REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2021/26601

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
	_____
	DATE SIGNATURE

In the matter between:

DAVID SURTEES WEBSTER N.O.	**First Applicant**
IAIN CAMEROON FRASER N.O.	**Second Applicant**
PATRICK JOSEPH AYLING N.O.	**Third Applicant**
CHARLES ANTHONY SANER N.O.	**Fourth Applicant**
NEIL URGUHART GARDEN N.O.	**Fifth Applicant**
MMETJIE PATIENCE NAVES-SHONGWE N.O.	**Sixth Applicant**
KEITH ROBERT DE BUYS N.O.	**Seventh Applicant**
PAUL ANTHONY CARTER N.O.	**Eighth Applicant**
LEONARD IAN SEGAL N.O.	**Ninth Applicant**

CHRISTIAAN CORNELIUS BESTER N.O.	**Tenth Applicant**
GRAHAM JOHN BROKENSHIRE N.O.	**Eleventh Applicant**
	and
THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY	**Respondent**

JUDGMENT

Introduction

[1] The applicants were all trustees of the R A Welfare Development Trust (Trust Number: I[…]), a trust duly established in terms of the Trust Property Control Act[1]. In this judgment I will refer to the applicants as the "Trustees".

[2] Central to this application is a letter (the "appeal letter") written by attorneys for the Trustees to the respondent (the "City") on 19 January 2021. The letter is attached to the founding affidavit as "WP16".

[3] The letter constitutes an appeal in terms of section 16.5 of the City's Credit Control and Debt Collection Policy. This section provides that if a dispute logged or declared has not been resolved to the satisfaction of a customer, the customer may appeal the decision made or failure to make a decision to the City Manager (*inter alia*) in terms of section 62 of the Local Government: Municipal Systems Act[2] (the "Act")

[1] No. 57 of 1988
[2] No 32 of 2000

[4] The City Manager did not respond to this letter and the Trustees now apply to court in this application for resolution of their disputes with the City.

The dispute

[5] The appeal letter addresses a dispute between the Trustees and the City regarding the billing for electricity at a property (portion 136 of Erf 6[…] R[…] 6[…]-I[…] (known as E[…] L[…])) (the "property") owned by the Trustees.

[6] The dispute dates back to July 2010, with issues arising from incorrect meter readings and rebilling attempts by the City.

[7] The appeal letter was headed -

…

> *APPEAL IN TERMS OF SECTION 16.5 OF THE CITY OF JOHANNESBURG'S CREDIT CONTROL AND DEBT COLLECTION POLICY*
>
> was addressed to -
> *The City of Johannesburg Metropolitan Municipality*
> *Attention: The Legal and Contracts Unit*
>
> and went on to record that -
> *4. On or about 26 October 2020 we sent a written complaint, in relation to the below mentioned issues on our Client's behalf, in terms of section 16.2 of the City's Credit Control and Debt Collection Policy. The 21 (Twenty-One) day time period within which the City should have resolved same has also come to an end.*
> *5. Our Client finds the City's failure to resolve the dispute as unsatisfactory. In light of the City's failure to resolve the dispute set out below, our Client therefore declares a dispute in terms of section 16.5 of the City's Credit Control and Debt Collection Policy.*

[8] The appeal letter then goes on to set out in detail, the basis upon which the Trustees dispute the City's accounts.

[9] Despite this letter constituting an appeal in terms of section 16.5 of the City's Credit Control and Debt Collection Policy, neither the City nor the City Manager answered this letter.

The legislative framework and the rights and obligations of the Trustees and the City

[10] The legislative framework and the rights and obligations of customers and municipalities were dealt with by the learned Fisher J, in Body Corporate of Willow and Aloe Grove v City of Johannesburg and another[3].

