



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

Case no: **8850/2022P**

In the matter between:

ENYUKA PROP HOLDINGS (PTY) LTD

APPLICANT

and

UMZINYATHI DISTRICT MUNICIPALITY

RESPONDENT

Coram: Mossop J

Heard: 26 April 2023

Delivered: 26 April 2023

ORDER

The following order is granted:

The application is dismissed with costs.

JUDGMENT

Mossop J:

[1] This is an ex tempore judgment.

[2] In this application, the applicant seeks an interdict against the respondent restraining it from disconnecting a supply of water to the applicant's commercial property, which supply of water is regulated through a water meter bearing number GZR294. The interdict sought is to remain in force pending the resolution of a dispute in respect of the applicant's liability:

'for water consumed via water meters in the vicinity of the premises other than water meter number GZR294.'

[3] It is necessary to briefly mention the facts that underlie the current application. The applicant is the owner of certain commercial business premises in the form of a shopping mall, known as 'The Old Acre Plaza' (the Plaza) in the town of Dundee in Northern KwaZulu-Natal. Directly adjacent to the Plaza is a building occupied by Shoprite Checkers, a well-known supermarket. The applicant does not own the building occupied by Shoprite Checkers. Who owns that property is not disclosed on the papers, save to say that it is not the applicant. The applicant contends that the Plaza is supplied with water through the aforementioned water meter bearing number GZR294 and which meter is associated with account number 0050027444. That account is in the name of the applicant. I shall refer to this as 'the GZR294 account'. According to the applicant, Shoprite Checkers receives its supply of water through a meter bearing number LZT280, and which meter is associated with account number 0050047697. I shall refer to this account as 'the LZT280 account'. This account is not in the applicant's name.

[4] The applicant contends, and the respondent agrees, that the GZR294 account is not in arrears. By virtue of this fact, the supply of water to the Plaza remains unimpeded, even as the matter is argued before me

today. The applicant, however, contends that it is being held liable by the respondent for water charges associated with the LZT280 account, in respect of which it denies any liability. The LZT280 account is in arrears by approximately R2,6 million. The applicant believes that the respondent will consolidate the GZR294 account with the LZT280 account and then, because of the disputed arrears on the latter account, terminate the supply of water to the Plaza supplied through the GZR294 account, to disastrous effect to it.

[5] The fulcrum around which this application moves is the reasonableness of the applicant's belief that the respondent will consolidate the two accounts. The respondent has opposed the relief sought by the applicant on the grounds that it has never threatened to consolidate the two accounts and will not do so in the future. As previously mentioned, the respondent concedes that the GZR294 account is currently not in arrears. It has undertaken not to disconnect that account unless it falls into arrears. It contends that the applicant had no basis for believing that it would consolidate the two accounts.

[6] In his replying affidavit the deponent, Mr Machiel Botha, states that he intends not to say any more than is necessary about the dispute. That is a parsimonious approach that I intend also following in this judgement and I therefore do not intend to state more than is strictly necessary to resolve this application. There are a number of ancillary issues which occupy a fair amount of space in the papers but which are not of any practical relevance to the applicant's case and the relief claimed. They need not be dealt with.

[7] The applicant's belief that the supply of water to the GZR294 account will be disconnected appears to me to be based upon the occurrence of two events. The first is that the water supply regulated through the GZR294 account was previously briefly disconnected by the respondent. And the second is that the applicant's attorneys wrote to the

respondent and sought an undertaking from it that it would not discontinue the supply of water to the GZR294 account, which undertaking the respondent allegedly declined to give.

[8] The previous disconnection of the supply of water to the GZR294 account occurred allegedly on 14 June 2022, according to the applicant. That day, its representative met with the respondent's representative and was informed that the respondent intended to:

'... disconnect all meters until the now R2.6 million owed on meter 280 is received.'

According to the applicant, the supply of water to the GZR294 account was restored the next day, 15 June 2022. It has never been disrupted again. The same day, 15 June 2022, the applicant states that the respondent sent an undated letter to it in which it stated that:

'... the disconnection on the 14th of June 2022 was due to an illegal connection, that the Respondent's meter was tampered with and that the respondent [sic] must pay for all their existing debts and that more meters need to be added to their account.'

[9] The letter referred to by the applicant is, in fact, a report prepared by the respondent into the entirety of the dispute between the parties (the report). It is entitled 'Site Visit Report For Enyuka Properties'. It makes no reference to a disconnection of the GZR294 account on any date, let alone on 14 June 2022. The disconnection that it refers to appears to be the disconnection of the LZT280 account.

[10] In its answering affidavit, the respondent denies that it ever disconnected the GZR294 account. It states that:

'The respondent has only disconnected 280 for the arrears on the account number 0050047697.'

This is consistent with what is stated in the report. The respondent goes on to state that it never threatened to disconnect the GZR294 account to enforce payment of the arrears on the LZT280 account. It says, finally, that this must be correct as the GZR294 account remains entirely

functional and the LZT280 account remains disconnected. It is difficult to argue against this logic.

