


REPUBLIC OF SOUTH AFRICA



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

APPEAL CASE NO: A5041/2016

COURT A QUO CASE NO: 2014/45277

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/ NO
(3)	REVISED. ✓
29/08/2017 	

In the matter between:

EKURHULENI METROPOLITAN MUNICIPALITY

Appellant

and

ERGO MINING (PTY) LIMITED

First Respondent

ESKOM HOLDINGS SOC LIMITED

Second Respondent

SUMMARY

FLYNOTE: Interdictory relief – supply of electricity – interpretation of section 102(2) of the Municipal Systems Act 32 of 2000 – meaning of the word “dispute” and the phrase “specific amount” in terms of section 102(2)

MABESELE J. (ADAMS J AND SARDIWALA AJ CONCURRING):

This is an appeal with leave of the Supreme Court of Appeal against the whole judgment and order of the Court below. In terms of the said order, Ekurhuleni Metropolitan Municipality (appellant) and Eskom Holdings SOC Limited (second respondent) are interdicted from terminating the electricity supply to the metallurgical plant, “Ergo Plant” of Ergo Mining (Pty) Ltd (first respondent), pending the final determination of the main application.

The main application was launched by the first respondent against the appellant and the second respondent. In this application, the first respondent seeks a declaratory order that the appellant does not supply electricity to the Ergo Plant and it is in fact the second respondent supplying the electricity. The first respondent therefore disputes liability for payment to the appellant for the electricity supplied on the grounds that the second respondent supplied said electricity. For this reason, the first respondent preferred to pay the appellant at the second respondent’s tariff, which is much lower than the appellant’s tariff. This resulted in the appellant experiencing a shortfall of approximately R3 million in its monthly income.

This appeal concerns the interpretation of section 102(2) of the Local Government: Municipal Systems Act, 32 of 2000. Section 102(2) provides that a municipality will not be able to implement its credit control and debt collection measures where there is a

dispute between the municipality and a person liable for payment to the municipality for the provision of services. The Court below granted the order in favour of the first respondent after it had found that the first respondent raised a *bona fide* dispute in accordance with section 102(2) which prevents the appellant from implementing its credit control and debt collection measures.

The learned Judge of the Court below was of the view that the issue regarding the tariff is in fact a dispute relating to the payment of a specific amount. Further, the Judge stated that the dispute was not general or broad but it clearly sets out the basis for the objection. Additionally, the municipality's right to claim is *bona fide* disputed by the first respondent, therefore the proper approach would be for the municipality to institute an action to recover the funds and then await the determination of that application.

This Court was of the view that the words 'dispute' should be interpreted as being a dispute relating to an account issue, with reference to a specific amount of consumption of electricity and the tariff at which the electricity was charged. Therefore any dispute outside of this interpretation would not be covered by section 102(2). The consequence of this interpretation is that the dispute between the parties does not fall within the ambit of section 102(2). Therefore the Court below erred in deciding otherwise.

The Court was of the view that the granting of the interdict would hamper the appellant in the execution of its constitutional mandate as this would have the effect of restricting its financial resources and therefore restricting its responsibilities to improve the socio-economic development in its area. Further, the appellant had argued that the sale of electricity represents one of the main sources of income of the appellant in order to ensure provision of services to all communities throughout its area of jurisdiction and to provide such services in a sustainable manner.

Therefore the Court held that the interdictory relief should not have been granted and the appeal against the judgment and order of the Court below succeed.