[11] I summarise this judgment as it applies in the current proceedings -

a. the Act seeks to facilitate a user-friendly process of dispute resolution which accords with constitutional precepts of fairness;

b. it was the Trustees' obligation to formulate their complaint sensibly so that the basis on which it disputes an account is understandable;

c. it was the City's obligation to engage efficiently and intelligently with the complaint with the object of coming to a determination which either resolves it or allows for further engagement with it in accordance with the legislation;

d. the City should have informed the Trustees, in writing, of its decision. The written information provided to the Trustees should have had cogency and should have been directed to the dispute at hand;

e. the court's function is not to resolve the dispute. Its function is to see to it that the parties' respective rights are fairly accommodated within the City's internal procedures and the law;

f. to order the City to rectify the account (or to prescribe to the City how to do so) would amount to an impermissible incursion into the contract of the parties. From an administrative perspective it would be an impermissible interference with decisions to be taken by the City;

[3] 2023 JDR 4762 (GJ)

g. it is now compulsory for an aggrieved party to exhaust the relevant internal remedies unless (in certain limited circumstances) exempted from doing so. Any review process, of necessity, entails an inquiry into whether the internal remedies available to the customer in terms of the legislative scheme have been exhausted;

h. ultimately, the appeal process under section 62 of the Act will yield an administrative decision which may in due course be subject to a judicial review;

i. thus, a court may order that the internal remedies be employed. Whilst these remedies are being exhausted in good faith, the structure of the customer/municipality agreement is such that there can be no lawful termination of services.

Application of the legislative framework to these proceedings

[12] Applying these principles to the current proceedings I make the following observations -

a. the Trustees have complied with their obligation to formulate their complaint sensibly so that the basis upon which they dispute the City's accounts, is understandable;

b. the City's has not engaged efficiently and intelligently with the complaint with the object of coming to a determination which either resolves it or allows for further engagement with it in accordance with the legislation;

c. the City or the City Manager has apparently not made a decision but if one or other of them has, they have not informed the Trustees, in writing, of their decision.

Relief available in these circumstances

[13] As outlined above, the court's function is not to resolve the dispute. Its function is to see to it that the parties' respective rights are fairly accommodated within the City's internal procedures and the law. It is the court's function to ensure that the internal remedies be employed and are followed.

[14] These internal remedies entail the lodging of an appeal in accordance with the City's by-laws - which the Trustees have done - and it is the City Manager's obligation to engage efficiently and intelligently with the complaint and then inform the Trustees, in writing, of its decision - which the City Manager has not done.

[15] It follows therefore that this court should order the City to procure that its City Manager respond to the appeal letter, to engage efficiently and intelligently with the Trustees' complaint and then inform the Trustees, in writing, of the City Manager's decision.

Relief sought by the Trustees

[16] The relief sought by the Trustees is to require the City to comply with its statutory obligations and the Trustees request an order giving specific direction to the City as to how the City should comply with these obligations.

[17] As I have found, the Trustees are entitled to an order requiring the City to comply with its statutory obligations, to wit, to an order that the City procure that its City Manager respond to the appeal letter.

[18] As regards the charges for electricity which the City includes in accounts to the Trustees, the Trustees request an order (in summary) that the City –

a. reverse all electricity charges on the Account 221096029 from 2 June 2010 to 7 May 2013;

b. attend to rebilling the Account 221096029;

c. reverse all charges as billed in the March 2017 invoice and rebill;

d. reverse any/all interest, VAT and legal fees that stand to be reversed from account number 2[…] from June 2010 to date;

e. furnish the Trustees with an adjusted statement of account showing that the above adjustments have been attended to.

[19] In my opinion, for this court to make such an order would be an impermissible interference with decisions to be taken by the City and would amount to an impermissible incursion into the contract between the parties.

Outline of the litigation

[20] As I have stated above, in the circumstances of this dispute, it is not the court's function, at this stage, to resolve the dispute between the parties. In order to give context to this litigation and particularly to give context to the points *in limine* raised by the parties (which are dealt with below), it is useful to summarize broadly what occurred -

a. the City historically billed the Trustees for their electricity consumption based on meter number 2[…] ("the Old Meter");

b. meter number 2[…] was replaced by the City by meter number 9[…] ("the New Meter") on 7 June 2013;

c. the Old Meter's daily average consumption was approximately five times the daily average consumption of the New Meter;

d. the Trustees' position is that when a meter has become faulty and is not giving accurate readings, and a new meter is installed, then the daily average consumption of the new and correctly functioning meter should be used to replace the incorrect data of the faulty meter and thus calculate the charges which should have been levied. This is done in accordance with the City's Electricity By-Laws and the industry standards;

e. the Trustees initially proposed three different methods of calculation to arrive at an amount either due to or by the City or by or to the Trustees. In their replying affidavit the Trustees accepted the New Meter's readings as being correct;

f. if the method outlined in clause [20]d is applied, using the New Meter's average daily consumption applied over the period that the Old Meter was being used to record average daily consumption, then the City overcharged the Trustees by an amount of R21,629,949.85.

