



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Rademan v Moqhaka Municipality & others (173/11) [2011] ZASCA 244 (01 December 2011)

Today the Supreme Court of Appeal (SCA) dismissed an appeal by the appellant and upheld an order of the Free State High Court, Bloemfontein

The appellant is a resident of No 1 Panorama Park, Kroonstad which fell within the jurisdiction of the first respondent, a municipality duly incorporated in terms of s 12 of the Local Government: Municipal Structures Act 117 of 1998. The second to fifth respondents are officials of the municipality. The appellant is a member of an association called the Moqhaka Ratepayers and Residents Association. The appellant together with other unhappy residents were not happy with the municipal services provided by the municipality which resulted in them withholding payment of their taxes and levies, albeit the appellant together with the other residents continued paying for the other municipal services provided such as water and electricity. The municipality, due to the failure to receive payment, disconnected the appellant's electricity supply; this was done without a court order. The appellant successfully launched an urgent application for the restoration of her electricity supply, in the Kroonstad Magistrates Court. The respondent municipality appealed successfully to the Free State High Court, Bloemfontein, which held that the disconnection was statutorily authorised. The appellant appealed to the SCA with the leave of the high court.

The central issue before the SCA was whether the municipality was justified in disconnecting the electricity supply to the appellant whilst her electricity account was up to date.

The SCA stated that the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act), the Constitution of the Republic of South Africa Act 108 of 1996 as

well as the Credit Control and Debt Collection by-laws regulate the functioning of municipalities and bestows on them the power to restrict and disconnect the supply of municipal services when the requisite payments are not received.

The SCA held that s 102 of the Systems Act makes it clear that entwined in a municipality's obligation to charge and receive payments for municipal services, it further has the option to consolidate the accounts for the various services it provides and thus the unilateral refusal by the ratepayers to pay for services which they enjoy cannot be condoned.

The SCA found further that there is no statutory instrument in existence requiring a municipality to obtain a court order prior to the discontinuation of its services and therefore the SCA held that the appeal by the appellant must fail.

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