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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2024-018830

(1) REPORTABLE: YES/NO

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

(3) REVISED: YES/NO

DATE: 10/3/2025

SIGNATURE:

In the matter between:

MIEMIE ELIZABETH VERMEULEN

Applicant

and

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

1st Respondent

THE MUNICIPAL MANAGER OF THE CITY OF TSHWANE

2nd Respondent

JUDGMENT

This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 14:00 on 11 March 2025.

MOJAPELO AJ

INTRODUCTION:

1. The Applicant is the owner of a property situated at No. 1[...] S[...] Street, the Wilds Estate which is within the jurisdiction of the City of Tshwane Metropolitan Municipality. The electricity supply to the Applicant's premises was disconnected in January 2024 because of what the City alleges to be tampering. It is the Applicant's case that she should have been given a notice before the disconnection and the City's case is that in the event of tampering, there is no provision for a prior notice. Consequently, the Applicant seeks an order that the action of the City of disconnecting the electricity supply to her premises be declared unlawful.

APPLICANT'S CASE:

2. The applicant states that she purchased the said property and took ownership on or about 31 August 2023. The Applicant states that she did not immediately occupy the property on a permanent basis as she was still residing at her other residence in Lydenburg in Mpumalanga Province. The applicant states that on 31 August 2023, she noticed that there was no electricity on her premises. She reported the matter to the agents and attorneys that assisted her with the transfer of the property and they arranged for electricians from the City to investigate and the power was restored on 01 September 2023. She then returned to Mpumalanga on 02 September 2023.

3. However, the applicant states that she was unable to purchase electricity or to load any tokens. She states that; *"At this point in time we were unable to; purchase electricity or to load any tokens. The electricians that attended our premises on 1 September 2023 indicated that they are assisting us due to the ongoing strike of the employees of the first respondent during that time."* She further stated that; *"Even*

though I took possession of this property on 31 August 2023 and only permanently started occupying the premises on 13 February 2024, I have only as recent as 31 January 2024 being able to purchase electricity whereafter a token is issued to me. Despite the token being issued, I am unable to load the token as a result of the disconnection."

4. This means that even though the Applicant has taken ownership and possession of the property since 31 August 2023, she was only able to purchase and load electricity on 31 January 2024. For a period of five months, the applicant did not purchase any electricity, but somehow her premises had electricity until it was disconnected by the City on the allegation of tampering.

5. The applicant states that when she returned to Pretoria on 10 January 2024, she discovered that there was no hot water. The realisation that there was no hot water occurred a day after the City disconnected the applicant's electricity supply on the allegations of tampering. She then contacted her electrician, Mr Nico Coetzee, who advised her that the circuit breaker was removed. The applicant does not provide any further information except to state that she has now permanently relocated and started occupying the disputed premises on 13 February 2024.

6. It is the applicant's case that the actions of the City in disconnecting the electricity supply to her premises should be declared unlawful because she was not given any prior notice of the termination. She further states that there was no prima facie evidence of tampering.

THE CITY'S CASE:

7. The City's case is briefly that they have a program to monitor prepaid electricity meter boxes. The purpose of this program is to monitor electricity prepaid meters where there are no purchases of electricity or low purchases of electricity. The program was necessitated by the fact that where there are no electricity purchases on prepaid meters, it has usually been found that the prepaid meters have been tampered with and/or bridged so as to enable a consumer to use electricity without purchasing the same.

8. The Municipality is able to identify possible cases of electricity tampering through prepaid meters which do not report any electricity purchasing. It is stated that the Municipality has discovered this ploy wherein consumers who bridged electricity resorted to purchasing low electricity units. The Municipality discovered that the average electricity usage is not consistent with the units purchased. They therefore identify possible illegal connection, tampering and/or theft by monitoring non-purchase or low purchase prepaid meters.

9. In this particular matter it is alleged that on 09 January 2024, the Municipality's electricity division went to No. [...] S[...] Street, the Wilds Estate to investigate a prepaid meter not assigned to the applicant as there has been a dispute lodged by the said consumer. The electricity box at No. [...] S[...] Street contains several prepaid meters of different properties in the area, including that of the applicant. As the officials of the City were busy investigating the prepaid meter of No. [...] S[...] Street, they realised that there was another prepaid meter that had been tampered with. This prepaid meter had account number 0[...], which belonged to 1[...] S[...] Street. This is the prepaid electricity meter that belongs to the applicant.