g. the Trustees made multiple attempts to resolve the issue, including logging queries and sending written complaints. The City failed to resolve the dispute within the specified time periods or at all;

h. the Trustees have been paying the City the current charges in accordance with the New Meter's readings. There is no dispute with regard to

the current charges, but rather only the charges that were billed using the readings from the Old Meter;

[21] The history of the proceedings before this court may be summarised as follows -

a. this application was served on the City on 4 June 2021 and the City delivered a notice of intention to oppose on 10 June 2021;
b. when the City failed to deliver the answering affidavit, the application was set down on the unopposed roll on 5 October 2022;
c. on 5 October 2022, the matter was removed from the roll with the City to pay the wasted costs. The matter was removed in order for the parties to attempt settlement;
d. the parties were unable to reach agreement on settlement and the matter was again set down on the unopposed roll for 21 February 2023;
e. the City delivered its answering affidavit on 20 February 2023. The answering affidavit includes an “application for condonation”;
f. given the opposition and the late filing of the answering affidavit, on 21 February 2023 Wanless AJ postponed the matter to 23 February 2023 for submissions from both parties;
g. on 23 February 2023, both parties (having delivered practice notes and referred to various case law) made submissions in respect of condonation of the late delivery of the answering affidavit, as well as costs;
h. on 23 February 2023, Wanless AJ granted an order directing that the application be removed from the unopposed roll, the matter shall be dealt with in the ordinary course, with the City to pay the wasted costs;
i. on 8 March 2023, the Trustees delivered their replying affidavit;
j. in February 2023 the City served a pretermination notice and the Trustees engaged with the City regarding a resolution of the issue;
k. the City agreed that electricity supply would not be terminated before 30 June 2023;
l. on 16 August 2023 the City terminated electricity supply to the property with no additional notice and the Trustees instituted urgent proceedings against the City to have the electricity supply restored;

m. the matter came before Yacoob J on 18 August 2023 who granted an order inter alia to the effect that -

   i. the disconnection of electricity supply to the property on 16 August 2023 was unlawful;

   ii. the City was ordered to restore the electricity supply to the property within 2 hours of the order being handed down;

   iii. the Trustees were directed to remain up to date with payment of the current charges for account number 2[…] in accordance with what was billed as current charges on the City's invoices in respect of the property;

   iv. for as long as the Trustees remained up to date with payments of the current charges, the City was interdicted from disconnecting / terminating, or causing or instructing the disconnection / termination of the electricity or water supply of the property, for any reason whatsoever, at any time after the handing down of the order;

   v. in the event that the Trustees did not pay the current amount on a monthly basis and in terms of what was invoiced as the current amount on the City's invoices, then the City must serve a new pretermination notice in respect of the property before terminating services supplying the property;

   vi. any termination in respect of the historical debt was interdicted pending finalisation of the dispute under case number 2[…] (the current matter);

n. on 15 September 2023, the Trustees delivered their Heads of Argument. The City failed to deliver its Heads of Argument within the prescribed time period, and the Trustees therefore brought an application to compel delivery;

o. the Trustees applied for a date for hearing the application to compel and were assigned 19 February 2024. The matter was removed from the roll of 19 February 2024;

p. on 19 March 2024, the City served an application to supplement its papers. This was not opposed by the Trustees;

q. on 18 April 2024, the Trustees served their supplementary replying affidavit;

r. the Trustees served their heads of argument for these proceedings on 20 August 2024;
s. the City served its heads of argument on 16 February 2025 (2 days before this hearing);
t. the hearing of this matter was set down for hearing on 18 February 2025 and took place on that day.

Condonation for the late filing of the City's answering affidavit

[22] The answering affidavit was delivered on 20 February 2023 and it is common cause that it was delivered many months late. The City did not apply formally for condonation but did make some submissions in this regard in the answering affidavit itself. The City made no attempt to comply with the provisions of Rule 27.

[23] The Constitutional Court[4] has held that –

> *It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default.*

[24] While condonation may be granted even in the absence of a substantive application[5], the City's submissions in support of its application for condonation fall far short of these requirements.

