IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

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

Date: ***8th October 2019*** Signature: _____

CASE NO: 2019/32229

DATE: 8TH OCTOBER 2019

In the matter between:

CEDAR PARK PROPERTIES (PTY) LIMITED	Applicant
and	
THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALTY	First Respondent
THE CITY OF JOHANNESBURG PROPERTY COMPANY (PTY) LIMITED	Second Respondent
JOHANNESBURG WATER (PTY) LIMITED	Third Respondent

JUDGMENT

Adams J:

[1]. This is an opposed urgent application by the applicant against the respondents for the reconnection of the supply of water to the business premises of the applicant. Pending the determination of final relief sought in part B of the notice of motion, the applicant also applies for an order interdicting and restraining the respondents from terminating the supply of water to the property of the applicant.

[2]. The first respondent alleges that as and at the 30th of July 2019 the applicant owed it (the first respondent) an amount of R7 077 949.11 in respect of arrear water charges, sewerage charges, property rates and taxes and other municipal charges relating to the immovable property owned by the applicant since the 13th of June 2013. The applicant had in fact purchased from the first respondent the said property in terms on an agreement for the purchase and sale of the property dated the 3rd of July 2009. It appears that since becoming the owner of the property during 2013 the applicant never paid any amounts in respect of rates and taxes and other municipal services. The water charges were paid from time to time by the tenants of the applicant, although it is alleged by the respondents that, notwithstanding such payments from the occupiers of the business premises at the applicant's property, there are still some arrear payments which relate to water usage.

[3]. The applicant disputes the amount due to the respondents and it does so on the basis that in terms of the original sale agreement it (the respondent) was not liable for all of the charges debited by the first respondent. The applicant also alleges that the first respondent is overcharging them in respect of the rates and taxes in that they are charged at a higher value and on the basis of an erroneous valuation of the property in question. Additionally, it is claimed by the applicant that it has a counterclaim against the first respondent in respect of the consumption of electricity since 2013 by a city library also operating from the applicant's property. This library, which is under the control of the City of Johannesburg, so the applicant alleges, has been utilising electricity paid for by

the applicant since 2013, which means that the respondents owe it an amount of approximately R5.85 million.

[4]. This is the dispute between the parties. Notwithstanding such dispute, the respondents on the 3rd of August 2018 delivered to the applicant a pre-termination notice that its account at that stage was in arrears in an amount of R2 622 833.93. The applicant was also forewarned that, unless the account was brought up to date, its services would be discontinued or restricted. The applicant did not act on this pre-termination notice. The dispute did however not resolve.

[5]. On the 30th of July 2019 a further pre-termination was sent to the applicant. By then the arrears had increased to R7 million +. The applicant failed to bring its municipal account up to date and on the 6th of September 2019 the supply of water to the applicant's property was terminated.

[6]. Section 102(2) of the Local Government: Municipal Systems Act 32 of 2000 *('the Systems Act')*, which provides *inter alia* that a municipality will not be able to implement its debt collection and credit control measures by, for example, terminating the supply of electricity to a consumer, where there is a dispute between the municipality and the consumer *'concerning any specific amount claimed by the municipality'* from that person. The question in this matter is whether the dispute between the applicant and the respondents is a dispute as envisaged in s 102(2).

[7]. For reasons which will become clear later on in this judgment, it is not necessary for me decide this question. I will nevertheless say that it is of importance that subsection 102(2) of the Systems Act requires that the dispute must relate to a 'specific amount' claimed by the applicant. As was said by Maya JA in *Body Corporate Croftdene Mall v EThekwini Municipality*, 2012(4) SA 169 (SCA) at par [22]:-

'Quite obviously, its objective must be to prevent a ratepayer from delaying payment of an account by raising a dispute in general terms. The ratepayer is required to furnish facts that would adequately enable the municipality to ascertain or identify the disputed item or items and the basis for the ratepayer's objection thereto. If an item is properly identified and a dispute properly raised, debt collection and credit control measures

could not be implemented in regard to that item because of the provisions of the subsection. But the measures could be implemented in regard to the balance in arrears; and they could be implemented in respect of the entire amount if an item is not properly identified and a dispute in relation thereto is not properly raised.

[8]. On the basis of this authority I have my reservation whether there is a 'genuine dispute' between the parties about the applicant's indebtedness to the first respondent which falls within the confines of the definition of 'dispute' as envisaged in section 102(2). For starters, the dispute relating to the electricity charges for the library cannot possibly be said to fall within the ambit of the section. Also, over a long period from at least during or about 2013 to 2018, the applicant appears not to have challenged its indebtedness to the appellant in respect of the municipal charges. It was only during 2018 that the applicant adopted the approach that it does not owe the respondents anything in respect of the municipal services. Without deciding the point, I make the comment that the dispute between the parties is not of the type that disentitles the respondents to terminate the supply of services.