10. They further state that where the electricity division identifies a tampered connection on site, they are obliged to complete a manual job card and investigate the tampered connection. They were advised to also take pictures of the tampered connection, which pictures have been attached to the answering affidavit.

11. After an investigation by the officials of the City, they submit that there was evidence of a tampered connection which they have explained as follows;

"27.1 The prepaid meter has two (2) red cables connected to it. The one on the right and the one on the left.

27.2 The one on the right is known as the outcome circuit and the left cable is known as the income. The left income cable is the supply for the Municipality and it is connected from the circuit breaker and the right cable is the outcome and is connected to the house load.

27.3 *The income cable is also referred to as the supply cable whereas the outcome cable is also referred to as the load.*

27.4 *The Municipality's technicians carries a customer interface unit (green one) that is used to communicate with the identified meter. When the connection has been tampered with (when both right and left cables are joined/connected) the consumer interface unit will display the units available on the meter.*

27.5 *Accordingly, when both cables are connected together, the prepaid system within the meter is bypassed, there will be no need for the prepaid meter as the prepaid system will be disabled."*

12. It is reported that the officials of the City's electricity division then removed the bridge and reconnected the applicant's prepaid meter cables to normal. They then proceeded to disconnect electricity supply to the applicant's premises.

THE RULE NISI:

13. The applicant then brought this matter to the Urgent Court and obtained a *rule nisi* on 28 February 2024, the relevant part reads as follows:

*"3. A rule nisi is issued calling upon the respondent to show cause on **14 May 2024** at 10:00 or as soon thereafter as the matter may be heard why an order with the following terms should not be made final:*

3.1 that the termination/disconnection/discontinuation/blocking/ restriction of service to the electricity supply to NO. 10 S[...] STREET, THE WILDS ESTATE, PRETOR/USPART EXT13, PRETORIA ("the premises") be and is hereby declared unlawful;

3.2 that the respondents be and are hereby directed to reconnect/ unblock/ unrestrict the electricity supply to the premises within 4 (four) hours after

service of the Court order at the office of the second respondent, by the applicant's Attorneys;

3.3 that the respondents be and are hereby interdicted and restrained from charging the applicant a reconnection fee as a result of the unlawful restriction/termination/disconnection/discontinuation/blocking of service;

3.4 that the respondents be and are interdicted and restrained from unlawfully terminating/disconnecting/blocking/restricting the electricity supply of the electricity to the premises;

3.5 that paragraphs 3.1 to 3.4 above shall operate as an interim mandamus/interdict pending the finalization of this Application;

4. Costs on the scale as between Party and Party."

14. This is therefore the return day of the *rule nisi*. The Court may on the return day confirm or discharge the rule. *Rule nisi* is analogous to interim interdicts, both of which are mostly made in the urgent Court, where the judge sitting in the urgent Court does not have as much time as a judge sitting in a normal opposed motion Court.

15. In the matter of ***Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and Others 2023 (4) SA 325 (CC)***, it was held as follows:

"Sight should not be lost of the fact that a substantial number of applications for interim relief are brought by way of urgency. There is much to be said for the view that a judge sitting in a busy urgent Court does not have as much time as does a judge who hears trials or decides non-urgent opposed matters. Although each judge must strive for the attainment of the best possible outcome in the circumstances, this reality cannot be ignored. Of course, this is not an invitation to judges considering urgent interim interdicts to avoid deciding legal questions which - with the necessary diligence - are capable of definitive decision."

16. Although it is accepted that the electricity metre box that contained the applicant's prepaid electricity meter contains several other meters, the applicant in the replying affidavit states that the investigation and the evidence provided by the City is for the wrong house. In other words, the pictures were taken outside No. [...] S[...] Street, whereas the applicant's house is No. 1[...] S[...] Street. This allegation is repeated in the heads of arguments despite it being common cause that the meter box at No. [...] S[...] Street contains several meters of several houses in the vicinity including that of the applicant.