[25] The standard for considering an application for condonation revolves around the concept of "interests of justice." This concept is flexible and cannot be precisely defined. It encompasses several factors, including the extent and cause of the delay and the reasonableness of the explanation for the delay. Ultimately, determining what is in the interests of justice requires considering all relevant factors, though it is

[4] Grootboom v National Prosecuting Authority [2013] ZACC 37; 2014 (2) SA 68 (CC)
[5] McGill v Vlakplaats Brickworks (Pty) Ltd 1981 (1) SA 637 (W)

not necessarily limited to those mentioned. The specific circumstances of each case will dictate which factors are pertinent[6].

[26] In this matter, I take into account that the Trustees have had an opportunity to and have dealt comprehensively with the answering affidavit in their replying affidavit as well as in their heads of argument. I also take into account that if I were to refuse condonation this may result in further delays to the finalisation of this matter which has already been unacceptably delayed.

[27] I therefore condone the late filing by the City of the answering affidavit.

[28] The City is not an ordinary litigant. It is an organ of state. Section 165(4) of our Constitution[7] instructs organs of state to assist courts to ensure the courts' accessibility and effectiveness.

[29] As stated in Grootboom v the National Prosecuting Authority[8] –

> *One gets the impression that we have reached a stage where litigants and lawyers disregard the rules and directions issued by the court with monotonous regularity. In many instances very flimsy explanations are proffered. In others there is no explanation at all. The prejudice caused to the court is self-evident. A message must be sent to litigants that the rules and the court's directions cannot be disregarded with impunity*

[30] The conduct of the City's representatives in this litigation bears a striking similarity to their conduct described in Millu v City of Johannesburg Metropolitan Municipality and another[9]. But here there has been an intervening judgment of Wanless AJ on 23 February 2023 and the City in this case, is not in defiance of any court order. The Trustees in their heads of argument state that Wanless AJ made no finding in respect of whether or not the late filing of the answering affidavit is

[6] Grootboom v National Prosecuting Authority above
[7] Constitution of the Republic of South Africa, 1996
[8] 2013] ZACC 37; 2014 (2) SA 68 (CC)
[9] 2024 JDR 1329 (GJ)

condoned or whether an application for condonation by the City in that respect is necessary. The City does not deal with this aspect.

[31] Nevertheless, the City and its representatives have inexcusably disregarded the rules of court and I am therefore minded to grant a punitive order for costs against the City on this basis alone.

Condonation for the late filing of the City's heads of argument

[32] The Trustees filed their heads of argument and practice note for these proceedings on 20 August 2024 and the City filed its heads of argument and practice note on 16 February 2025 (2 days before the hearing).

[33] In terms of the Practice Manual for this division, the City should have delivered its heads of argument and a practice note within 10 days from 20 August 2024 being 3 September 2024.

[34] In the City's heads of argument counsel submits –

> *At the outset, I wish to point out that these heads are delivered late due to the administrative issues caused by the change of attorneys dealing with the matter in the Municipality's attorneys of record and the Municipality together with its representatives profusely apologise for the inconvenience caused*

[35] In this regard, what I have said in paragraph [30] above is pertinent. It is difficult to understand why an administrative issue caused by the change of attorneys dealing with the matter in the Municipality's attorneys of record could cause a delay of more than 5 months to the filing of these heads. No other explanation is put forward.

[36] The City and its representatives have inexcusably disregarded the terms of the Practice Manual.

City's supplementary answering affidavit

[37] The City applied to file a supplementary answering affidavit in order, according to the City, to introduce "*facts … material and relevant and necessary to be disclosed in order for this honourable court to be able to adjudicate the issues in the present matter*".

[38] The "material and relevant" facts which the City introduces relate -

a. firstly, to the previous proceedings before and an order of Yacoob J which I have referred to above; and
b. secondly, to the 'fact' that Yacoob J advised the Trustees to change the name of the City's account for the property.

[39] The rest of the affidavit consists of argument or repeats what has been dealt with before by the City in its answering affidavit.

[40] As regards the first issue, the City quotes from the order –

for as long as the Applicants remain up to date with payment of the current charges, the Respondent is hereby interdicted from disconnecting the services

[41] Having quoted from the order, the City states –

It follows therefore that the Court accepted that the billing on the current meter discussed above is correct and that the Applicant accepted the outcomes of the court and they are currently paying as billed by the Municipality

[42] The City then goes on to submit -

It follows therefore that there is not cogent ground in law on why the Applicant should not be ordered to pay the full amount on the same charges billed on actual reading of the consumption of electricity in the same meter number

and

Judge Yacoob … then ordered the Applicants to pay the full amount.

