

REPUBLIC OF SOUTH AFRICA



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

Case Numbers: 41604/2020 & 13541/2022

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

11/12 2023

DATE

SIGNATURE

In case number 41604

In the matter between:

**BODY CORPORATE OF WILLOW AND ALOE GROVE
(SECTIONAL SCHEME NUMBER: 103/2011)**

Applicant

and

THE CITY OF JOHANNESBURG

First Respondent

LUKHWARENI, NDIVHONISWANI

Second Respondent

and

In case number 13541/2022

In the matter between

SELLAH WILHELMINA THEBYANE

Applicant

and

MOGALE CITY LOCAL MUNICIPALITY

First Respondent

ORDERS

In case number 41604/2020

- [1] The application is dismissed.
- [2] The respondents are to comply with section 11(5) of the by-laws of the City of Johannesburg relating to complaints in respect of accounts by informing the applicant, in writing, of the municipality's decision with reference to the adjustments to the applicant's account such that it is made intelligibly clear why each of the adjustments were affected and how the final determination of the amount owing to the municipality has been reached.
- [3] The first respondent is to pay the costs of the application.

In case number 13541/2022

- [1] The application is dismissed.
- [2] The applicant is to pay the costs.

SUMMARY

Legislative scheme relating to the credit control, collection and dispute resolution processes of municipalities - comprising *Local Government: Municipal Systems Act 32 of 2000* and the municipal by-laws adopted thereunder - examined.

Held - The legislative scheme relating to credit control and dispute resolution in municipalities creates a contractual relationship.

Held – A customer is obliged under the contract to frame the query or dispute in a manner that is accessible. The municipality is obliged to engage efficiently and intelligently with the dispute with the object of coming to its resolution.

Held - The municipality must inform the customer, in writing, of its decision. The written information provided to the customer under the by-laws must have cogency. (Section 11(5) of the COJ by-laws; section 12 of the Mogale City Local municipality's by-laws)

Held - The dispute must be engaged with by both parties in good faith and on the basis that there is method and reason brought to bear on an identified issue or issues. The legislative scheme provides that while this process is unfolding in terms of the scheme there can be no debt collection measures taken relating to the amount in dispute, including termination or disconnection of municipal services.

Held – Whether there has been compliance by the parties with their obligations depends on the facts.

- In the COJ case - the COJ had not been compliant; applicant was entitled under the scheme to more details and further explanation relating to the final account produced; so ordered with the municipality to pay the costs.
- In the MCLM case the municipality was compliant; the application dismissed with costs.

Held - The relationship between customer and the municipality is contractual but also has administrative and statutory components. Were a court to interfere in the determination of the dispute, this would amount to an impermissible incursion into the contract of the parties. From an administrative perspective, such intervention would amount to an impermissible interference with decisions which are to be taken by the municipality under the legislative scheme.

Held – The appeal process under section 62 of the Act will yield a final administrative decision which may be subject to a judicial review. Any review process would have to engage sensibly with the administrative failings of the municipality and would, of

necessity, entail an inquiry into whether the internal remedies available to the customer in terms of the legislative scheme have been exhausted.

JUDGMENT

FISHER, J

Introduction

- [1] It is not unusual for exasperated customers of municipalities the country over to have to resort to the courts in a bid to resolve disputes. Regrettably, this is often sought to be done without a consideration of the court's function and powers in the context of the relationship between municipalities and citizens and the understanding that relief sought must comply with the legal prescripts which govern this relationship.
- [2] These two cases came separately before me in an opposed motion week. Both represent typical applications brought against municipalities in our courts relating to municipal accounts. Generally, what is sought is that there be an order compelling the reconnection of services which have been disconnected or the interference by the court in the municipality's accounting and other debt collection processes.
- [3] In the application against the City of Johannesburg (CoJ) it is common cause that there have been errors in the accounting dating back to November 2014. The account is in respect of municipal charges for services provided by the municipality to the applicant's commercial property in Johannesburg known as *Houghton Estate Office Park*.
- [4] In the case against Mogale City Local Municipality (MCLM) the dispute relates to electricity, water and sanitation charges for services to the applicant's residential property in Krugersdorp for a period spanning July 2013 to January 2019. Electricity supply to the property was disconnected in 2021 and has remained disconnected. The applicant seeks that the court order the

municipality to reconnect the electricity services. Alternatively, she seeks a declaration that an allegedly disputed amount debited to her account during March 2017 has prescribed and that MCLM be directed to credit her account with the amount declared to be so extinguished.

