconnect the electricity supply to the respondent's unit in the event of the non-payment of the money judgment by the respondent within 10 days of the grant of such order and authorising that the electricity supply remain disconnected until full payment of the money judgment.

[21] In his answering affidavit the respondent contended that the Body Corporate is not entitled to cut the electricity without a prior agreement between themselves and that such relief would affect his constitutional right against the '*arbitrary deprivation of property in terms of section 25(1) of the Constitution*' and '*the public law right to receive electricity from the municipality*'. In support of his argument, he

relied on two cases: *Lion Ridge Body Corporate v Alexander*⁵ and *Joseph v City of Johannesburg*.⁶

[22] In *Lion Ridge*, the court held that the relief sought (disconnection of the electricity supply) affected the respondent's constitutional rights and could only be granted by virtue of a Management or Conduct Rule or agreed to by the body corporate member. It further held that although it was argued that there was a tacit agreement permitting it to disconnect the respondent's utilities, such an agreement was not pleaded, failing which no relief would be competent. The respondent in *casu* contends that there was no such agreement between the Body Corporate and himself.

[23] The Constitutional Court in *Joseph* examined the relationship between the municipality, a service provider, and the ultimate user of the service (tenants), where the service is provided through a third party, such as a landlord. The municipality disconnected the electricity after giving only notice to the landlord and not to the tenants. The tenants, *inter alia*, claimed that the disconnection without notice to them violated their constitutional right to access to adequate housing (implying a right to electricity) and human dignity (under sections 26 and 10 of the Constitution, respectively), and their contractual rights against the owner of the property. The Court held that the right to electricity was a public law right and that the tenants were entitled to procedural fairness in that they had to receive adequate notice at least 14 days before disconnection.

[24] The Body Corporate contends that it has made out a case for the authorisation relief on various grounds. Firstly, the Body Corporate acknowledged that it cannot arbitrarily disconnect the respondent's electricity. It thus seeks the court's authorization to disconnect the respondent's electricity.

⁵ 2022 JDR 3057 (GJ).

⁶ 2010 (4) SA 55 (CC).

[25] Secondly, in its founding affidavit, the Body Corporate stated that following the annual general meeting on 1 May 2020, the trustees passed a resolution in writing in terms of section 3(5) of the Act and the following was resolved:

- “1. *That the contribution for the period 1 May 2020 until 30 April 2020 is determined with reference to the attached levy schedule for the financial year end 30 April 2021;*
2. *That the above contribution is payable in monthly instalments, due on the first day of every month, conditional upon every instalment being paid on or before the 7th day of each month and;*
3. *That if an owner should fail to pay any monthly instalment on or before the 7th day of each month, the entire annual contribution shall become due and payable, known as the “acceleration clause” and;*
4. *That the interest rate in respect of all arrears due by the owners be determined at 10.00% or such rate as determined by the Prescribed Rate of Interest Act 55 of 1975 (the percentage for interest rate as Determined by Prescribed Rate of Interest Act 55 of 1975), compounded monthly, in terms of the Management Rules of the said Body Corporate such interest to be calculated from the first day of each month following the due date of any contribution payment and:*
5. *That the registered owner will be handed over by the duly appointed managing agent of the Body Corporate to attorneys or a debt collection agency appointed by the trustees of the Body Corporate for the collection of the full outstanding arrears. The trustees will therefore institute legal action in a court of competent jurisdiction in terms of section 3(2) of the Sectional Titles Schemes Management Act, NO. 8 of 2011, or apply to the Community Schemes Ombud to recover same. The defaulting owner will be liable to pay all legal costs, expenses and charges incurred by the Applicant in recovery of arrear contribution as contemplated in the aforementioned trustees’ resolution.*

6. *That should an owner dispute any contribution and/or charges, and all internal dispute resolution mechanisms have been exhausted, he/she will have the option to approach the Community Schemes Ombud Service (CSOS) for relief. The owner may register an application with CSOS in the prescribed manner and form which form must be completed in full and all relevant information pertaining to the application must be recorded accurately. Once registered, the application will be assessed to determine its validity and, if possible, set down for conciliation.*
7. *That the above determination of the interest rate remains in place and effective until resolved otherwise by the trustees.*
8. *That this resolution replaces any other duly signed resolution by the trustees to raise and recover levies, prior to the date of this resolution, required in terms of the Act”.*

[26] Similarly, the Body Corporate explains that the determination of the levies' quantum was always subject to the formulation of the participation quota of each and every unit in the Body Corporate's scheme to calculate the exact levy payment that would be payable by each and every unit owner. A copy of the levy schedule was attached to the Body Corporate's founding affidavit. However, pursuant to the annual general meeting held on 29 September 2021 and 28 September 2022, the trustees passed a further special written resolution in terms of section 3(5) of the Act resolving to recover all utilities at a different value, other than PQ values of the scheme or the liability of an owner in terms of section 3(1)(a) [and] 14(1).”