THE CITY OF TSHWANE ELECTRICITY BY-LAWS:

17. The relevant section of the City of Tshwane Standard Electricity By-Laws that provides for disconnection in relation to the tampering of electricity supply is section 26 which reads as follows:

"Section 26 of the Standard Electricity Supply By-Laws supra provides-

(1) No consumer, owner, occupier or registered owner of any premises or immovable property or any other person may in any manner or for any reason whatsoever bypass the meter and/or a related metering equipment of the Municipality or of a contractor on or relating to any premises, or otherwise tamper or interfere with, remove, redirect, disturb, alter, vandalise or steal any meter or other metering equipment, or any service connection, service protective device, protective box or case, the supply of mains or any other electricity supply or metering assets, equipment and/or infrastructure forming part of the Municipality's electricity supply, distribution and reticulation network and/or any prepayment meter system, smart prepayment meter system, whether owned or operated by the Municipality or a contractor and whether or not it is located or installed on, or affixed to any premises or is located or installed elsewhere in relation to any premises. Such tampering, interference, removal, redirection, by-passing vandalism and theft shall constitute an offense in terms of these By-Laws.

(2) *Where prima facie evidence of tampering, interference or by-passing referred to in subsection (1) exists, the Municipality has the right to disconnect the supply of electricity immediately without prior notice to the consumer. The consumer is liable for all fees and charges levied by the Municipality for the disconnection and subsequent reconnection in accordance with the approved tariffs.*

(3) *In cases where the tampering, interference or by-passing referred to in subsection (1) has resulted in the accuracy of the meter being compromised, the Municipality has the right to rectify the consumer's account to include circuit breaker, connection and quota charges."*

18. It is quite clear from the above section that the City, on the existence of *prima facie* evidence of tampering, has the right to disconnect the electricity supply immediately without prior notice to the consumer.

19. The applicant argues otherwise and states that she is entitled to a fourteen (14) day notice. The section that deals with a fourteen (14) day notice prior to the disconnection of the electricity supply is section 21 and it states as follows:

"Section 21 of the Standard Electricity Supply By-Laws supra provides-

(1) *The Municipality has the right, after giving notice, to disconnect the electricity supply to any premises if-*

(a) *the person liable for payment for the supply or for payment for any other municipal service fails to pay any charge due to the Municipality in respect of any service which he or she may at any time have received from the Municipality in respect of the premises; or*

(b) *any of the provisions of these By-Laws and/ or the regulations are being contravened.*

(2) *The Municipality has the right to disconnect the electricity supply to any premises if there has been deliberate overloading on or the illegal increase of supply or capacity of supply to the premises. The Municipality must give notice to the consumer of its intention to disconnect or, in the case of a grave risk, the Municipality may disconnect without giving notice. After a consumer's electricity supply has been disconnected for non-payment of accounts or for the improper or unsafe use of electricity or for any other related reason, the fee prescribed by the Municipality must be paid by the consumer."*

20. Section 21 of the electricity By-Laws deals with the situation where the disconnection is a result of non-payment. This matter does not deal with non-payment and therefore the provisions of section 21 are not applicable in this matter. However, it is worth noting that the City under section 21(2) has the power to disconnect electricity without notice in the case of a grave risk.

21. However, the applicant insists that it is entitled to a notice prior to the termination despite the clear text of section 26, in particular section 26(2) of the Standard Electricity By-Laws.

22. Even though the provisions of section 26 do not provide for prior notice before termination, the applicant argues that she is entitled to procedural fairness as provided for by, amongst others, section 3 of the Promotion of Administration Justice Act 3 of 2000 (PAJA). In this regard, the applicant relies on the Constitutional Court case of **Joseph and Others vs The City of Johannesburg and Others 2010(4) SA55 (CC)** where it was stated that the City Council must afford the applicants a pre-termination notice and the Constitutional Court went on to describe what should be contained in that notice.¹

23. The matter of **Joseph** is not applicable in the current matter as the Constitutional Court was dealing with the termination of electricity based on an outstanding amount. The **Joseph** matter involved a large residential and commercial property where the owner was in arrears to the tune of R400 000.00 and the City

¹ Joseph (supra) paragraph 61.

terminated the electricity supply. The Constitutional Court held that prior to the termination of electricity, the applicants in that matter should have been given a pre-termination notice, which notice; *"must contain all relevant information, including the date and the time of the proposed disconnection, the reason for the proposed disconnection, and the place at which the affected parties can challenge the basis of the proposed disconnection. Moreover, it must afford the applicant sufficient time to make any necessary inquiries and investigations, to seek legal advice, and to organize themselves collectively if they so wish."*²

24. However, this matter does not deal with a dispute about payment. This matter deals with the termination based on an alleged illegal activity of tampering. The City states that the purpose of the immediate disconnection is to prevent electricity theft. One can only imagine the amount of revenue that the City would lose while waiting for the illegally connected consumer to make representations. There is also an element of safety risk to members of the public.

