

REPUBLIC OF SOUTH AFRICA



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

Case Number: **9437/2017**

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **NO**

14/12/2017

DATE

SIGNATURE

In the matter between:

TLOTLISO MALILE DUBE

First Applicant

MOLATLHEGI DUBE

Second Applicant

and

**THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

Respondent

JUDGMENT

FISHER, J:

INTRODUCTION

[1] The applicants seek an order in terms of which the respondent is ordered in sweeping terms “*to take any/all measures necessary to comply with its constitutional and statutory obligations in relation to the applicants within 14 days*”. They state that this relief would include (but not be restricted to): the reversal of ‘*erroneous*’ and ‘*excessive charges*’ billed from an unspecified date; the re-billing for water charges, taking into account the average consumption of what has been called as a “*ghost meter*” that applicants installed on their property; the furnishing of a revised account reflecting these reversals and the correct amounts owing by applicants; and the respondent being prevented from continuing debt collection proceedings, until the “*necessary rectifications*” have been made to the account. They also seek costs on the attorney and client scale.

[2] In essence the applicants seek final mandatory /interdictory relief. They thus need to establish the requisites for such relief which are:

- (a) a clear right;
- (b) an injury actually committed or reasonably apprehended; and
- (c) the absence of similar protection by any other ordinary remedy.

(See: *Setlogelo v Setlogelo* 1914 AD 221 at 227).

THE FACTS

[3] That applicants are co-owners of a property in Mulbarton, Johannesburg. The property is subject to the respondent’s by-laws. Applicants have an account with the respondent in terms of which the respondent renders certain municipal services to applicants, including water supply, and in turn bill applicants for these services. The respondent had initially installed meter number ZSA337#WD1 (“*the old meter*”) as far back as May 2010, to measure water usage on the property. The aforesaid meter was removed due to flooding. The respondent installed a new meter number GKF9702 (“*the new meter*”) at the property on 25 June 2013 and the old meter was then removed.

[4] The readings from the new meter were substantially lower than the readings from the old meter. The applicants claim that the old meter was defective and that it had been substantially over -reading. The applicants claim also that the new meter is also reading too high, given that the property is residential and their usage is low.

[5] The applicants allege that they have established, with the assistance of a plumber, that there are no water leaks on the property. On 14 July 2016, the applicants asked the respondent to test the old meter, but it had been destroyed since its removal some 4 years ago.

[6] On 8 November 2016, the applicants took it upon themselves privately to have a meter installed on the property to assess if the new meter was functioning properly. This, the parties have called a “ghost meter”. After comparing the readings from the new meter and the ghost meter the applicants say it was determined by them that the new meter was reading a higher amount than the ghost meter. This has led the applicants to conclude that the new meter is also over-reading.

[7] The applicants thus refuse to pay in accordance with the accounts issued by the respondent. They seek the relief set out above in a bid, they say, to resolve the dispute.

DISCUSSION

[8] Obviously, such disputes over the metering of water consumption and the charges payable are not unusual. The Water Services By-Laws for the City of Johannesburg, as approved in terms of Section 13(a) of the Local Government: Municipal Systems Act No. 32 of 2000, contain a detailed process specifically aimed at dealing with disputes such as those in issue herein.

[9] Reg 32 (1) deals directly with defective measurement of consumption and provides that, if a consumer has reason to believe that a measuring device which was installed by the Council, is defective, he may make application in writing for the measuring device to be tested and in terms of reg 32 (3) if it is alleged that a measuring device is inaccurate, the device must be subjected to a standard industry

test to establish its accuracy. The consumer is entitled to be present during the testing process.

[10] Furthermore, in terms of reg 35(1), if a measuring device is found to be defective, the Council may estimate the quantity of water supplied to the consumer concerned during the period in which, in its opinion, such measuring device was defective, on the basis of the average daily quantity of water supplied to him or her over- (a) a period between two successive measurements subsequent to the replacement of the measuring device or, if this is not possible; (b) the period in the previous year, corresponding to the period in which the measuring device was defective; or, if this is not possible; (c) the period between three successive measurements prior to the measuring device becoming defective.

[11] In terms of reg 35 (2)(a), if the quantity of water supplied to a consumer during the period when his or her measuring device was defective cannot be estimated in terms of subsection (1), the Council may estimate the quantity; and the consumer must be informed of the method so used to estimate the quantity of water supplied, and given an opportunity to make representations to the Council before a final estimate is arrived at.

[12] Reg 9.C (1) deals with arrears and discontinuation of services. It prescribes that a series of notifications must be sent in relation to the decision to discontinue and opportunities given to the consumer to pay. This process, which must take place prior to any decision to terminate, specifically allows for representations to be made by a consumer. If representations made by a consumer are unsuccessful, either wholly or in part, a final demand notice must be given to the consumer stipulating that no further representations may be made.

[13] Importantly, the authority of the respondent to discontinue water services is specifically made subject to the provisions of the Act, and subject also to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000), having been observed.

[14] Instead of taking advantage of the processes afforded them under the By-Laws, the applicants have devised and employed their own process and have in this context seen fit to bring these proceedings. The relief sought is overly widely framed and there is no basis in law for it. It must be appreciated that the respondent is obliged to seek payment in respect of water services in that it is concerned with public funds.

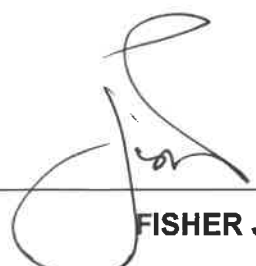
[15] In any event the applicants have not established the third requirement for an interdict, that being that there should be an absence of any other ordinary remedy. The remedies prescribed by the By-Laws are by no means inadequate. Indeed it seems to me to me that they are designed to meet the very problems allegedly being experienced by the applicants in a manner that takes account of the Constitutional rights of the applicants.

[16] The respondent sought costs on a punitive scale as it contends that the application is baseless and vexatious. I am inclined to agree for the reasons set out above.

ORDER

[17] I thus order as follows:

The application is dismissed with costs on the scale as between attorney and client.



FISHER J
HIGH COURT JUDGE

GAUTENG LOCAL DIVISION, JOHANNESBURG

DATE OF HEARING:

09 November 2017

DATE OF JUDGMENT AND ORDER:

14 December 2017

LEGAL REPRESENTATIVES:

FOR THE APPLICANTS:

Adv M Oppenheimer
instructed by Schindlers
Attorneys

FOR THE RESPONDENT:

Adv. Yina instructed by
Ramushu Mashile Twala