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

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

30/4/2019
DATE SIGNATURE

CASE NO: 36746/2017

IN THE MATTER BETWEEN

ALAN SUGBEN	**1ST APPLICANT**
MARGARET JUNE SUGDEN	**2ND APPLICANT**
AND	
THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY	**1st RESPONDENT**

JUDGMENT

SENYATSI AJ

[1] On the 18 December 2017, Mphahlele J, of this Court, issued an order with, inter alia, the following terms:-

"1. The Respondent to take any/all measures necessary to comply with its constitutional and statutory obligations in relation to the Applicants within 14 (fourteen) days of this Court Order being handed down, which measures expressly include (but not limited to) in respect of municipal account number 550 059 569:

1.1. The Respondent to effect a reversal of the estimated, erroneous and excessive charges based on estimate readings taken from meter number AL50801812 from September 2011 to July 2015;

1.2. The Respondent to provide the Applicants with job cards to verify the start reading of electricity meter number 14200927011 installed on or about 18 June 2015 in order to determine an average consumption to rebill the Applicants municipal account number 550 059 569 from September 2011 to date and rebill the account based on that average

consumption. Alternatively should the Respondent not be able to furnish Applicants with job cards, above, that the Respondent use an average monthly consumption reading compiled by the Applicants to rebill the account from September 2011 to date.

1.3. *Thereafter, that the Respondent reverse all accounts that have prescribed for electricity charges and which charges stand to be written off.*

1.4. *The Respondent furnish the Applicants with a revised invoice reflecting the reversals conducted and the correct amount owing by the Applicants;*

1.5. *The Respondent immediately desists from continuing debt collection proceedings in respect of account number 550 059 569, until the necessary rectifications have been made to the account; and*

1.6. *The Respondent refrain from terminating or restricting the supply of any service to the Applicants property or threatening to terminate or restrict the supply of any service to the proper in respect of any amount outstanding on the account until this Court has adjudicated over this dispute and handed down an order in terms of same and such order has been fully complied with.*

1.7. The Respondent is to pay the Applicants costs on the scale as between attorney and client."

[2] After being ordered as set out above, the Respondent did certain adjustments to the Applicants' municipal account. The adjustments which were allegedly effected were determined from the new meter reading. There was, however, no job card to verify the start of the new meter reading for the purposes of determining a monthly consumption average, so contend the Applicants. The Applicants' other complaint is that the adjustments done also omitted the necessary adjustments for the charges and interest to be written off.

[3] The Respondent contends that it is not in contempt of the Court Order. It argued that paragraph 1.1 of the Court Order was complied with before the contempt application was issued on 24 April 2018. Consequently, it submits, that prayer 2.1 of the Notice of Motion cannot be sustained.

[4] With regards to prayer 2.2 in terms of which the Applicants seek an order compelling the Respondent to re-bill the Applicants account from September 2011, computed on a monthly average consumption, is to be furnished by the Respondent to the Applicants, the Respondent contends that it is common cause that

the account was already correctly re-billed in December 2017 invoice which was based on average consumption charges. The Respondent contends that this prayer cannot be granted as it was complied with by the Respondent long before the issuing date of the proceedings.

[5] The Respondent contends that prayer 2.4 was already complied with as at December 2017 or as at, based on the Applicants' own version, February 2018. There is no basis, so contends the Respondent, for the Applicants to pursue the relief formulated in prayer 2.4.

[6] The Respondent, furthermore, contends that no case whatsoever is made out for the relief in prayer 2.5. The Respondent also contends that it has not suggested anywhere in the founding or replying affidavits that there has been any attempt by the Respondent, in continuing debt collection proceedings in respect of the Applicants' account.

[7] Furthermore the Respondent contends that there is no merit in prayer 2.6. The reason advanced for the contention is that no case has been made out in the founding and replying affidavits that the

Respondent has attempted to terminate or restrict the supply of any service to the Applicants' property in respect of the amount outstanding. It contends that this prayer amounts to an abuse of the court process.

[8] In prayer 3 the Applicants seek that the Respondent be fined a daily penalty, should it fail to comply with order in paragraph 2 of the Notice of Motion, until such time as the Respondent has fully complied with paragraph 2 of the order. The Respondent contends that this prayer should fail as the Respondent has already complied with the order.

[9] The only contentious prayer, so contends the Respondent is prayer 2.3 which contains paragraph 1.3 of the order which reads as follows:

"Thereafter, that the Respondent reverses all amounts that have prescribed for electricity charges and which charges stand to written off."

[10] The Respondent contends that this prayer is non-specific and that this is common cause on the papers. It contends furthermore that the court hearing the contempt application, should interpret the prescription so as to hold it in contempt.

[11] The difficulty for the Applicants, so contends the Respondent furthermore, is that where an order is vague and/or ambiguous, and susceptible to different interpretations, that under such circumstances, contempt of court is not an inappropriate remedy.

[12] The brief background of this matter is that, in terms of the order granted on 18 December 2017, the Respondent ought to have complied with the court order within 14 (fourteen) days of the handing down of the order. The contempt application was issued on 24 April 2018 and served on 7 May 2018 on the attorneys of record for the Respondent.

[13] The Respondent was informed of the order on the 16 of January 2018 through its attorneys of record and various officials of the Respondent through e-mail.

[14] The Applicants concede that during December 2017, the Respondent did begin making certain adjustments to the Applicants' municipal accounts, however, the adjusted amount was determined from reading on the new meter and there was no job card to verify the start reading of the new meter for the purposes of determining a monthly consumption average.

[15] The issue for determination is whether or not the Respondent should be held in contempt of the court order as averred by the Applicant.