[43] These submissions are patently incorrect. Yacoob J ordered that the Trustees pay the current charges on the account and not the full amount.

[44] As regards the second issue relating to Yacoob J's so-called advice that the Trustees change the name on the City's account for the property, this is also patently incorrect.

[45] The only mention of the name on the account in the judgment is in the first paragraph of that judgment. The learned judge gave no advice nor even mentioned changing the name on the account. In the first paragraph the learned judge stated –

> *The applicants of (sic) a trustees of a trust which is consuming electricity provided by the respondents although the account the with (sic) the respondents is not in the name of the trust, a court dispute is pending between the parties dealing with amounts which have been debited on the account, is pending before this Court*

[46] There is no mention of the actual name on the account at all in the order issued.

[47] As an aside on the issue of the name on the account, the City is adamant that it is up to the Trustees to have the name on the account changed. If the consumer agreement, as alleged by the City, is in the name of Elphin Lodge Rand Aid Association (which is just a name and not a legal person), then it would be sensible for the City to have the obligation to initiate a process to correct the name on the account rather than the Trustees being obliged to do so. It is not clear why the City says it is the Trustees' obligation to have the name changed. If the consumer account was being transferred from one person to another (and not just a change in name), then in that case would seem sensible for the consumer taking over the account, to take the initiative in this regard. This is not the situation here.

City's submissions – locus standi

[48] The City alleges in its answering affidavit that the Trustees do not have l*ocus standi* to bring this application. Their reason for saying so is that the account number 2[…] is in the name of Elphin Lodge Rand Aid Association (which for convenience I will abbreviate to "ELRAA"). The deponent to the founding affidavit has explained

that Rand Aid is the founding donor of the trust and that Elphin Lodge is the name of the building.

[49] The City goes on to say that it is evident that the Trustees appear to be the owner of the property, but, the consumer agreement was concluded between the ELRAA and the City and not the Trustees.

[50] The City goes on to conclude that, on the common cause facts provided in the founding affidavit, the Trustees do not have the necessary *locus standi*, to bring the present application relying on the consumer agreement concluded between the ELRAA and the City.

[51] This is a very strange submission. It is not disputed that ELRAA is the combination of the name of the building and the name of the founder of the trust. ELRAA is neither a juristic nor a natural person. The City does not attach a copy of the consumer agreement to support its argument and no explanation is given as to why it is not attached. If the alleged "consumer agreement" exists, the counter-party to that agreement would, according to the City, be a non-existent person. And ELRAA, as neither a juristic nor a natural person could certainly not institute any legal proceedings of any nature.

[52] In any event, the Trustees do not rely on the consumer agreement for *locus standi*. The Trustees are the owner of the property and, as such, are liable to the City[10] for services provided to the property.

[53] The City referred, in its Heads of Argument, to Tarica and Another v City of Johannesburg Metropolitan Municipality[11]. In that case Mahon AJ held that a municipality has the right to recover outstanding amounts from a property owner even if the account is held in the name of another party. In such a case the property

[10] Mkontwana v Nelson Mandela Metropolitan Municipality and Another; Bissett and Others v Buffalo City Municipality and Others; Transfer Rights Action Campaign and Others v MEC, Local Government and Housing, Gauteng, and Others (KwaZulu-Natal Law Society and Msunduzi Municipality as Amici Curiae) 2005 (1) SA 530 (CC); PA Pearson (Pty) Ltd v Ethekwini Municipality and Others 2017 (6) SA 82 (SCA)
[11] (2023/044543) [2025] ZAGPJHC 46 (27 January 2025)

owner must then have the right to defend any proceedings brought by a municipality and must necessarily have the *locus standi* to do so. It does not matter that the account is held in a different name to that of the property owner.

[54] The Trustees thus have a direct and substantial interest in the rights and obligations which are the subject of this litigation[12] and have *locus standi* to institute these proceedings.