[9]. This is an issue which I am not required to adjudicate *in casu*, for the simple reason that urgency in my judgment has not been established by the applicant.

[10]. By all accounts the applicant by the 3rd of August 2018 had become aware of the fact that the respondents intended terminating their services. By then the applicant was also well aware of the fact that the respondents were of the view that they are entitled to cut the supply of water to their property. The applicant should then have commenced proceedings to ensure that their rights are protected.

[11]. I am of the view that the applicant, when the respondents first delivered the pre-termination notice, should have realised that the respondent intended on pursuing a claim against them for payment of arrear rates and taxes. Applicant, upon this realisation, should then have proceeded with the issue of the urgent application. Additionally, on the 30th of July 2019 the first respondent caused to be delivered a further pre- termination notice. The applicant therefore

became aware or ought reasonably to have become aware that respondents were determined to cut the supply of water to its property. Still the applicant took no action to obtain an interdict.

[12]. This urgent application was only issued on the 12th of September 2019.

[13]. At the commencement of the hearing of the urgent application, I requested the parties to address me on the issue of urgency, which they did. I had deemed this course necessary in the circumstances of the matter.

[14]. There are two difficulties which the applicant faces relative to the issue of urgency. The first related to the fact that during August 2018 they became aware of the fact that the respondents intended terminating the supply of services to the applicant. At that stage, on the applicant's own version, there was a need for the applicant to interdict the respondents from carrying out their threats. By then, it would have been crystal clear to the applicant that it had to take action in order to protect its alleged right to the supply of water, lest the respondents decide to cut their water supply. The applicant did nothing. In my judgment, there is no explanation, let alone an acceptable one why the applicant did nothing between August 2018 and September 2019 to protect its alleged rights to the continuous supply of water.

[15]. The second difficulty relates to the fact that even on the 31st of July 2019, when the second pre-termination notice was delivered, the applicant adopted a rather laid back approach to the matter.

[16]. It is the respondent's contention that the alleged urgency of the matter is self-created and that there was non-compliance with the provisions of rule 6(12). It was submitted on behalf of the respondent that despite the fact that the applicant was aware as far back as August 2018 that the respondents had intentions to terminate the supply of services, the applicant failed to issue its application soon thereafter.

[17]. Rule 6 (12) (b) of the uniform rules of court reads as follows that:

'(b) In every affidavit or petition filed in support of the application under para. (a) of this sub-rule, the applicant shall set forth explicitly the circumstances which he

avers render the matter urgent and the reasons why he claims that he would not be afforded substantial redress at a hearing in due course.'

[18]. On behalf of the applicant it was submitted that application is urgent because it was only when the water was actually cut on the 2nd of September 2019 that the exigency of the matter dawned on the applicant. There is no merit in this contention.

[19]. I am of the view that the urgency of this application is self – created. In my view, the applicant should have launched this application as soon as the respondents made it clear to it that the services will be terminated. If they did so, urgency would not have been an issue now. It was incumbent on the applicant to as soon as possible after August 2018 to launch proceedings for an order interdicting the respondents. There is no explanation as to why the applicant waited for so long before deciding to take action. Even then they delayed in launching the urgent application.

[20]. I am not convinced that the applicant has passed the threshold prescribed in Rule 6(12)(b) and am of the view that the application ought to be struck of the roll for reasons given above.

Costs

[21]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

[22]. I can think of no reason why I should deviate from this general rule

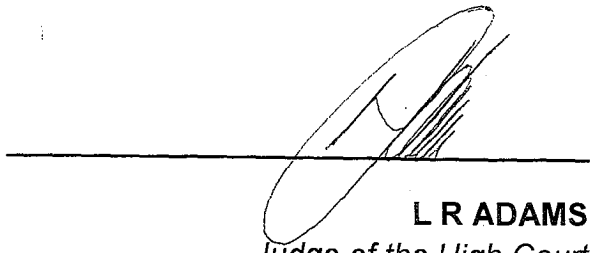
[23]. Accordingly, I intend awarding costs in favour of the respondent against the applicant.

Order

Accordingly, I make the following order:-

(1) The applicant's urgent application be and is hereby struck from the urgent court roll due to lack of urgency.

(2) The applicant shall pay the respondent's cost of this urgent application.



L R ADAMS
Judge of the High Court
Gauteng Local Division, Johannesburg

HEARD ON:	4th October 2019
JUDGMENT DATE:	8th October 2019
FOR THE APPLICANT	Adv Vincent Maleka SC, together with Adv W Krog
INSTRUCTED BY:	Smit Sewgoolam Incorporated
FOR THE FIRST, SECOND AND THIRD RESPONDENTS:	Adv M Naidoo SC, together with Advocate P Managa
INSTRUCTED BY:	Madhlopa & Thenga Incorporated