- [5] The second respondent in each case is the municipal manager of the municipality as the responsible functionary of the municipality.
- [6] In this judgment I examine the legislative scheme which governs the relationship between municipalities and their customers with reference to debt recovery, credit control and dispute resolution. This examination is done with the aim of clarifying the powers and function of the court in this context.

Legislative scheme

- [7] According to the Constitution “the objects of local government” are, inter alia, “to provide democratic and accountable government for local communities”¹ and “to ensure the provision of services to communities in a sustainable manner.”²
- [8] Obviously, the fulfilment of these objects requires services to be charged for and for the payment of such charges to be regulated. The duty to levy and collect payment is a constitutional imperative.
- [9] The Local Government: Municipal Systems Act is enacted for the purposes of providing municipalities with a centralised and consistent approach in relation to the creation and managing of systems for credit control and debt collection.

*The Local Government: Municipal Systems Act (the Act)*³

- [10] The preamble to the Act states, inter alia, that its purpose is:

“[T]o empower the poor and ensure that municipalities put in place service tariffs and credit control policies that take their needs into account by providing a

¹ Section 152(1)(a) of the Constitution.

² Ibid section 152(1)(b).

³ Local Government: Municipal Systems Act 32 of 2000 (the Act).

framework for the provision of services, service delivery agreements and municipal service districts; to provide for credit control and debt collection.”

- [11] Section 5(1) of the Act provides a broad overview of the rights and duties of the community. It provides that members of the community may submit written or oral recommendations, representations and complaints to the municipality. It provides furthermore that this must be done in terms of the processes and procedures of the legislative scheme which is created in terms of the Act.
- [12] In terms of section 5(2) such community members have a concomitant duty when exercising their rights to observe the mechanisms, processes and procedures of the municipality.
- [13] Section 96 of the Act provides that a municipality must collect all money due and payable to it and that for this purpose it is obliged to adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariff policies and complies with the provisions of the Act. To this end it must adopt by-laws.⁴
- [14] Section 95 of the Act provides that a municipality must take reasonable steps to ensure that the consumption by individual users of services is measured through accurate and verifiable metering systems.⁵ It must ensure also that persons liable for payments receive regular and accurate accounts. Such accounts must indicate the basis for calculating the amounts due.⁶
- [15] A municipality is to provide accessible mechanisms for persons to query or verify accounts and metered consumption. There must be appeal procedures which allow for persons liable for payments to receive prompt redress for inaccurate accounts.⁷ There must also be accessible mechanisms for dealing with complaints. It is required of a municipality that it issue prompt replies and corrective action.⁸

⁴ Section 98 of the Act.

⁵ Section 95(d) of the Act.

⁶ Section 95(e) of the Act.

⁷ Section 95(f) of the Act.

⁸ Section 95(g) of the Act.

- [16] In terms of section 102(1)(c), a municipality may implement any of the debt collection and credit control measures provided for in the Act in relation to any arrears, including the termination of services.
- [17] In terms of section 102(2), the municipality may not implement such measures, including termination, where there is “a dispute between the municipality and [its customer] concerning any *specific* amount claimed by the municipality from that person.” (Emphasis added.)
- [18] In terms of section 102(1)(a), a municipality may consolidate separate accounts of persons liable for payments to the municipality. In this way arrears may be raised and measures taken across the range of services provided. Put differently, the fact that one is up to date with one’s electricity account but in arrears in respect of charges for other services does not prevent the disconnection of the electricity services.
- [19] Thus, in sum, the Act requires that disputes in relation to specific charges on a municipal account must be dealt with through a co-operative structure which places obligations on both the customer and the municipality and which affords to the customer procedural fairness. This includes an internal appeal mechanism.⁹
- [20] It must be noted that there is no provision for resorting to court for the resolution of disputes in the context of this structure.

