


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 018876/2024

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
9 May 2025	
DATE	SIGNATURE

In the matter between:

ZODWA PRETTY ZUMA

First Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

First Respondent

**THE MUNICIPAL MANAGER: CITY OF TSHWANE
METROPOLITAN MUNICIPALITY**

Second Respondent

JUDGMENT

DOMINGO, AJ

Introduction

- [1] This is the extended, opposed return date of a *rule nisi*, issued as a matter of urgency calling upon the respondents to cause why the order issued should not be confirmed.

- [2] The applicant brought proceedings by way of urgency, seeking interim relief of the reconnection of her electricity supply which was disconnected on the 19 February 2024.
- [3] Following the hearing of submissions regarding the interim relief, the court on 29 February 2024, granted the following:
- “3.1 that the Respondents be and are hereby directed to reconnect/ unblock/ unrestrict the electricity supply to the premises within 4 (four) hours after services of the court order at the office of the Second Respondent, by the Applicant’s attorney.”
- “5. The Applicant is directed to continue making payments of her current service fees as appearing on the statement account.”
- [4] On the 7 February 2025, the respondents submitted a supplementary affidavit which stated that this application has become moot because the applicant had concluded an Instalment Plan Agreement where she agreed to the tampering charges and paying the arrears amount inclusive of the tampering charges on a monthly basis.
- [5] On attendance at court on the 10 February 2025, the applicants raised the issue that they had not had time to respond to the respondents supplementary affidavit, It was agreed that the matter would stand down and be heard on the 13 February 2025 to afford the applicant the opportunity to respond to the respondents supplementary affidavit.

Issues

- [6] The issues to be determined in this matter are as follows:
- 6.1 Whether by signing the Instalment Plan Agreement on the 10 December 2024 this application has become moot.
- 6.2 Whether the respondents conduct in disconnecting the electricity was lawful.

- 6.3 Whether the applicant has made out a case for the granting of the final relief and whether the respondents have shown cause why the interim order should not be made final.

Background

- [7] On the 19 February 2024, the respondents restricted electricity supply to the premises of the applicant, who is the owner of the property.
- [8] At the time when the applicant instituted the urgent proceedings, the applicant was still not informed of the reason for the restriction of the electricity supply other than the presumption that it might be for arrear amounts.
- [9] The applicant discovered in the respondents Answering Affidavit that the reason for the restriction of her electricity supply was that the respondents alleged tampering of the electricity supply unit.

Legislative Framework

- [10] The Respondents proceeded to oppose this application, and they averred that the applicant tampered with the electricity supply unit. By virtue, hereof, the respondents rely on section 26¹ of the Electricity By-Law, which states as follow:

“TAMPERING AND OTHER OFFENCES IN RESPECT OF SERVICE CONNECTION, METERING EQUIPMENT OR SUPPLY MAINS

- (1) No consumer, owner, occupier or registered owner of any premises or immovable property or any other person may in any manner or for any reason whatsoever bypass the meter and/or related metering equipment of the Municipality or of a contractor on or relating to any premises, or otherwise tamper or interfere with, remove, redirect, disturb, alter, vandalise or steal any meter or other metering equipment, or any service connection, service protective device, protective box or case, the supply of mains or any other electricity supply or metering assets, equipment and/or infrastructure forming part of the Municipality’s electricity supply, distribution and reticulation network and/or any prepayment meter system, smart prepayment meter system, whether owned or operated by the Municipality or a

¹ Electricity Supply By-Law published in the Provincial Gazette Extraordinary 227 on 7 August 2013 (*the By-Laws*”).

contractor and whether or not it is located or installed on, or affixed to any premises or is located or installed elsewhere in relation to any premises. Such tampering, interference, removal, redirection, by-passing, vandalism and theft shall constitute an offence in terms of these by-laws.

- (2) Where *prima facie* evidence of tampering, interference or by-passing referred to in subsection 1 exists, the Municipality has the right to disconnect the supply of electricity immediately without prior notice to the consumer. The consumer is liable for all fees and charges levied by the Municipality for the disconnection and subsequent reconnection in accordance with the approved tariffs. (Emphasis my own).

Mootness of the application

- [11] The respondents averred that this application has become moot because the applicant has concluded an Instalment Plan Agreement on 10 December 2024, where she admitted to the tampering, and agreed to paying the arrear amount inclusive of the tampering charges on a monthly basis.
- [12] The 10 December 2024, Instalment Plan Agreement filed on record by the respondents regarding the payment of the tampering charges refers to the acknowledgment of payment by the applicant of the tampering charges for 6 December 2023 and not the 9 February 2024 tampering charge.
- [13] On the 6 December 2023 due to alleged tampering the applicant's electricity supply was disconnected. The applicant denies this tampering, and this was supported by the evidence of the respondents.
- [14] The respondents have submitted as part of their evidence an electricity inspection card for an inspection which took place on 6 December 2023, the inspection card indicated that there has been no tampering.
- [15] On the 16 December 2023 the applicant submitted that she attended the office of the respondent and entered into an arrangement and acknowledged her indebtedness to the respondents before her electricity supply was restored. She at that time never admitted to the 6 December 2023 tampering.