City's submissions – prescription

[55] In paragraphs 24 and 25 of the answering affidavit, the City states –

> *24. On the Applicants deponent of the founding affidavit own version, the present meter is clearly reading properly, and it has been doing so, since the date of installation, save to note that the meter reads less than the meter which was on the property from 2010 to 2013.*
>
> *25. From the above, it follows therefore that:*
>
> *25.1 in respect of the electricity supply services, not only is the Municipality by-laws provide for a period of 36 months,*
>
> *25.1.1 but the Prescription Act No 68 of 19 69, ("the Prescription Act") is applicable, thus, the Applicants cannot demand any correction on the electricity billing for a period more than 36 months.*
>
> *25.2 In respect of the interdict, the Applicants make out no case whatsoever, there is no basis, upon which this Honourable Court could grant a competent order preventing the Municipality from implementing its own by-laws.*

[56] It is not at all clear what these paragraphs mean. For example, it is not clear which by-laws the City is referring to when it says they "*provide for a period of 36 months*".

[57] In argument the City submitted –

[12] Kommissaries van Binnelandse Inkomste v Van de Heever 1990 (3) SA 1051 (SCA)

46.3 That in any event, even if there was an error which is denied, the Municipality cannot reverse any services beyond three years or 36 months.

46.3.1 In terms of the Prescription Act No 68 of 19 69, ("the Prescription Act") is applicable, thus, the Applicants cannot demand any correction on the electricity billing for a period more than 36 months.

46.4 In the event where there is an error in relation to the calibration, then the Municipality may not go back 6 months, in this regard, the Municipality relies on

46.4.1 section 9(7) Greater Johannesburg Metropolitan Council Notice 1610 of 1999 provides that:

"When it appears that a consumer has not been charged or incorrectly charged for electricity due to the application of an incorrect charge or on any other grounds other than inaccuracy of a meter, the council shall conduct such investigations, enquiries and tests as it deems necessary and shall, if satisfied that the consumer should have been charged or has been incorrectly charged, adjust the account according: Provided that no such adjustment shall be made in respect of a period in excess of 6 months prior to the date on which the incorrect charge was observed or the council was notified of such incorrect charge by the consumer. Where such consumer is found to have been correctly charged, the consumer shall be charged the cost of conducting such investigations, enquiries and tests."

47. In reply to the above contentions above, the Applicants contend that:

47.1 The Applicants place no answer or response to the prescription contention and

47.2 In respect of section 9 (7) the Applicant contends that the section is not applicable as the Applicant's case is based on the accuracy of the meter. [Para 65 of Reply].

[58] The Trustees' response quoted by the City in paragraph 47 above is clearly correct. This section 9(7) does not apply because the Trustees' case is that the Old Meter was inaccurate. The City goes on to argue -

48. In respect of prescription, this Court in a similar matter of Douglas and Another v City Of Johannesburg and Others (2021/36955) [2023] ZAGPJHC

1263 (6 November 2023) relying on the Supreme Court of Appeal judgment found that:

"[73] The effect of the upholding of the prescription plea is that all the claims for the reversal of charges emanating from a period before July 2018 have prescribed. The further effect of this would be that a portion of the claim made in prayer 1.1 in the amount of R125,682.30 has prescribed; the claim made for the reversal of duplicate property rates charges in prayer 1.2 has prescribed; the claim to reverse all property rates charges according to prayer 1.5 has prescribed; the reversal of all duplicate refuse charges according to prayer 1.6 has prescribed; the claim for the reversal of all water availability and sewerage availability charges according to prayer 1.7 has partially prescribed; the interest claim according to prayer 1.8 has partially prescribed; the claim for the reversal of all property rates charges according to prayer 1.10 has prescribed; the claim for the reversal of all duplicate refuse charges according to prayer 1.11 has prescribed; the claim for the reversal of all water availability and sewerage availability charges according to prayer 1.12 has partially prescribed and the claim for interest according to prayer 1.13 has partially prescribed."

49. It follows therefore that in respect of the electricity supplied by the Municipality to the Applicants property, the claim thereto is subject to the three year prescription period.

[59] In the case of Douglas and Another v City of Johannesburg, the learned judge Strydom J found –

…

[64] In my view, what is claimed amounts to a debt for purposes of section 11 of the Prescription Act. A reversal of an amount on an account here will either reduce the amount payable or extinguish the debt if the account was in arrears or, if fully paid up, would leave a credit. This, in my view, amounts to a claim for the payment of money.

[60] The Douglas case is distinguishable because the learned judge in that case found that the relief claimed amounted to a claim for the payment of money by the municipality to the owners of a property.

