IN THE HIGH COURT OF SOUTH AFRICA (GAUTENG DIVISION, PRETORIA)
REPUBLIC OF SOUTH AFRICA

Case Number: **36663/2022**

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: NO
DATE: 3 August 2022

In the matter between:

GLOFURN (PTY) LTD Applicant

and

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

[1] This is an urgent application to prohibit the respondent from terminating the electricity supply to the applicant's property situated at [....] E[....] S[....], Koedoespoort Industrial, Pretoria ("the premises")

Background

[2] The facts pertaining to the relief claimed herein are largely common cause and a short summary will suffice for present purposes.

[3] The dispute between the parties pertains to two accounts held in the respondent's records in respect of the applicant's premises, to wit: account number [....] ("the old account") and account number [....] ("the new account").

[4] Unbeknownst to the applicant, the respondent closed the old account with effect 1 March 2022 and opened the new account, which account operates on a model known as a pre-payment account. Although the applicant did not receive any further invoices on the old account from 1 March 2022, the applicant kept on paying an estimated amount in respect of the electricity consumption on the premises into the account.

[5] The respondent did not transfer these payments to the new account, which resulted in the old account being in credit during June 2022 in an amount of approximately R 400 000, 00.

[6] On 29 June 2022 the applicant received the first invoice on the new account, which invoice indicated that the applicant owned the respondent an amount of R 766 457, 81.

[7] On 8 July 2022 the applicant lodged a formal dispute in terms of the provisions of section 95(f) read with section 102(2) of the Local Government: Municipal Systems Act, 32 of 2000 ("the Act") with the respondent. The applicant described the nature of the dispute as follows:

> *"The account does not belong to the complainant, the complainant never applied for an account, never opened an account nor received any documents, application forms, meter readings, rates and taxes or any accounts before 29 June* 2022. *The complainant denies that it is indebted to the City in respect of the account of R 766 457, 81*

[8] A certain Prudence P Lebudi, an official of the respondent, responded to the

dispute in an email that reads as follows:

> *"Notification of migration of the postpaid account to the prepayment account was sent to email address on the system, please find attached.*
>
> *The electricity was not charged on the client's account since migration.*
>
> *The client can view their balance on the prepayment portal, the link provided on the attached email sent."*

[9] According to the respondent the aforesaid reply constitutes a finalisation of the dispute in terms of clause 6 of its Credit Control and Debt Collection Policy. The relevant portions of the policy reads as follows:

> Clause 6.1:
> *"(c) .....The relevant department will give* a *written acknowledgement of receipt of the dispute, investigate the matter, and inform the customer in writing of the outcome of the investigation within one month. Any adjustment to the customer's account will be done within a reasonable time.*

and

> *(e) The decision of the authorised official of the Council is final and will result in the immediate implementation of any control and debt collection measures provided for in this policy, after the consumer is provided with the outcome of the dispute."*

[10] Although the respondent relies only on the aforesaid provisions of the policy, I pause to mention that the policy also contains a clause 6.1.1 with the heading:

> ***"Reciprocal obligations of the Municipality and the petitioner of a dispute"***

[11] The respondent's obligations are contained in 6.1.1 (b) and (v) are noteworthy:

"(v) The following provisions are applicable in the consideration of the disputes:

-All disputes must be concluded by the Chief Financial Officer, provided that the Chief Financial Officer may delegate the powers to finally resolve any matter to an official in Group Financial Services. The Chief Financial Officer or the delegated official will have all those powers necessary or incidental thereto in order to resolve a matter.

-All complaints and/or disputes will be investigated by a special technical task team under the leadership of Group Financial Services, who will establish such a task team in terms of sections 95(f), (g) and (h) of the Municipal Systems Act, 2000 *(Act 32 of 2000). An official appointed by the Chief Financial Officer will chair such* a *task team and be assisted by* a *dedicated legal advisor from the Legal Services Department and, depending on the nature of the dispute, officials from other municipal departments or divisions,* as *may be required. Such* a *task team will make its findings and recommendations to the Chief Financial Officer or the delegated official* as *referred to in paragraph (a) above.*

-The Chief Financial Officer's decision is final and will result in the immediate implementation of any debt collection and credit control measures *provided in this policy after the debtor is provided with the outcomes of the dispute.*

-The same *debt will not again be defined* as a *dispute in terms of this paragraph and will not be reconsidered* as *the subject of* a *dispute.* "

[12] It is not clear from the papers, whether clause 6.1 or clause 6.1.1 apply to the facts in *casu* and/or in what capacity Ms Lebudi provided the answer in the email.

[13] Be that as it may, should the respondent be correct in its approach, section 102(2) of the Act that suspends debt collection measures pending finalisation of a dispute, will not apply and the applicant must pay the disputed amount.

[14] The applicant, however, denies that the response from Ms Lebudi amounts to the finalisation of the dispute lodged by it.