⁹ Section 62 of the Act deals with appeals and provides as follows:

- “(1)A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.
- (2) The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).
- (3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (4) ...
- (5) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.
- (6) The provisions of this section do not detract from any appropriate appeal procedure provided for in any other applicable law.

[21] As I have said, the Act provides for the creation by municipalities of a more granular credit control and debt collection policy by way of the power and obligation to pass by-laws.

The by-laws

[22] Credit control and debt collection by-laws of all municipalities have common salient features and processes in that they must all be aligned with the prescripts of the Act and, in turn, the Constitution.

[23] Section 11 of the CoJ by-laws deals with queries or complaints in respect of municipal accounts and reads as follows:

“Queries or complaints in respect of accounts

(1) A customer may lodge a query or complaint in respect of the accuracy of any amount due and payable in terms of an account rendered to him or her in terms of these By-laws.

(2) A query or complaint must be lodged with the Council before or on the due date for payment specified in the account concerned, or as soon as reasonably possible thereafter.

...

(5) The Council must –

(a) investigate or cause the query or complaint to be investigated within 14 days, or as soon as possible after the query or complaint was received; and

(b) inform the customer, in writing, of its decision as soon as possible after conclusion of the investigation, instructing that any amount found to be due and payable must, subject to the provisions of section 21, be paid within 21 days from the date on which the customer is notified thereof, unless an appeal is lodged within that period in terms of subsection (6) or section 12.

(6) A customer may, subject to the provisions of section 12, lodge an appeal with the City Manager in terms of section 62 of the Act against a decision

referred to in subsection (5), within 21 days of the date of the notification of the decision.”

[24] Section 12 of MCLM by-laws provides that customers may lodge appeals and disputes and that:

“For a dispute to exist there must be more than just an expression of dissatisfaction and may not be by implication, a general enquiry and must be submitted within thirty (30) days of the account. If a dispute is raised after this period, it will be treated as an enquiry, the account will not be suspended and normal credit control procedures will apply.”

[25] A central feature under the scheme is the isolation of the disputed amount while payment is made of amounts incurred going forward.

[26] In September 2014 the CoJ established an independent Office of the Ombudsman to be a designated neutral facilitator who provides confidential and impartial assistance in resolving grievances and disputes. It is empowered to investigate complaints, report findings, and mediate settlements. The by-laws relating to the Office of the Ombudsman make it clear that it is not necessarily a first port of call and that the by-laws mentioned above, which allow for the raising of disputes and queries, should be used in the absence of maladministration and undue complexity.

[27] Against this backdrop I turn to the salient facts of each matter.

The application against the CoJ

[28] The applicant relies on three separate disputes that it claims to have isolated in the accounts. The first is with reference to the account of 19 November 2014 which reflected a recalculation of the account from inception, being July 2013 until October 2014 in respect of all services (i.e. water and sanitation, electricity). The applicant contends that this recalculation of the account led to it being charged for an amount of approximately R 950 000.00 which was not due.

[29] The second dispute relates to alleged double charges for electricity and water meter readings in the period March to May 2017.

- [30] The third dispute relates to an alleged “practice” of arbitrarily raising inflated amounts of electricity for the period December 2014 to January 2019. It seems that these complaints overlap to an extent.
- [31] Although it is not clear what dispute resolution processes were initially adopted, the dispute ultimately came before the Ombudsman on 13 October 2017. This resulted in what has been termed a “settlement agreement”.
- [32] However, the dispute itself was not settled. The agreement is nothing more than a concession by the municipality that there was an error with the electricity billing for November 2014 and an undertaking that certain named officials of the revenue department of the municipality would conduct investigations in relation to the erroneous account and provide a final response by 02 November 2017.
- [33] As set out above, pending resolution of a properly lodged dispute, the services in issue may not be terminated.
- [34] Thus, by at least 13 October 2017, the municipality was bound to investigate and report back with a final determination of the amounts that it contended were owing as at November 2017.
- [35] The applicant, on the other hand, was bound to continue to pay the amounts due for services consumed going forward. Only payment of the disputed amount could be withheld by the applicant.
- [36] The municipality did not comply with its obligation to provide a determination by 02 November 2017. The dispute was allowed to drag on.
- [37] It seems that the exasperation of the applicant in relation to the inaction of the municipality eventually led it to withhold payments of undisputed amounts.
- [38] The municipality demanded payment and stopped supplying electricity when payment was not forthcoming. Whether the correct termination process was followed by the municipality is unclear. Nothing turns on this for present purposes, however.