[27] After the receipt of the answering affidavit in which the respondent alleged that there was no agreement between the Body Corporate and himself, authorizing the disconnection of electricity supply to his unit, the Body Corporate filed its replying affidavit. In the replying affidavit it was averred that there was a tacit agreement established between itself and the respondent upon the purchase of the respondent's unit in the sectional title scheme. As a consequence, thereof, he was

bound to the Rules and Regulations passed by the trustees of the Body Corporate. General and special resolutions passed by the trustees were thus enforceable against the respondent.

[28] Thirdly, the Body Corporate receives monthly accounts from Eskom, which is payable by it, in respect of all the owners of the Body Corporate, including the respondent. The Body Corporate has engaged the services of a contractor which attend the sectional title scheme on a monthly basis and generates a report of the electricity consumption in respect of every unit after reading the meters. In this regard, the Body Corporate represented by its managing agent, will capture its monthly readings and the applicable amount in respect of the electricity consumption, which is incorporated in the monthly invoice and statements of account furnished to every member of the Body Corporate. Accordingly, the respondent receives a statement reflecting the actual electricity consumption of his unit.

[29] The Body Corporate has paid the respondent's electrical charges in respect of February 2021, on a monthly basis, up to and including March 2023. It is contended that the electricity consumption charges are the most prejudicial to the Body Corporate if they are not recovered as the Body Corporate is obligated to, on a monthly basis to effect payment of electricity consumption in respect of every unit to Eskom. If the Body Corporate does not recover these payments, it will continue to advance monies to Eskom, on behalf of owners of units who do not pay for electricity consumption. This will deplete any savings the Body Corporate may have and ultimately cause the Body Corporate to have a negative bank balance, risking a disconnection of electricity supply to all the units and the Body Corporate being placed under administration. This would severely prejudice all the members of the Body Corporate who will be left without electricity and will suffer a significant decrease in their property values.

Evaluation

[30] There is tension between competing interests in this matter: the right of the Body Corporate to be reimbursed for payments made on behalf of the unit owners and the right of the owner to be supplied electricity. This issue is subject to a variety

of policy considerations. The Body Corporate is a non-profit association and precluded from deriving income from sources outside the scope of the Act. It is dependent on the recovery of the levies and municipal charges for its survival. It is obliged to pay Eskom, failing which the remainder of the owners of units of the Body Corporate will be left without electricity. The recovery of the electrical charges is therefore critical.

[31] In *Lion Ridge*⁷ the basis for the authorisation relief was not properly pleaded. In this application, the Body Corporate had made out a case for the authorisation relief based on a tacit agreement between the Body Corporate who is represented by the trustees on the one side and the owners of the units on the other side. The respondent did not attend the hearing, did not file heads of argument and did not seek leave to file a supplementary affidavit. The allegations made by the Body Corporate in relation to the tacit agreement are thus undisputed.

[32] The tacit agreement entails that when the Body Corporate pays the electricity charges on behalf of the owners, they in turn have an obligation to reimburse the Body Corporate for such payment. Usually, this is pro rata as was the case in *Body Corporate of Balboa Park v Skeyi and Another*.⁸ However, this was changed by way of a special resolution to recover utilities at value other than per quota.

[33] Like many Bodies Corporate, the Body Corporate has engaged the services of a contractor which attends at the sectional title scheme on a monthly-basis and generates a report of the electricity consumption in respect of every unit, after reading the meters. In this regard, the Body Corporate, represented by its Managing Agent, will then capture the monthly readings and the applicable amount in respect of the electricity consumption, which is then incorporated in the monthly invoice and statements of account furnished to every member of the Body Corporate. Accordingly, the respondent receives a statement reflecting his actual usage of electricity.

⁷ See also *Body Corporate of Balboa Park v Skeyi and another* 2024 JDR 1560 (GD).

⁸ 2024 JDR 1560 (GD).