[16] For the Applicants to succeed in their application, they must prove:

16.1. the order;

16.2. the notice on the Respondent and knowledge of the order; and

16.3. non-compliance with the order by the Respondent (See Fakie NO v CC11 Systems (Pty) Ltd 2006 (4) 326 (SCA) at 344 para 42).

[17] It is also trite that all orders of court, whether correctly or incorrectly granted, must be complied with until they are properly set aside. (*See Department of Transport and Others v Tasima (Pty)* Ltd 2017 (2) SA 622 (CC) at 668E-669B; 674D-F.)

[18] In Tasima (Pty) Ltd v Department of Transport and Others [2016] 1 All SA 465 (SCA) at 473 para 18, the court held that contempt of court is the deliberate, intentional refusal or failure to comply with a court order.

[19] The Applicants must prove the requisites of contempt of court beyond reasonable doubt and no longer on balance of probabilities. ((See Fakie NO v CC11 Systems (Pty) Ltd supra at 344-345 para 42). The Respondent's conduct must be wilful and *mala fide* to be found to be in contempt of court.

[20] In Els v Weidman and Others (2011) 72 All SA 246 (SCA) at para 66-77, Heher JA, who was writing for unanimous decision held as follows:

> *"[66] Thus, when one considers the first Respondent's affidavit with the content of cover and editorial one is left in no reasonable doubt that she, while appreciating both the scope and effect of the interdict, set out carefully an deliberately to construct a trail for her readers which lead them to conclude that Els and the*

abuser who could not be directly named were one and the same person. That, in my judgment, is the only reasonable inference that follows from the facts and it is consistent with all of them.

[67] That being the conclusion, not only has Weidman failed to adduce credible evidence of her bona fides, but her intention unlawfully to circumvent the court order is manifest".

[21] The proper analysis of the facts of this matter reveals that at the time when the initial application was issued, the Respondent was already doing adjustment of the account. This is borne out by the invoice dated 15 December 2017 marked "AA2" attached to the opposing affidavit of the Respondent. In fact that invoice shows a credit of R6036-80.

[22] When the order in terms of which the Applicants seek a declaration that the Respondent is in contempt thereof was issued, it is clear from the evidence that the Respondent had already done the adjustments.

[23] The Applicants' complain that the fourteen days period has passed without the order been complied with. I cannot find any factual or legal basis in support of the contention of non-compliance. The order only came to the attention of the Respondent from 16 January 2018.

[24] As regards the average monthly charge to be effected in the absence of the job card for electricity meter number 14200927011, it is common cause between the parties that such job card was none existent. This is conceded by the Applicants as well. As a consequence, the average charge used was 381kw per month. This has also been implemented and I cannot fathom the basis of contending that the Respondent is non-compliant.

[25] Both parties concede that meetings were held to debate the account and resolve the issues between them. This is borne out by various emails between them which led to a meeting which took place on 27 March 2018 the result of which was that the invoice dated 15 December 2017 showing the adjustments was provided to the legal representatives of the Applicants.

[26] It is of concern to this court that the invoice clearly showing the reconciled amount was not attached to the founding affidavit of this contempt application by the Applicants through their attorney Mr

Musa Mathebula. No explanation has been proffered for this omission.

[27] What seems to be a real contention is the prescribed amounts that were to be written off. I have considered the court order by Mphahlele J on this aspect. The amount to be written off is not spelt out. What is apparent is that for the period disputed, the Respondent, provided electricity to the Applicants and the latter paid for those services. It is highly unlikely that Mphahlele J's order could have intended to imply that the electricity services supplied for which payment had been made, that the services were supplied free of charge and that the Applicants be credited with the same amount already paid for electricity used. This in my view could not have been the intention of the court and the Respondent is within its rights to interpret that way. It is for this reason that the contended court order is open to more than one interpretation on this point.

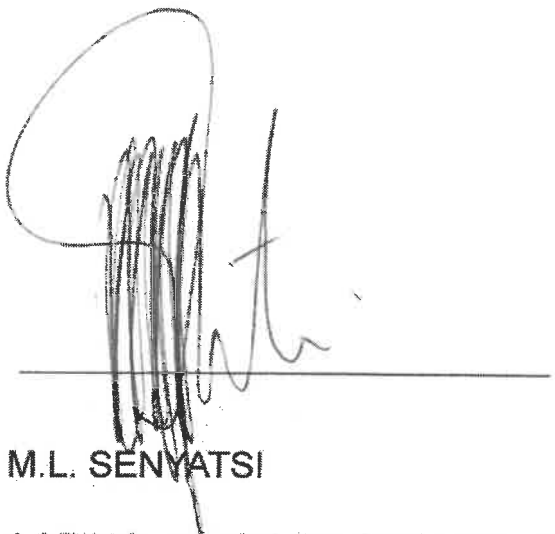
[28] Having considered the facts of this matter and the principles applicable for the Applicants to succeed in their application, I hold the view that the Applicants have not succeeded to discharge the evidentiary onus of proving bad faith to disobey the order of

Mphahlele J by the Respondent. It follows therefore that the application must fail.

ORDER

[29] The following order is made:-

(a) The application is dismissed with costs.



M.L. SENYATSI

ACTING JUDGE OF THE HIGH COURT

OF SOUTH AFRICA,

GAUTENG LOCAL DIVISION,

JOHANNESBURG

Appearances:

Date of hearing	: 30 January 2019
Date of Judgment	: 30 April 2019
For the Applicant	: Adv Sandra Cliff
Instructed by	: Schindlers Attorneys
For first Respondent	: Adv C Van Der Merwe
Instructed by	: Sali Mantlana & Partners