- [39] The refusal to pay due amounts and the resultant withholding of services was catalytic of still further confusion and dissatisfaction in relation to the dispute.
- [40] It seems that payment of the full amount outstanding, including the disputed amount, was now demanded by the municipality for it to restore connection. It is clear that at this point the dispute had not been determined.
- [41] Had court intervention been sought when the electricity was first disconnected the only competent order would have been that a final account be produced in accordance with the undertaking before the Ombudsman and that there could be no disconnection of the services pending resolution of the dispute. This would have required payment of the undisputed amounts but would have avoided payment of the disputed amounts.
- [42] Instead of a sensible determination of the amounts disputed and undisputed and the payment of the undisputed amount, the full amount demanded was paid under protest.
- [43] An amount of over R 1.6 million was thus paid by the applicant in order to secure restoration of the services. The court is not told which portion of the R 1.6 million paid was devoted to the disputed amount and which was in respect of payments due.
- [44] At this stage, the applicant decided that it required the assistance of an attorney. It employed the services of Mr G Vermaak.
- [45] It seems that Mr Vermaak advised the applicant that it should not have paid the amount demanded by the municipality. On 21 February 2018 a letter was addressed to the municipality by Mr Vermaak demanding repayment of the full amount of R 1.6 million which was alleged to have been paid under duress. A claim for damages was also threatened.
- [46] On 26 March 2018 the applicant's current attorney, Mr Wellbeloved, took over the matter. He wrote an email asking that a meeting be convened to discuss the reasons behind the recalculation of November 2014. The reason for this recalculation is central to the dispute.

- [47] The applicant alleges that no response was received to these letters. It seems that the matter went into a lull. Presumably the applicant had stopped paying for services on the basis that it was in credit by its calculation and on its version. But the lull was an uneasy one and the applicant's credit position had a limited lifespan.
- [48] Further correspondence by Mr Wellbeloved to the municipality's legal department demanding a resolution substantially in accordance with the relief ultimately sought in this application seems to have fallen on the deaf ears of those dealing with the matter on behalf of the municipality.
- [49] The applicant then brought this application on 09 December 2020.
- [50] From 18 January 2021 to 03 February 2021, and in a bid to achieve settlement of the application without the need for the filing of an answering affidavit, there were overtures made by the municipality's attorney, Mr Yoshira Ramjee of Nozuko Nxusani Incorporated, to Mr Wellbeloved to attend meetings for the purposes of attempting to settle the dispute.
- [51] To this end, on 18 January 2021 Mr Ramjee sent a letter in terms of which he invited the applicant to a debatement of the account. The municipality says that there was no response to this invitation. A second invitation was answered by Mr Wellbeloved on the basis that this invitation was rejected.
- [52] The municipality was thus forced to file its answering affidavit. The affidavit was filed late and condonation is sought. The application for condonation is not opposed. A refusal of condonation would serve only to protract the matter still further and accordingly, I shall grant it.
- [53] The municipality's deponent is Mr Tuwani Ngwana a legal advisor in the municipality's revenue and debt collection department. He admits that there were errors in the calculation of the amounts due. He says that the municipality has at last corrected the account and made a final determination of amounts owing.