[34] Thus, in terms of the tacit agreement, if an owner fails to reimburse the Body Corporate, it is entitled to take the necessary steps to mitigate its losses and prevent further usage until the electricity charges had been paid. In effect, what the Body Corporate is seeking, is a termination of the agreement between it and its owner. Given that the nature of the relationship is by agreement, it is unclear why the Body Corporate is required to continue to pay the electricity charges of a non-paying owner, who is able to enjoy the benefits of electricity, while the other owners are unfairly contributing towards the non-paying owner's usage of electricity.

[35] In *Body Corporate of Balboa Park v Skeyi and Another*⁹ the court per Dippenaar J expressed her doubts on whether an agreement between a Body Corporate and the respective owners would survive Constitutional muster and may be *ultra vires*. It is, however, unclear why this is the position in relation to Sectional Titles, which pays the owner's accounts due to an existing agreement, when a municipality may disconnect the power of a non-paying owner upon written notice (*Joseph*) and a landlord may, upon notifying a non-paying tenant, stop paying the municipality, who could then disconnect the power (see *Zungu v Nilgra Flats CC*¹⁰).

[36] One of the rationales behind Sectional Titles Schemes, was to provide ownership rights to individuals with lower incomes.¹¹ Accordingly, the authorisation to disconnect a unit owner's electricity is crucial, as these households are responsible for the payment of these accounts. In the event that the Body Corporate is unable to finance non-paying owners, the entire scheme's electricity may be disconnected.

[37] The respondent continues to benefit from electricity without paying his dues, which is detrimental to the financial stability of the Body Corporate and the other owners. The disconnection of the respondent's supply of electricity can operate or function as a preventative measure to safeguard other owners by ensuring that the financial responsibility is shared equally and proportionately to avoid financial

⁹ 2024 JDR 1560 (GD)

¹⁰ (2017/44199) [2017] ZAGPJHC 417 (23 November 2017). See also *Anva Properties CC v End Street Entertainment Enterprises CC* (unreported) case number 22109/2014 at para 8 in which the court granted a landlord permission to disconnect the power to its own property with the assistance of a electrician in the event of non-payment of rental.

¹¹ See CG van der Merwe Sectional Title Share Blocks and Time Sharing. Vol 1 Page 1 – 18.

hardships and the repercussions thereto. In the absence of such a safeguard, the respondent enjoys the benefit of electricity without paying his dues at the expense of the other owners.

[38] Lastly, the respondent's reliance on *Joseph* is misplaced, as the facts of that matter are wholly distinguishable from the present matter. The Constitutional Court in *Joseph* appreciated the importance of debt collection by local government in the event of non-payment of electrical charges but held that before the municipality can disconnect the electricity there must be procedural fairness in that proper notice must be given to the end-users. In the present matter, the Body Corporate followed due process by sending a letter dated 21 February 2022 to the respondent informing him of the consequences of non-payment of his levies (which included seeking an court order that will made provision for the disconnection of the electricity supply to the respondent's unit until the arrears had been settled) and approaching the court to gain the necessary authority to disconnect the electricity supply to the respondent's unit.

[39] The written resolutions passed by the trustees during 2020, 2021 and 2022 are capable of being enforced by way of a court order until the respondent has settled the electricity charges together with interests and costs. The disconnection of the supply of electricity to the respondent's unit will put the Body Corporate in the position where it will be able to cap its losses, whilst it attempts to recover the arrears. At the very least, the Body Corporate will be able to prevent the situation from becoming worse, by preventing further electricity supply to the unit in circumstances where the respondent is not paying and avoiding the risk of Eskom disconnecting the electricity supply to every other unit in the scheme.

[40] In the result, the following order is made:

1. Payment in the sum of R107 940.63;
2. Interest on R107 940.63 at the rate of 11,25% a tempore morae to date of final payment;

3. The applicant is authorised to engage the services of an electrician registered with the Electrical Contractors Association of South Africa, in order to disconnect the electricity supply to the respondent's section, being section 7[...], The Straight, in the event of the respondent not effecting payment of the outstanding electricity charges within 10 days of this order.
4. The electricity supply shall remain disconnected until such amount plus interest on that amount at the rate of 11, 25% per annum compounded monthly is paid.
5. The respondent to pay the costs of the application on Scale B.

L. WINDELL
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 3 January 2025.

APPEARANCES

Counsel for the Body Corporate:	Ms A. De La Porte
Instructed by:	Christelis Artemides Attorneys
Counsel for the respondent:	No appearance
Date of order:	14 November 2024
Date of judgment:	3 January 2025