[61] In this matter, there is no claim by the Trustees for payment of money from the City. On the contrary, the City claims that the Trustees owe it money for electricity charges. These charges have been disputed by the Trustees which they resist by demanding proper accounting from the City. The claim for a proper account is not a debt under the Prescription Act and cannot prescribe. If anything, it is the City's claim against the Trustees for payment of money which has prescribed[13].

City's submission – interdict

[62] As regards the City's submissions in respect of the interdict, it is said that the Trustees make out no case and there is no basis upon which this Honourable Court could grant a competent order preventing the municipality from implementing its own by-laws. As I understand it, the Trustees do not ask for an order preventing the City from implementing its own by-laws. On the contrary, the Trustees ask for an order that the City comply with its by-laws.

[63] If, by this submission, it is meant that the Trustees are attempting to prevent the City from collecting money due to it, that, in my view, is not correct. The Trustees state that they are complying with Yacoob J's order (see paragraph [21]l above) that they remain up to date with payment of the current charges for account number 2[…] in accordance with what is billed as current charges on the City's invoices in respect of the property. The City does not deny that the Trustees keep up to date with the payment of the current charges[14].

[64] It is correct that the Trustees are not paying the amounts claimed by the City for electricity consumed as measured by the Old Meter. This the Trustees are entitled to do because they have disputed the charges based on the Old Meter

[13] see Tarica and Another v City of Johannesburg Metropolitan Municipality above and Jordaan and Others v City of Tshwane Metropolitan Municipality and Others 2017 (6) SA 287 (CC)
[14] The City says in its Heads of Argument (paragraph 6.1.1) that Yacoob J found that the Trust is to pay the full amount on the tax invoice issued by the City. That is not correct. Yacoob J ordered the Trust to remain up to date with payment of the current charges for account number 2[…] in accordance with what is billed as current charges on the City's invoices,

readings. Section 102 of the Local Government: Municipal Systems Act[15] specifically prohibits a municipality from implementing any debt collection and credit control measures where there is a dispute between the municipality and any person liable for payments to the municipality.

Trust's submissions – deponent's authority to depose

[65] The Trustees make the following submission regarding the authority of the deponent to the City's Answering Affidavit -

a. the deponent to this affidavit was Mr Tuwani Ngwana who stated that he is employed as a Legal Advisor in the City's Legal Department;

b. the deponent claimed that he is authorised to depose to the Founding Affidavit on behalf of the City, yet he failed to attach proof of that fact, or a resolution directing and empowering him with this authority;

c. the City is a municipality, established in terms of the Local Government: Municipal Systems Act, No. 32 of 2000, and as such, the governing figure behind a municipality is its municipal council, which performs its actions through the municipal manager;

d. the deponent is neither the municipal manager, nor shown to be a member of the municipal council, and as such, he has no authority to depose to the answering affidavit that the City's application rests upon. The answering affidavit is fatally flawed from the outset and should be dismissed outright for lack of authorisation.

[66] In Ganes v Telecom Namibia Ltd[16] it was held –

… it is irrelevant whether [the deponent] had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised. In the present case the proceedings were instituted and prosecuted by a firm of attorneys purporting to act on behalf of the

[15] No. 32 of 2000
[16] 2004 (3) SA 615 (SCA)

respondent. In an affidavit filed together with the notice of motion a Mr Kurz stated that he was a director in the firm of attorneys acting on behalf of the respondent and that such firm of attorneys was duly appointed to represent the respondent. That statement has not been challenged by the appellants. It must, therefore, be accepted that the institution of the proceedings was duly authorised. In any event, Rule 7 provides a procedure to be followed by a respondent who wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant.

[67] The Trustees' submission that, because the deponent was not authorised to depose the answering affidavit, the City's defence (which rested on that affidavit) is fatally flawed, is, in my view, not correct. In short, the deponent to an affidavit does not need to be authorised to depose to an affidavit.

[68] What does need to be authorised is the City's opposition to the Trustees' application. There is no resolution attached to the affidavit authorising the deponent to oppose the application, but the City's attorneys did file a notice of intention to oppose on behalf of the City. In this notice the attorneys state that the City gives notice of its intention to oppose the matter and appoints the address of the attorneys as the address and email at which it will accept service of all legal documents in this matter.

