

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE No: D7917/2020

In the matter between:

**BODY CORPORATE OF GREEN MEADOW
COUNTRY ESTATE**

APPLICANT

and

THE ETHEKWINI MUNICIPALITY

RESPONDENT

ORDER

In the circumstances the following order is made:

The applicant's application is dismissed with costs.

JUDGMENT

Mathenjwa AJ

[1] This is an application in which the applicant, the body corporate of Green Meadow Country Estate, seeks an order, inter alia that the respondent, eThekweni Municipality, be directed to:

- (a) credit the applicant's account under account number [...] in the amount of R694 008.04;
- (b) charge the applicant, in respect of its water consumption, in accordance with the correct applicable tariff, such tariff being based on average use of water per household at the applicant's estate; and
- (c) credit the applicant's account the amount equivalent to the supply of six kilolitres of water per month per household for 90 households which is based on the 2020/2021 tariff fees of R12 646.80 per month.

The applicant further deposed to a supplementary affidavit in which it amended its relief sought and added further relief sought that the respondent should be directed to recalculate any municipal bill, which has been issued by it after December 2020. The respondent opposes the application.

[2] In its founding papers the applicant contends that in terms of the regulations promulgated in terms of the Water Services Act 108 of 1997, the respondent is obliged to provide 6 Kilolitres of water to every household per month. Notwithstanding the aforesaid the respondent has failed to provide such six kilolitres of water free of charge. The applicable scale for consumption of water ought to be the average monthly use for each household, however the respondent has charged for the total consumption of water used by the applicant without regard to the fact that such consumption is being used by 90 households, and on the assumption that such water is consumed by a single household. Thus, it is contended, the respondent has been overcharging the applicant in respect of water consumption.

[3] The respondent contends that the applicant is not entitled to six kilolitres of free water, because in terms of the respondent's policy the six kilolitres is allocated only to those households whose property value is R250 000 and below, and the

applicant is well above the threshold. The applicant was charged according to a recognised water tariff at a rate of R21.39 for properties that are above the threshold. During address the applicant's counsel informed this court that it withdrew its claim claimed that the respondent should credit its account in the amount of R694 008.04, and that it has also withdrew its claim for six kilolitres basic water. However, the applicant introduced a new ground for the relief sought which was based on the allegations that the applicant was charged for a higher water consumption by the respondent at the rate of a domestic consumer whereas it is a commercial consumer.

[4] I agree with counsel for the respondent that the applicant's contention is unfounded and based on a misinterpretation of the respondent's policy. The applicant's counsel relied on the provision of the respondent's policy which makes provision for different rates to other classes of consumers other than domestic consumers. The applicant's reliance on this provision is misplaced because the respondent's policy does not exclude the applicant from the category of domestic consumers. Therefore, the contention that the applicant is not a domestic consumer is not supported by the respondent's policy.

[5] It is trite that an applicant in motion proceedings must make out a proper case in the founding affidavit and may not make out a new case in the replying affidavit (see *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA) para 29). Furthermore, an applicant may make out a case for relief on the averments contained in the answering affidavit (see *Administrator, Transvaal, and Others v Theletsana and Others* 1991 (2) SA 192 (A) at 19H-I) Thus, there is no merit in the applicant's case against the respondent, and it should fail accordingly.

Order

[6] In the circumstances the following order is made:
The applicant's application is dismissed with costs.

Mathenjwa AJ

Date of hearing: 12 August 2022

Date of Judgment: 19 August 2022

Counsel for Applicant: N T L Ntuli

Instructed by: Luthuli Sithole Attorneys

56 Henwood Road

Morningside

Durban,4001

Email: mpendulo@luthulisithole.co.za

candice@luthulisithole.co.za

Counsel for Resondent: M C Tucker

Instructed by: Peacock Liebenberg & Dickson Inc

1 Loundon Park

8 St Mary's road

Kloof

Email: brian@pldinc.co.za

Judgment duly handed down electronically.