25. The question of whether the applicant who is receiving electricity based on an illegal or unlawful connection would be entitled to the notice procedure in terms of PAJA as described by the Constitutional Court in the matter of **Joseph** was dealt with by the Supreme Court of Appeal in the matter of **Eskom Holdings Soc Ltd v Sidoyi and Others 2019 JBR 0963 SCA** where it was held as follows:

"If Eskom was correct in saying that the supply of electricity to Mr Sidoyi's house was via an unlawful connection using electrical apparatus that had been unlawfully erected and installed, it was difficult to see how the removal of that apparatus, which would have the effect of terminating the supply, could constitute administrative action as defined in PAJA. The reason was that the definition of administrative action in section 1 of PAJA requires that the action in question 'adversely affect the rights' of the person bringing the proceedings. If the means of receiving a supply of electricity is an unlawful connection to

² Joseph (supra) paragraph 61.

the electricity network there is no right or legitimate expectation to receive that supply of electricity."³

26. Similarly, in this matter where there are allegations of an illegal activity of tampering, the procedural rights provided for in PAJA are not applicable and the applicant's reliance on the Constitutional Court case of **Joseph** is misplaced.

CHALLENGE TO EVIDENCE OF TAMPERING:

27. There is another issue that was raised on behalf of the applicant. The issue in general can be categorized as a challenge to the allegation that there was *prima facie* evidence of tampering. This attack is raised on three (3) fronts. First, the investigation was done at the wrong address, second, the electrician hired on behalf of the applicant concluded that there was no tampering, and third, there were no supporting affidavits by the officials who conducted the inspection.

28. The first issue is that the investigation was done at the wrong address. It is alleged that the investigation was done at house No. [...] S[...] Street, whereas the applicant's house is No. 1[...] S[...] Street. This challenge is based on the photograph that was used by the City as evidence of tampering. That photograph has a GPS address of No. [...] S[...] Street. The submission by the applicant is disingenuous based on the following; in the founding papers, the applicant states that the electricity box outside the applicant's premises is used by multiple properties. She states that; "I need to highlight that upon inspection, the electricity box outside my premises is being used by multiple properties." The fact that the electricity box contains electricity meters from multiple properties was also supported by the respondent in their answering affidavit when they stated that they went there to inspect the electricity meter of house No. [...] S[...] Street and in the same electricity box, there was the applicant's meter which was found to have been tampered with. However, in her replying affidavit and in her heads of argument, the applicant took the stance that because the GPS coordinates on the photograph of tampering show that the picture was taken at house No. [...] S[...] Street, then this Court must

³ Sidoyi (supra) paragraph 15.

conclude that the inspection was done at the wrong house. This submission cannot be taken seriously based on the fact that the applicant's own version in the founding papers is that the electricity metre box contains various meters of various properties and those properties include the applicant's property and house No. [...] S[...] Street. In any event, the report contains the meter number that belongs to the applicant.

29. On the second issue, the applicant argues that there was no evidence of tampering as the applicant's electrician, Mr Nico Coetzee stated under oath that he had inspected the photographs and investigated the alleged tampering and concluded that there was no tampering in the applicant's electricity meter box. This inspection by the applicant's electrician occurred after the City had already removed the illegal bridging material from the box. It is the City's submission that after the members of the electricity division removed the bridge, they reconnected the applicant's prepaid meter cables to normal. It is therefore understood that after the normalization of the prepaid meter and the removal of the illegal material, an inspection that happened thereafter would not find any evidence of tampering. Such evidence of tampering would have been removed by the time of Mr Coetzee's investigation.