[15] In support of its aforesaid denial, the applicant relies on the respondent's Standard Electricity By-Laws ("the By-Laws") which By-Laws were published in the Provincial Gazette Extraordinary, (No. 234 of 25 June 2003), Authority Notice 1132 (as amended in 2013) and more specifically on By-Law 9 which reads as follows:

> *"If at any time any difference or dispute arises between the Municipality and the consumer about the construction, meaning or effect of these By-Laws or about the rights,* ***obligations or*** *liabilities of the consumer or Municipality under the By-Laws, the difference or* ***dispute*** *must be referred to the NERSA for a decision, failing which the difference or* ***dispute*** *must be settled by arbitration in terms of the provisions of the Arbitration Act, 1964 (Act 42 of 1965)."* (own emphasis")

[16] In the result, according to the applicant, the dispute can only be deemed to be finalised once By-Law 9 has been complied with.

[17] Although the respondent attached the By-Laws to its answering affidavit and relies on certain provisions of the By-laws, the respondent steadfastly denies that clause 9 of the By-Laws is applicable to the dispute in *casu.*

Legislative framework

[18] Mr Vester, counsel for the applicant, submitted that the policy relied upon by the respondent, will only become binding once a By-Law is adopted to give effect to the policy.

[19] Mr Voster's contention is based on the following sections in the Act:

[19.1] Section 96 that provides for a credit control and debt collection policy:

> **"96** ***Debt collection responsibly of municipalities*** - *A municipality*

(a) must collect all money that is due and payable to it, subject to this Act and any other applicable legislation; and

(b) for this purpose, must 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 this Act.",* and

[19.2] Section 98(1) that determines the status of the policy:

"(1) A municipal council must adopt by-laws to give effect to the municipality's credit control and debt collection policy, its implementation and enforcement."

[20] The respondent published Credit Control and Debt Collection By-Laws in the Provincial Gazette Extraordinary (No 44 of 27 February 2002), Local Authority Notice 226. By-Law 5.1 states that the Council shall have a written policy on credit control and debt collection and prescribes general requirements with which the policy must comply.

[21] The policy relied upon by the respondent herein, has, however, not been adopted in a By-Law and is therefore not enforceable against customers.

[22] Ms Maganye, counsel for the respondent, does not agree. Ms Maganye submitted that the respondent's policy has been given the status of a By-Law because it was adopted in terms of the Credit Control and Debt Collection By- laws, referred to *supra.*

[23] The submission is at odds with section 98(1) which clearly provides that the respondent

"must adopt bv-laws to give effect to the municipality's credit control and debt collection policy".

[24] The policy relied upon by the respondent is not contained in a By-law. The By-law that was adopted refers in general terms to the aspects that should be in a policy pertaining to credit control and debt collection.

[25] I agree with Mr Vaster that the only By-Law that presently provides for the

resolution of a dispute in respect of the applicant's obligation to pay for electricity consumption, is the Standard Electricity Supply By-Laws, referred to *supra.*

Interim Interdict

***Prima facie* right**

[26] The provisions of section 102(2) of the Act provides a *prime facie* if not clear right to the applicant for the relief claimed herein.

Irreparable harm

[27] The applicant stated in its founding affidavit that it is in the business of injection moulding of plastic for various purposes and that it has a large volume of contracts that must be fulfilled. The machinery utilised in the production of its products is reliant on a constant source of electricity and the termination of the electricity will halt the production in toto. The applicant's business will be unable to perform in terms of the various contracts and would lose all its income, with the resultant prejudice its employees will suffer should there be no income to pay wages.

[28] In the result, the harm that will befall the applicant's business if the electricity supply is terminated, is self-evident.

Balance of convenience

[29] The respondent will, should the dispute be resolved in its favour, receive the amount due in respect of the electricity consumption by the applicant on its premises.

[30] The business of the applicant will, on the other hand, not survive without electricity. The balance of convenience manifestly favour the applicant.

Other satisfactory remedy

[31] Pending the resolution of the dispute, the applicant does not have

another satisfactory remedy to protect its interests in the interim.

ORDER

The following order is issued:

1. The Respondent is interdicted from implementing its debt collection and credit control measures by terminating any of the services of the Applicant that are rendered to the Applicant on the immovable property known as [....] E[....] S[....], Koedoespoort, Pretoria and in respect of account [....] and [....], pending the determination of the dispute between the Applicant and the Respondent for arrear amounts due up until date.

2. The Respondent is ordered to pay the Applicant's costs.

N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE HEARD PER COVID19 DIRECTIVES:
26 & 27 July 2022

DATE DELIVERED PER COVID19 DIRECTIVES:
3 August 2022

APPEARANCES

For the Applicant

Instructed by:	Adv A Vorster Adv J Stroebel Albert Hibbert Attorneys Inc
For the Respondent :	Adv S Manganye
Instructed by:	Mathie Jooma Sabdia Inc