[69] In my opinion then, the authority to oppose the Trustees' application rested with the City's attorneys, who did oppose the application on the City's behalf. If the Trustees wished to challenge that authority, they should have used the procedure provided in Rule 7 to do so. The Trustees did not do so with the result that the City's opposition and the deponent's answering affidavit (condonation having been granted) are, in my opinion, properly before this court.

Costs

[70] I have already dealt with the City's cavalier attitude to the rules of court in paragraphs [28] to [30] above. In my view that alone is sufficient to justify a punitive

order as to costs. Added to that must be the City's late filing of its heads of argument.

[71] The City is an organ of state. As was stated by Sutherland DJP in Millu v City of Johannesburg Metropolitan Municipality and another[17] -

> *… Organs of state are expected to behave honourably. Apparently, the City expects that it can at the same time disrespect the fundamentals of the litigation system and continue with impunity to participate in that litigation system to protect its rights. Such behaviour cannot be tolerated precisely because it is calculated to abuse the process of the court.*

[72] The supine attitude of the City in not responding to correspondence and not resolving this dispute expeditiously is wholly unacceptable. The City did not investigate the Trustees' query on the account and did not provide the Trustees with a written decision. As was stated by de Villiers AJ[18] -

> *There is no doubt that a municipality has a higher duty as a litigant. It has a duty to address the real issues raised by a ratepayer, honestly, fairly, and properly.*

[73] I therefore will order that the City pays the Trustees' costs of this application as between attorney and client.

Order

A. The respondent is ordered -

a. in compliance with section 62 of the Local Government: Municipal Systems Act No. 32 of 2000 to procure that the respondent's City Manager -

i. consider the appeal lodged by the applicant, such appeal being contained in the document dated 19 January 2021 and attached as annexure WP16 to the applicant's founding affidavit;

ii. confirm, vary or revoke the decision;

[17] above

[18] Jordaan and Others v City of Tshwane Metropolitan Municipality and Others 2017 (6) SA 287 (CC)

iii. commence with the appeal within six weeks of the date of handing down this judgment;

iv. decide the appeal within a reasonable period; and

v. notify the applicant in writing of his or her decision;

b. based on the decision of the City Manager, the respondent shall revise the applicant's statement of account and shall deliver to the applicant an adjusted statement of account with suitable notations and explanations such that it is possible for the applicant to check that the City Manager's decision has been correctly incorporated into the statement.

B. Should the applicants -

a. dispute the decision of the City Manager under paragraph A(a); or

b. dispute the statement of account provided by the respondent under paragraph A(b);

c. consider that either the respondent or the City Manager have otherwise failed to comply with the orders made under paragraph A above;

the applicants are given leave to apply to this court on the same papers duly supplemented (if necessary) –

i. to review the City Manager's decision in terms of the Promotion of Administrative Justice Act or in terms of any other applicable law;

ii. to correct the statement of account provided by the respondent;

iii. to apply for appropriate relief should the respondent be found to have failed to comply with the orders made under paragraph A above.

C. The order of Yacoob J made on 18 August 2023 under case number 081420/2023 shall remain of full force and effect provided that, for the purposes paragraph 8 of that order, the dispute under case number 2021-26601 (being these proceedings), shall only be regarded as finalised –

a. when and if the applicants notify the respondent in writing that they regard these proceedings as finalised; or

b. if the respondent has complied with paragraphs A(a) and A(b) of this order and the applicants have failed to initiate, review or other proceedings under paragraph B of this order within 21 days of delivery by the respondent of the adjusted statement of account under paragraph A(b) of this order; or

c. if the applicants have initiated review or other proceedings under paragraph B of this order within the 21 day period, when final judgment, not

subject to appeal or further appeal, has been delivered in such review or other proceedings.

D. The respondent is to pay the costs of this application as between attorney and client.

A MITCHELL

Acting Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 7 April 2025.

HEARD ON:	18 February 2025
DECIDED ON:	7 April 2025
For Applicants:	Adv. L de Wet 083 987 6501 dewet.litigation@gmail.com Attorneys HBGSchindlers Attorneys gohl@hbgschindlers.com 011 568 8532
For Respondent:	Adv. Emmanuel Sithole 076 1629 605 esithole@law.co.za Attorneys Madhlopa & Thenga Inc. lucky@madhlopathenga.co.za 087 135 5672