

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 129862/2023

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

.....
SIGNATURE **...30/01/2024.....**
DATE

In the matter between:

31 KOCH STREET JOUBERT PARK CC

Applicant

and

**THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

First Respondent

CITY POWER JOHANNESBURG (SOC) LTD

Second Respondent

REASONS

MANOIM J:

- [1] On 19 December 2023 I gave an order in this matter in favour of the applicant which I had heard in the urgent court during the recess period. The first and second respondents have filed a notice of appeal and asked me to give

reasons for my order, which I now give. For convenience I will refer to both respondents which make common cause, as the City.

[2] This is an urgent application brought by the applicant which is a close corporation that is the owner of a building in central Johannesburg. The essence of the application is to require the City to restore the supply of electricity to it pending the return day of an application. The application is premised on the City complying with a prior order granted by Wright J to restore supply.

[3] The building is situated in downtown Johannesburg and is occupied by some 400 people. The building requires electricity supply for the obvious reasons most urban dwellers do, but in its case a special reason is that the electricity is required to pump water to the top of the building to water tanks which are required to supply the building with not only water but also ensure sanitation. Given that 400 people reside in an inner city building with its present history of fires when occupants without power resort to using candles in crowded spaces (I had two other such applications in the same week where the City through one of its other departments was the applicant to make the case for the danger of large buildings becoming a health and fire hazard) I considered the matter urgent and hence heard the matter on its merits.

[4] The background to this application is a long history of strife between the two antagonists leading to multiple court applications and, up to now, no resolution.

- [5] The basic dispute is over alleged arrears the applicant owes the City in respect of the supply of electricity to the building. The applicant claims that it does not owe what the City says it does because the City meters are inaccurate. The City denies this.
- [6] The City cut the applicant supplies off in 2020. In terms of a prior court order in September 2020 the City was ordered to reconnect the electricity supply to the building and to commence a process of statement and debatement process with the applicant to resolve the outstanding account issues. This dispute, which was meant to be resolved within 30 days of the date of that order, has not been resolved, for reasons still in dispute but which are not relevant to me.
- [7] On 23 October 2023 the City terminated the supply again. The applicant brought an urgent application over the weekend before Wright J to have the supply restored. On 29 October Wright J ordered that the supply be restored pending a return day of 19 February this year. The order stated that the City could not disconnect the supply of electricity unless it gave 14 days' notice to the applicant.
- [8] The order required the City to restore the supply "*forthwith*". Although the City was represented at this hearing by counsel before Wright J it appears that it did not have an opportunity to file papers hence the interim nature of the order and the return day.

- [9] It is common cause that the City did not restore the supply although the reason for its non-compliance is disputed. Correspondence followed to no avail. Various applications were then filed.
- [10] The City then filed a reconsideration notice in terms of Rule 6(12) (c). This application does not seem to have been proceeded with.
- [11] Still without supply the applicant then changed its approach and sought an order allowing it to get a third party to reconnect the supply of electricity. This served before Mdlalana-Mayisela J who dismissed the application on 1 November. The City said the reconsideration was not dealt with by Mdlalana-Mayisela J and according to it, she had said the matter could be heard in due course. Be that as it may this application has not been set down.
- [12] The next event in the saga is that on 8 November the applicant resorted to self-help and reconnected the electricity supply itself. The City promptly disconnected it again the following day.
- [13] The applicant then brought a contempt of court application. The central thrust of this was the City's' failure to comply with the order of Wright J.
- [14] The application served before Pearse AJ who on 1 December gave a pragmatic order. He declared that the applicant's reconnection of the supply on 8 November was unlawful. But he ordered the City to reconnect the supply to the building and *"...to adhere fully and properly to the order of Wright J of 29 October which is declared to remain in full force and effect"*. Further Pearse AJ ordered that any remaining residual orders remain for

determination on the 19th February 2024. That should have been the end of the matter until the return day.

[15] But it was not. On 5 December just before contractors were ready to restore the supply the City served a notice of appeal of the Pearse AJ order. The City has not restored the electricity supply.

[16] Hence this application before me. The applicant seeks the City to comply with the Wright J order pending the return day on 19 February 2024 and to restore the electricity supply to the building within 12 hours.

[17] The City has opposed the application. It has two defences. The first is procedural. That given the reconsideration application, the order of Wright J, as its deponent put it in the answering affidavit in this matter, stands to be disregarded given the pending reconsideration application.

[18] The second defence is that by reconnecting the supply illegally in the face of the Mdlalana-Mayisela J order, the applicant would be benefiting from its own unlawful conduct and for this reason alone, the order of Wright J in the City's' view is "... *no longer effective*".

[19] Neither argument is tenable. The efficacy of the Wright J order is not effected by an appeal pending against the Pearse AJ order. That is a manifestly opportunistic argument. I do not know even if the latter order is appealable but that is not for me to decide.

[20] The second argument is equally untenable. Even if the actions of the applicant in restoring supply illegally, is something to be sanctioned in some form, it is not the basis for non-compliance of a court order that the City has clearly up until the date of the present application, not complied with. It is trite law that court orders are to be complied with until set aside. This obvious point of law has recently been re-emphasised by the Constitutional court in *Department of Transport and Others v Tasima (Pty) Ltd* that:

“The obligation to obey court orders “has at its heart the very effectiveness and legitimacy of the judicial system”. Allowing parties to ignore court orders would shake the foundations of the law, and compromise the status and constitutional mandate of the courts. The duty to obey court orders is the stanchion around which a state founded on the supremacy of the Constitution and the rule of law is built.”¹

[21] The of the obligation of the City to comply with an existing order cannot be expunged because the party in whose favour the order was granted later took self-help measures. That conduct constitutes a separate legal issue that does not discharge the City’s’ obligation to comply, moreover when the self-help conduct is a product of the City’s non-compliance. This as the Constitutional Court has held is a foundation of the rule of law. An unlawful failure to reconnect supply by the City is not an obligation that gets expunged by the beneficiary of that order’s unlawful attempt at self-help.

¹ 2017 (2) SA 622 (CC) at paragraph 183.

[22] I am satisfied that the order of Wright J remains extant and must be complied with unless set aside in any subsequent judicial proceeding. The applicant tendered payment of the supply in the interim and agreed for it to be part of my order. Costs were reserved for the proceeding on 19 February 2024.

N. MANOIM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
JOHANNESBURG

Date of Reasons: 30 January 2024

Appearances:

Counsel for the Applicant: M Louw

Instructed by: Dempster McKinnon Incorporated

Counsel for the Respondent: E Sithole

Instructed by: Madhlopa & Thenga Incorporated