- [54] An account produced in the course of this litigation, which the municipality alleges is indeed the corrected final account, is attached to the answering affidavit as annex AA5.
- [55] In terms of such corrected account, the applicant's account was in credit in an amount of approximately R 812 000.00 as at February 2021. According to the municipality, such credit has since been exhausted.
- [56] The applicant was unimpressed by this intra-curial recalculation. It amended its notice of motion to seek that the municipality be ordered to reverse the amendments to the proffered account and recalculate the electricity charges in accordance with its submissions and version. The amendment was sought on the basis of a supplementary affidavit sought to be filed by the applicant which raises disputes on the intra-curial account.
- [57] The municipality has also sought to file a supplementary affidavit raising a prescription defence and making still further allegations and justifications relating to the accounting sought to be employed by the applicant.
- [58] The applicant has sought to reply to the municipality's supplementary affidavit by baldly restating that it does not agree with the calculations and that it is entitled to an explanation as to the contention of the municipality that the account was correct.
- [59] The matter has now devolved to a level where it is more of an intractable mess than it was when the application was first issued.
- [60] The court is prevailed upon in this context to apply an accounting of its own. This is under circumstances where the dispute seems ever-evolving in light of the further sets of affidavits generated on each side.
- [61] Clearly, this is an untenable state of affairs. Neither party has made out a case for the receipt of the further affidavits. The general approach taken to receipt of further affidavits is "a question of fairness to both sides".¹⁰

¹⁰ *Neutron Energy Africa (Pty) Ltd v Hengyi Electrical Co. Ltd* [2023] ZAGPJHC 306 at para 26.

[62] On the basis that the application seeking that the court direct the municipality to make specific changes to the account was not competent in the first place these affidavits are inadmissible.

The application against MCLM

[63] Mrs Thebyane noticed what she viewed as an unusually high charge of R 17 227.00 on her municipal water account on 31 March 2017. She paid an amount of R 1 700.00 which she believed to be reasonable. In fact, she alleges that she misread the number because it was so extraordinary and believed herself to be paying the correct amount.

[64] Approximately two months later, when she realised that the debit was in fact in excess of R 17 000.00, she attended on the municipality's offices and queried the account. She was referred to a manager in the revenue department, Ms Gladys Selepe.

[65] Her complaint was given a reference number 354558 and the query attended to on the basis that the Chief Financial Officer (CFO) of the municipality and Ms Selepe convened a meeting with the applicant on 24 July 2017 where her views as to the query were heard.

[66] The CFO's decision and/or answer as to the query was conveyed to the applicant by the municipality on 24 October 2017 in writing.

[67] In essence, the municipality conceded that the amount debited on the account of 31 March 2012 was extraordinary. The CFO explained was that there had been a new meter installed on the premises because the old meter was not operating properly because it was "buried". The new meter was initially not properly linked to the municipality's billing system and this endured for 16 months. During this period the applicant was charged low estimates on the basis of the defunct meter's historical readings.

[68] Once the new meter was properly linked to the municipality's system it was found that a total amount of R 17 222.00 had accrued over the period which amount was not covered by the estimations charged over the period.

- [69] The municipality now also took steps to make sure the applicant was fairly treated by spreading the charge over a 16-month period so that the applicant was not prejudiced by the original once off accumulated charge for March 2017.
- [70] The account was credited on 17 October 2017 with the sum of R 8 485.00 on the basis that the municipality effected a recalculation so that the amount due could be amortised over a 16-month period; the accrued interest on such amount of R 883.00 was also written off.
- [71] It was pointed out by the CFO in his written determination that the municipality had recorded an upward trend in water consumption between April 2017 and July 2017 and that this had caused the municipality to send technicians to investigate. It was stated that no water leakage was found but that it was noted that there had been building activity on the property which, in the view of the municipality, explained the above average consumption. It was noted furthermore that the consumption had since normalised.
- [72] This should have been the end of the matter. The applicant has not put forward any version which suggests that these findings of MCLM are incorrect.
- [73] It appears to me that the dispute was resolved in a professional and fair manner by the MCLM.
- [74] The applicant, however, continued seeking information after receipt of this finding/explanation of the CFO. It is not clear what issue she had with the CFO's resolution of the dispute. Indeed, even years later she still makes out no case as to a particular grievance.
- [75] Subsequent to the determination of the dispute, the applicant made erratic and inadequate monthly payments on the account. The application of these payments did not serve to meet the amounts levied on the account and the arrears mounted up.

- [76] During 2019 the municipality disconnected the electricity supply to the property as a debt collection measure. This followed, at least, eleven notices of demand having been sent between July 2017 to April 2018.
- [77] The applicant alleges that she involved lawyers at this point and that a reconnection was achieved. She gives no detail as to how the reconnection occurred. She says she does not have documents relating to what the lawyers did.
- [78] Her delinquency continued and on 30 March 2021 the electricity supply was again disconnected.
- [79] The municipality offered to enter into an arrangement with the applicant in relation to a payment plan, provided she signed acknowledgment of debt for the arrears. But the applicant rejected this accommodation. The electricity has remained disconnected.