30. Although the applicant alleges not to have occupied the property since she took possession on 01 September 2023 and only took occupation on 13 February 2024, she states that she discovered on 10 February 2024 that there was no hot water in the house. The date of 10 February 2024 is a date immediately after 09 February 2024 when the City's officials removed the illegal bridging material and disconnected the electricity supply to the applicant's premises based on tampering. The only response from the applicant's attorney is that it was a coincidence. However, this "*coincidence*" does not assist the applicant's case on the probabilities based on the fact that the applicant did not during this period of approximately five (5) months purchase electricity. The question that remains is how was the electricity supplied to the applicant's house for a period of five (5) months without any electricity purchases.

31. The third issue is the allegation that there is no corroborating evidence from the officials who did the inspection. However, the answering affidavit states that

those officials reported to Mr Sivhada, the Director of the Energy and Electricity Department of the City, who has filed a confirmatory affidavit.

32. On the conspectus of all the facts, there is absolutely no basis to doubt the City's finding of *prima facie* evidence of tampering on the applicant's prepaid electricity meter box. Consequently, this application should fail.

COSTS

33. The City states that it has a program for monitoring electricity meter boxes. The purpose of this program is to monitor electricity prepaid meters where there are non-purchases of electricity or low purchases of electricity. It states that the program was necessitated by the fact that where there are no electricity purchases on prepaid meters, it has usually been found that the prepaid meters have been tampered with and/or bridged so as to enable a consumer to use electricity without purchasing the same. In other words, the City is monitoring electricity theft by consumers who are supposed to purchase it. Section 26 of the Standard Electricity By-laws gives the City the authority to immediately, without notice, disconnect the electricity supply where there is *prima facie* evidence of tampering.

34. In addition thereto, the By-laws provide that any person who tampers with any metering equipment shall be guilty of an offense and if found guilty by a Court of law may be sentenced to a fine.⁴ And further, the By-laws provide that any person who contravenes them is liable to compensate the Municipality for the loss, expenditure, and/or damage suffered or sustained by the Municipality.⁵

35. The City has an obligation to provide electricity in a safe environment and to collect payments for its services. The illegal connections result in unaccounted consumption of electricity; the loss of substantial revenue and, most importantly, pose a significant public health and safety risk to consumers and members of the public.

⁴ Section 62(1) of the Electricity By-laws

⁵ Section 62(2) of the Electricity By-Laws

36. The efforts of the City to comply with their obligations in terms of the By-laws are deliberately frustrated. The applicant tells this Court that she took possession of her property on 31 August 2023 but was unable to buy electricity until 31 January 2024, a period of five months. It does not need a lot of imagination to see where the applicant was getting her electricity supply all along. Coincidentally, on 10 January 2024, after the City had removed the bridge and disconnected her electricity, she suddenly discovered that there was no hot water in the house.

37. Despite telling the Court that there are multiple meters belonging to several properties in one electricity meter box outside No. [...] S[...] Street, she surprisingly persists with a meritless argument that the inspection was made at the wrong address.

38. During her meeting with the Director in the Energy and Electricity Department of the City, she claimed that the bridging must have been made by the previous owner. Although she tersely denies having made such a statement, the applicant does not explain to this Court how her house was electrified for a period of about five (5) months without purchasing electricity.

39. This Court has already frowned upon this type of conduct. In the matter of *City of Tshwane Metropolitan Municipality v Grobler and Others 2005 (6) SA 61 (T)* it was held as follows:

"This deliberate flouting of the law in the face of lawful attempts by the applicant to perform its statutory duty warrants a special costs order. To permit such conduct would result in anarchy, particularly in a city where it is notorious that contraventions of the scheme, in circumstances such as the present, are widespread."

40. There is accordingly no basis at all in this matter for the City to be out of pocket when performing its obligations. There is therefore no reason to deviate from the principle that the costs should follow the results.

CONCLUSION:

41. Under the circumstances, the applicant is not entitled to the interdict and the other orders prayed for. I therefore make the following order:

1. The *rule nisi* issued by this Court on 28 February 2024 is hereby discharged.
2. The application is dismissed.
3. The applicant is ordered to pay the costs of this application, which costs will include the reserved costs of 03 July 2024 on a party and party scale and counsel's costs on scale B.

**MM MOJAPELO
ACTING JUDGE HIGH COURT
GAUTENG DIVISION, PRETORIA**

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