

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO:

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

DATE

SIGNATURE

In the matter between:

SAMS TISSUE PRODUCTS (PTY) LTD

Applicant

And

EMFULENI LOCAL MUNICIPALITY
Respondent

First

EXECUTIVE MAYOR EMFULENI MUNICIPALITY
SIPHO RADEBE

Second Respondent

MUNICIPAL MANAGER EMFULENI MUNICIPALITY
LUCKY LESEANE

Third Respondent

JUDGMENT

MAKUME, J:

- [1] In this matter the Applicant seeks an order interdicting the Municipal from disconnecting electricity and water supply to its business premises situated within the local authority of the first Respondent.
- [2] In the alternative Applicant seeks an order that the order so granted operate as an interim order pending the finalisation of an action to be instituted by the Applicant within 30 days of service of this order in which action the Applicant seeks a determination of the right against the Respondent arising from the Municipal account.
- [3] It also seeks an order to interdict the Respondent from proceeding to recover what is owed to it for services.
- [4] On the 6th July 2022 I granted an interim order as prayed for save for the exclusion of the prayer prohibiting the First Respondent from instituting action to collect debts owed to it by the Applicant.
- [5] The first Respondent now seeks reason for that order. My reason follows hereunder.

URGENCY

- [6] This application was launched as an urgent application on the 28th June 2022 a day after the first Respondent had issued and served notice on the Applicant of its intention to disconnect the supply of electricity by Wednesday the 30th June 2022.
- [7] It is common cause that there is an outstanding dispute between the Applicant and the Respondent regarding the accuracy of the statement of account or invoices issued by the first Respondent in respect of the Applicant's commercial premises.
- [8] Several meetings were held aimed at reaching some solution the last meeting having taken place on the 16th May 2022 at which meeting the Applicant's

Director had made proposals which the Respondent declined on the 15th June 2022.

- [9] It is common cause that the Applicant carries on business as a Tissue Product Manufacturer and employs about 250 persons in the Vaal arear.
- [10] In paragraph 10 of the Founding Affidavit the Applicant says that it will suffer severe prejudice in the event of a disconnection. This will not only result in work stoppage for its employees but will bring production to a halt and result in economic losses.
- [11] The Respondent chose not to respond to paragraph 10 of the Founding Affidavit. I accordingly found that the Applicant has satisfied all the requirements of urgency as prescribed in Rule 6 (12) read with the practice directive and the case law.
- [12] In the alternative prayer set out in paragraph 4 of the Notice of Motion the Applicant prays for an interim order pending the institution of a legal action aimed at resolving the disputed billing and the amounts. In my view the Applicant has succeeded in making out a case for an interim order which I have already granted.

INTERIM INTERDICT

- [13] I have already granted an interim interdict in this matter on the basis that I am satisfied that the Applicant has satisfied the requirements of an interim interdict. Such requirements have been stated in numerous cases. The Applicant relies on the well-established principle that in order to obtain an interim interdict an Applicant has only to show the following:
- a) A right which though *prima facie* established is open to some doubt;
 - b) A well-grounded apprehension of irreparable injury; and

c) The absence of ordinary remedy and that the balance of convenience is in favour of granting the interim relief (See: **Vagar t/a Rajshree Release vs Transavalon 1977 (3) SA 766 at 771**).

[14] It is common cause that the Respondent says that the Applicant owes it some R39 million which the Applicant disputes. The Applicant says despite the dispute it has paid R3 million to the Respondent this was done after the Applicant's Director had met with the Municipal Manager and had arrived at an agreement that the Applicant pays R3 million on or before the 16th May 2022 and thereafter a monthly payment of R500 000.00 (Five Hundred Thousand Rand) starting on the 7th June 2022 pending a debatement of the Applicant's account.

[15] The Applicant in its Founding Affidavit says that it was agreed between it and the Municipal Manager that for as long as the Applicant kept to the above payment structure the Respondent would not terminate Municipal.

[16] In reply to the above all that the deponent to the Answering Affidavit could say is that "he Municipal Manager is not entitled alone to enter into any payment arrangement" It is not denied that he is prohibited from ever doing so. The Respondent does not deny that such an agreement was concluded.

[17] It is not expected that Mr Mohammed Jada should have known that the third Respondent had no authority to conclude such an agreement. The Municipal Manager has not filed an affidavit denying the existence of such an agreement with Mr Jada. I am therefore satisfied that the Applicant has established a *prima facie* right entitling it to an interim order.

[18] The second requirement which the Applicant has satisfactorily demonstrated is a well grounded apprehensive of irreparable harm or injury.

[19] In paragraph 103 and 104 of its Founding Affidavit the Applicant says that it runs various industrial machines such as paper manufacturing and pulping machines which machines require days to restart and recalibrate themselves.

Applicant can therefore not afford any downtime caused by interruption of electricity supply.

[20] In paragraph 109 of the Founding Affidavit the Applicant alludes to the fact that the first Respondent's intended action to disconnect is deplorable and will result in 200 persons losing work.

[21] The Respondent has chosen not to respond to the Applicant's statements of fact in the paragraph refer to above. In the result the Plascon Evans Rule applies. I am satisfied that the Applicant has demonstrated that it will suffer irreparable injury if an interim order is not granted.

[22] The last requirement is the absence of ordinary relief and the balance of convenience. The facts in this matter are self-explanatory. There is no alternative relief that the Applicant can rely on the issue of a claim for damages is not the answer at this stage for the Applicants.

[23] It is trite law that in every case if an application for an interdict *pendente lite* the Court has a discretion whether or not to grant the application. I have in the result exercised my discretion to grant interim relief after having taken into consideration all the circumstances of this case particularly that the intended action and debatement is not likely to be finalised soon also that the damages that the Applicant will suffer if no interim protection is granted is huge.

[24] In the matter of **Ndauti vs Kgami And Others 1948 (3) SA 27 (W)** the Court found as follows at page 37: "for though there may be no balance of probability that the Applicant will succeed in the action it may be proper to grant an interim interdict where the balance of convenience is strong in favour of doing so, just as it may be proper to refuse the application even where the probabilities are in favour of the Applicant if the balance of convenience is against the grant of interim relief."

[25] The Respondent elected to deal with the bylaws which fact or their existence as regard debt recovery is not in dispute. Their existence still does not take away the right of a Court to grant interim relief when satisfied of the fact. The

Respondent has also elected to raise new matter in its heads of argument which were not dealt with in the Answering Affidavit.

[26] Finally the Respondent has failed to put up an Affidavit by the Municipal Manager to dispute the agreement.

[27] In the result the interim order granted on the 6th July 2022 is hereby confirmed.

Dated at Johannesburg on this day of August 2022

**M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

APPEARANCES

DATE OF HEARING	:	1 JULUY 2022
DATE OF INTERIM ORDER	:	06 JULY 2022
DATE OF JUDGMENT	:	AUGUST 2022
FOR APPLICANT	:	ADV Z KHAN
INSTRUCTED BY	:	SHAHEED DOLLIE ATTORNEYS
FOR RESPONDENT	:	ADV T MATHOPO
INSTRUCTED BY	:	MESSRS MAJARA ATTORNEYS