IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 017138/2022

DATE: 2023-02-09

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO.
(3) REVISED.
DATE
SIGNATURE

In the matter between

MHLONGO, MANDLA Applicant

and

CITY OF EKURHULENI MUNICIPALITY Respondent

J U D G M E N T

WEPENER, J:

In this matter the applicant seeks a declaratory order that the respondent's termination of electricity supply to her property is declared unlawful and the respondent is ordered to reconnect the electricity supply.

The legal representative for the applicant was asked whether his application is based on an agreement with the respondent, or whether

he alleges that he is a consumer of electricity without an agreement, with the respondent.

After much fencing around the issue, it was finally submitted that the applicant and his tenants consume electricity without any formal agreement with the respondent, thus the reliance on the case of *Joseph* which I will refer to herein below.

Had the applicant had any agreement with the municipality, it could have acted in terms of the law to terminate the supply of electricity in the absence of payment therefore, see *Rademan v Moqhaka Municipality* 2012 (2) SA 387 (SCA), but this is not the case.

But the applicant's case is that it has no agreement with the respondent, its case is based on spoliation, ie the unlawful termination of electricity supply and the failure to afford the applicant procedural fairness as set out in the *Joseph* case.

The applicant alleges that he received no notice prior to the termination of the electricity supply. The respondent placed a host of evidence before this Court that it duly served a number of pre-termination notices on the property where the applicant alleges he stays with his tenants.

The applicant's version that he did not receive any of these notices defies credulity and I am satisfied that I can accept that that version is untrue. See in this regard *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) where Cameron JA stated:

"Motion proceedings are quicker and cheaper than

> trial proceedings and in the interest of justice; courts have been at pains not to permit unvirtuous respondents to shelter behind patently implausible affidavit versions or bald denials… This means that an uncreditworthy denial, or a palpably implausible version, can be rejected out of hand, without recourse to oral evidence."

This is at paragraph 55. There is no reason why this should not be applied to the version of an applicant. In my view, it matters not that the letters may have been addressed to the registered owner of the property. If they were indeed delivered to the property where the applicant alleges he stays, he must have received them.

He must have become aware that the applicant claimed that the payment of electricity was in arrears and threatened to discontinue the supply to the premises. Such pre-termination letter was delivered to the property where the applicant lives and as I said, on several occasions.

It cannot be disputed that the account for services at the property is in arrears and payment is not forthcoming for the services rendered by the respondent. The last payment for services was in 2016 and there is absolutely nothing from the applicant to show how he can believe that nothing is payable from that date up to 2023.

Several notices were sent, leaving them at the property since 2017 to August 2022. These notices were conspicuously attached to the gate of the property, the occupiers thereof, including the applicant,

must have seen it. The fact that the applicant received the pre-termination notices and failed to engage the respondent, despite having had sufficient and ample time and notice of the intended termination of the service, counts against him.

In that sense, there was indeed procedural fairness in the conduct of the respondent. The applicant was advised that electricity would be terminated by pre-termination notice on several occasions and ignored them.

In fact, the respondent had disconnected electricity on a few occasions, subsequent to the pre-termination letters and all that happened is 'someone' reconnected the electricity. Certainly, the occupiers would be that 'someone'.

Having found that the applicant knew full well that the pre-termination notices were sent to it, it follows that it must have had knowledge of the termination and the illegal reconnection from time to time. In *Joseph v City of Johannesburg* 2010 (4) SA 53 (CC) at paragraph 60 to 61 it was said as follows:

> "The applicants argued that the circumstances of this case required pre-termination notice and an opportunity to make representations. They submitted that the posting of a written notice in a prominent place in Ennerdale Mansions would suffice to constitute 'adequate notice' for the purposes of Section 3(2)(B)(i) of PAJA. The

> respondents conceded that the form of notice sought by the applicants would not place too onerous and administrative burden on the city power.
>
> 61. I agree that affording notice to the applicants would not undermine City Power's ability to provide an efficient service, accordingly the city must afford the applicants pre-termination notice."

I consequently find that the termination of the electricity supply only followed on a proper notice to the applicant and that he failed to utilise the opportunity to engage with the respondent. That renders the termination not to be unlawful. In the circumstances, the application falls to be dismissed with costs.

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W.L. WEPENER
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

APPEARANCES:

APPEARANCE FOR THE APPLICANT: ADV SELOANE

APPEARANCE FOR THE RESPONDENT: ADV SITHOLE