[11] The second event relied upon by the applicant is its attorney's letter written to the respondent. The letter must be carefully considered. It is dated 21 June 2022. This letter exposed a chink in the applicant's armour. Its previous position had unequivocally been that the water supplied through the LZT280 account did not supply its property. It was now required to concede that this was not correct. It stated:

'It did, however, turn out that, unbeknown to us, 280 supply [sic] to a portion of our client's property, ...'

Thus the applicant's denial that it was liable for any amounts arising out of the LZT280 account had to be retracted, which the applicant did when it stated that:

'... at best our client and/or its tenants might be liable for a portion of that consumption, assuming that the consumption recorded on the account is correct.'

[12] The disconnection that allegedly occurred on 14 June 2022 was thereafter addressed in the letter by the applicant's attorneys. It was denied that meter GZR294 had been tampered with or that the account was in arrears. The letter terminated with the following paragraph:

'We require an undertaking, that you will not switch off water meter 294, while the above disputes are being resolved, this undertaking must be received before the close of business tomorrow being the 22 June 2022, Failing [sic] which our client will approach the honourable High Court for an interdict to protect its rights.'

The respondent's failure to give the requested undertaking has thus contributed to the decision of the applicant to bring this application.

[13] It will immediately be noticed that the undertaking does not refer to the possible consolidation of the GZR294 account and the LZT280 account. There is no reference to this at all. Yet, there can be no doubt

that this is the basis upon which the application has been brought as is revealed from the following extract from the founding affidavit:

'The respondent may not consolidate separate accounts in order to implement debt collection measures. In other words, it may not cut the supply of water to the applicant's shopping centre to force the debt of the separate Shoprite account, even in the event that the applicant is found responsible for that account.'

[14] The undertaking demanded by the applicant's attorneys was therefore not linked to the unpaid LZT280 account being consolidated with the GZR294 account. It was a straight demand that the water supply to the GZR294 account could not be cut in the future under any circumstances whilst the dispute over the LZT280 account raged. That undertaking is sought, on the wording of the letter, even if the GZR294 account fell into arrears. That the respondent declined to give it is, in the circumstances, completely understandable. It could not give it because to do so would result in it being in dereliction of its duties to ensure that where accounts are not paid, such payment is demanded and recovered.

[15] The position thus is that at present the Plaza continues to receive a supply of water through the GZR294 account and the supply of water through the LZT280 account has been stopped. The respondent acknowledges that the GZR294 account is up to date and undertakes that it will not consolidate the two accounts in order to try and force the payment of the LZT280 account. I accept that this undertaking is revealed in the answering affidavit for the first time. I can, however, discern no basis why the applicant conceives that there was a reasonable possibility that the feared consolidation would, indeed, occur at some time in the future. The two accounts are in the name of two completely different entities unrelated to each other and relate to the supply of water to two different properties and could not be consolidated.¹ In this regard the matters of *Ekurhuleni Metropolitan Municipality v Anzotrax (Pty) Ltd t/a*

¹ Section 102(1) of Act 32 of 2000 reads as follows:


'(1) A municipality may - (a) consolidate any separate accounts of persons liable for payments to the municipality; (b) credit a payment by such a person against any account of that person; and (c) implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person.'

*Topbet Germiston*² and *Rademan v Moqhaka Local Municipality and Others*³ are instructive. There is, furthermore, no evidence that the respondent had previously attempted to consolidate those two accounts.

[16] The requirements for an interim interdict are well known: a prima facie right, a well-grounded apprehension of irreparable harm, the balance of convenience in favour of the granting of the interdict and the absence of an alternative remedy. In my view, the applicant fails on at least two of these requirements. Firstly, it has not established a well-grounded apprehension of irreparable harm. The applicant has not come close to establishing the likelihood of it suffering any harm in the future. And secondly, if there is a likelihood of the consolidation occurring, there is an alternative remedy available to the applicant foreshadowed in section 102(2) of the Local Government: Municipal Systems Act 32 of 2000. That section makes mention of a consumer declaring a dispute which would then prohibit a municipality from effecting such consolidation prior to the resolution of the dispute.

[17] In the circumstances, I am not satisfied that the applicant has made out a case for the relief claimed by it. I accordingly grant the following order:

The application is dismissed with costs.



MOSSOP J

² *Ekurhuleni Metropolitan Municipality v Anzotrax (Pty) Ltd t/a Topbet Germiston* [2016] ZAGPJHC 178.

³ *Rademan v Moqhaka Local Municipality and Others* [2013] ZACC 11; 2013 (4) SA 225 (CC); 2013 (7) BCLR 791 (CC).

APPEARANCES

Counsel for the excipients : Mr M Bingham
Instructed by: : Kritzinger Elish Attorneys
Care of:
Venns Attorneys
30 Montrose Park Boulevard
Victoria Country Club Estate
170 Peter Brown Drive, Montrose
Pietermaritzburg

Counsel for the plaintiffs : Mr I A Sardiwalla
Instructed by : Matthew Francis Incorporated
Suite 4, 1st Floor, Block A
21 Cascades Crescent
Montrose
Pietermaritzburg

Date of Hearing : 26 April 2023

Date of Judgment : 26 April 2023