Discussion regarding the proper approach to disputes relating to municipal charges

- [80] Most municipal by-laws give some indication as to the form in which a complaint or query must be submitted.
- [81] The Act seeks to facilitate a user-friendly process which accords with constitutional precepts of fairness. From a general perspective, it is elementary that a complaint or query be sensibly framed on the basis that the validity of a particular charge or charges is questioned in a manner that is understandable. This is the obligation of the customer.
- [82] The obligation of the municipality is to engage efficiently and intelligently with the complaint with the object of coming to a determination which either resolves it or allows for further engagement with it in accordance with the scheme.
- [83] The municipality must inform the customer, in writing, of its decision in relation to the dispute. The written information provided to the customer must have cogency and be directed to the dispute at hand.

- [84] In the case against the CoJ, the Ombudsman was approached pursuant to the hearing before the Ombudsman, the CoJ recognised that there was an error on the account and undertook to investigate and resolve the error by 02 November 2017.
- [85] The municipality was subsequently delinquent. This delinquency resulted in the applicant taking the law into its own hands and withholding all payments. This, in turn, led the municipality to cut-off the electricity supply to the applicant's property which led to the forced payment and, ultimately, this application.
- [86] This chain of events could have been avoided had the municipality complied with its obligations under the settlement and the scheme. It should have reverted to the applicant, as it undertook to do, by 02 November 2017 or, at least, have explained why this was not possible and kept the applicant up to date with actions being taken to resolve the matter and the expected timeframe.
- [87] I do not understand the case of the CoJ to be that there was a lack of particularity provided to it in relation to the dispute. At least by 13 October 2017 there appears to have been a sense of the nature of the complaint and hence the undertaking to investigate and determine it within two weeks.
- [88] If the dispute had been determined on the basis that a proper explanation for the adjustment to the account was provided, the applicant could have proceeded to appeal the determination should it have been dissatisfied. Instead, it has come to this court.
- [89] The approach of the CoJ, unfortunately, amounts to too little too late. It is no more than an account evidencing that there has been a reversal of certain payments and a recalculation of the amounts owing going back to November 2014.
- [90] From a general perspective, it is unhelpful for a recalculated account to be presented which gives no information pertaining to the dispute at hand. For

the dispute resolution process to have content, it must be engaged with by both parties in good faith and on the basis that there is method and reason brought to bear on the identified issue. MCLM met this standard. The CoJ did not.

[91] If the process is not followed in good faith by one or the other party, a court will be reluctant to assist such party. It will generally be clear on the facts when a party is abusing the process for the purposes of delay.

[92] The municipality has specialist employees with accounting expertise who have reference to and knowledge of the workings of the municipality's information systems. Using this access and specialist knowledge, these officials are in a position to investigate disputes of the kind facing the parties here.

[93] The court is not in this unique position. It usually cannot determine these disputes and it does not have the jurisdiction to do so. The court's function is to see to it that the parties' respective rights are fairly accommodated within the municipality's internal procedures and the law. Its function is not to resolve the dispute. It must defer to the municipality as to the determination of the dispute.

[94] The relationship between the applicants and the municipalities is contractual in nature but also has administrative and statutory components.¹¹

[95] To order the municipality to rectify the account would amount to an impermissible incursion into the contract of the parties. From an administrative perspective it would be an impermissible interference with decisions to be taken by the municipality.

[96] Thus, a court may order that the internal remedies be employed. Whilst these remedies are being exhausted in good faith, the structure of the customer/municipality agreement is such that there can be no lawful termination of services.

¹¹ *Joseph and Others v City of Johannesburg and Others* [2009] ZACC 30; 2010 (4) SA 55 (CC); 2010 (3) BCLR 212 (CC) ("Joseph").

[97] Ultimately, the appeal process under section 62 of the Act will yield an administrative decision which may in due course be subject to a judicial review.

[98] Any review process would have to engage sensibly with the administrative failings of the municipality.

[99] In *Nichol*¹² the Supreme Court of Appeal construed section 7 of the Promotion of Administrative Justice Act (PAJA)¹³ and stated:

“It is now compulsory for the aggrieved party in all cases to exhaust the relevant internal remedies unless exempted from doing so by way of a successful application under s 7(2)(c). Moreover, the person seeking exemption must satisfy the court of two matters: first, that there are exceptional circumstances and second, that it is in the interests of justice that the exemption be given.”

[100] Thus, any review process would, of necessity, entail an inquiry into whether the internal remedies available to the customer in terms of the legislative scheme have been exhausted.

[101] It is thus clear that the seeking of a mandamus against the municipality to restore a service is not as simplistic an application as many applicants to our courts, especially the urgent court, believe it to be.

[102] If there is a relationship of customer/service provider with the municipality then the scheme must be shown to have been followed in good faith. If an applicant is not a customer of the municipality (e.g. a tenant) he may approach the court on the basis that procedural fairness is afforded not only to customers of the municipality but to any person whose rights would be materially and adversely affected by the termination of electricity supply or other service.¹⁴

¹² *Nichol and Another v Registrar of Pension Funds and Others* (“*Nichol*”) [2005] ZASCA 97; 2008 (1) SA 383 (SCA) at para 15.

¹³ Act 3 of 2000.

¹⁴ *Joseph* above n 11 at paras 75-76.

[103] In sum, an applicant who seeks the court's assistance as to restoration of services must show that he is, at least, substantially compliant with his own obligations under the dispute resolution machinery. If he is compliant then he has the automatic protections of the contractual scheme created by the Act and the bye-laws.

[104] On the other side of the scales is the municipality's obligations. If it has complied with these obligations under the scheme and taken all mandatory steps before termination but the customer has not declared a proper dispute or followed the dispute resolution process in good faith, then a court will be hard pressed to come to the assistance of such a customer in the weighing up of whether to give interim relief in the form of a reconnection mandamus.

Conclusion

[105] Both applications fall to be dismissed because it is not competent for an applicant to seek to circumvent the machinery of the legislative scheme by resorting to court. An applicant may only seek that the municipality comply with its obligations under the scheme. It cannot be sought that the court supplants the municipality's function.

[106] The dispute resolution machinery in the by-laws is not an optional feature of the relationship which can be jettisoned in favour of approaching a court when one or the other party becomes dissatisfied.

Costs

[107] The applicant in the application against the CoJ has not been supine in the face of the dispute which had arisen as early as 2014. It sought, with reference to the processes in the bye-laws, to move the matter forward and thus brought the matter before the Ombudsman.

[108] The municipality, however, failed to adhere to its own processes. This is inexplicable in light of its early concession that there was indeed an error on the account.

[109] Although the approach taken by the applicant against the CoJ was flawed, it has had some success in that the municipality is ordered to provide more content to its alleged determination of the dispute as set out in its intra-curial account.

[110] The application against the MCLM has no merit whatsoever.

Order

[111] Thus, the following orders are made:

In case number 41604/2020

- [1] The application is dismissed.
- [2] The respondents are to comply with section 11(5) of the by-laws of the City of Johannesburg relating to complaints in respect of accounts by informing the applicant, in writing, of the municipality's decision with reference to the adjustments to the applicant's account such that it is made intelligibly clear why each of the adjustments were affected and how the final determination of the amount owing to the municipality has been reached.
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**D FISHER
JUDGE OF THE HIGH COURT
JOHANNESBURG**

Delivered: This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 11 December 2023.

Case number 41604/2020

Heard: 16 October 2023
Delivered: 11 December 2023

APPEARANCES:

For the Applicant: Adv A Mckenzie
Instructed by: Vermaak Marshall Wellbeloved Inc.
For the First Respondent: Adv Nicky Terblanche
Instructed by: Nozuko Nxusani Inc.

Case number 13541/2022

Heard: 17 October 2023
Delivered: 11 December 2023

APPEARANCES:

For the Applicant: Adv. J H F Le Roux
Instructed by: Bhika Calitz Inc.
For the Respondents: Adv. Jason Govender
Instructed by: Smith Van Der Watt Inc.