- [16] On the 19 February 2024, the applicant's electricity supply was disconnected despite the applicant's 16 December 2023 acknowledgement of debt arrangement.
- [17] However, the 19 February 2024 electricity restriction was due to the respondents alleging a tampering incident, which would be a "second alleged tampering" of the electricity meter by the applicant.
- [18] The applicant submitted that prior to the 10 December 2024, her electricity supply was once again restricted by the Respondents on either faulty equipment or the restriction of services.
- [19] On the 10 December 2024, the respondents discovered that the applicant's meter was indeed faulty, and the applicant purchased a new meter which was installed on the premises.
- [20] It is submitted by the applicant that the respondents refused to assist her with the installation of a new meter and purchase of electricity, up until the time she signed acknowledgement of debt forms. These forms also included an acknowledgement of the 6 December 2023 tampering. The applicant submitted that she had no choice but to sign the forms because she did not want to be without electricity during the December festive season.
- [21] The matter before this court deals with the 19 February 2024 tampering and not the 6 December 2023 tampering. It is noted that the applicant has signed a form admitting to the 6 December 2023 tampering and the payment of tampering charges despite the fact that the respondents in this matter have provided evidence of a 6 December 2023 electricity inspection form which reflects that there was no tampering.
- [22] This application is not moot because the Instalment Plan Agreement signed by the applicant on 10 December 2024 does not deal with the 19 February 2024 tampering allegation.

Respondents conduct in disconnecting the electricity

- [23] The respondents contended that their actions were lawful in disconnecting the electricity supply to the applicant in terms of section 26(2) of the Electricity By-Laws, in terms of which, the applicant does not have a right to receive notice once *prima facie* evidence of tampering has been established.
- [24] I now turn my attention to whether there was *prima facie* evidence of tampering on the 19 February 2024.
- [25] It is submitted by the respondents that on 19 February 2024, the respondents' officials conducted an inspection at the applicant's property and found *prima facie* evidence of tampering of the meter; they took pictures and proceeded to disconnect the electricity supply.
- [26] The applicant's counsel contended that there exists no *prima facie* evidence that the applicant tampered with the electricity supply. It was submitted by the applicant, that she sought the expertise of an independent electrician to inspect the electricity meter. The applicant has provided the independent electrician's photographic evidence together with explanatory notes, indicating that the electricity meter was not tampered with. The independent electrician in his confirmatory affidavit regarding the meter has stated that the "crimped lock of the meter is still in place and that there is no way one can remove the cover and interfere with the cabling without removing the crimped lock"; based on this evidence the independent electrician has concluded that there has been no tampering with the electricity meter.
- [27] The respondents have filed on record one photograph of the alleged tampering. The photographic evidence provided by the respondents do not have a time stamp indicating when the photograph was taken and by whom. There are no confirmatory affidavits filed on record by the respondents' officials who took the photograph and who inspected the meter of the applicant. There is also no job card and no electricity inspection letter providing the details of the alleged tampering on the 19 February 2024. However, the respondents have provided a job card for the alleged tampered connection of the 6 December 2023. They submitted that photographs were also taken of the alleged 6 December 2023 tampering, however, those photographs have not been filed on record.

[28] Furthermore, the respondents have not refuted the claims or produced a report from any experts to the contrary of the applicant's independent electrician who has submitted that there has been no tampering.

[29] The evidentiary burden of proving tampering in accordance with section 26 of the By-Laws rests on the respondents. In the case of *Gericke v Sack*² the court in dealing with what would amount to a *prima facie* case in instances where the facts were within the peculiar or intimate knowledge of the other party held:

“It is not a principle of our law that the *onus* of proof of a fact lies on the party who has peculiar or intimate knowledge or means of knowledge of that fact. The incidence of the burden of proof cannot be altered merely because the facts happen to be within the knowledge of the other party. See *Rex v Cohen* 1933 T.P.D. 128. However, the Courts take cognizance of the handicap under which a litigant may labour where facts are within the exclusive knowledge of his opponent and they have in consequence held, as was pointed out by Innes J. In *Union Government (Minister of Railways) v Sykes* 1913 A.D 156 at p. 173 that ‘less evidence will suffice to establish a *prima facie* case where the matter is peculiarly within the knowledge of the opposite party than would under other circumstances be required.’ But the fact that less evidence may suffice does not alter the *onus* which rests on the respondent in this case.”

[30] In this matter, the respondents are the only ones who can attest to how the tampering was determined. As such, I am in agreement with the applicant's counsel that the respondents have not satisfied the burden to prove that the applicant has tampered with her electricity meter.

Conclusion

[31] In the premises, taking into account the evidence I conclude that there has been no *prima facie* evidence produced to confirm tampering of the electricity supply unit by the applicant and therefore it follows that the disconnection of the electricity supply by the respondents was unlawful. The applicant's application succeeds, and the *rule nisi* granted on 29 February 2024 must be confirmed with costs.

² 1978 (1) SA 821 (A) pages 13 and 14.

Order

[32] I hereby make the following order:

- 33.1 The *rule nisi* issued on the 29 February 2024 is confirmed.
- 33.2 The respondents be and are interdicted and restrained from charging the applicant a reconnection fee as a result of the unlawful restriction/termination/discontinuation/disconnection/ blocking of service.
- 33.3 The respondents shall pay the costs of this application, including all costs reserved and wasted costs, on the scale as between attorney and client, which costs to include all costs of counsel.



W DOMINGO
ACTING JUDGE OF THE HIGH COURT
PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. This matter was heard in open court on the 10 February 2025 and was stood down. It was heard in open court on the 13 February 2025. The date for hand-down is deemed to be 6 May 2025.

APPEARANCES

For the Applicant:

MR N DUPLESSIS instructed by NJ DUPLESSIS
& ASSOCIATES INC.

For the Respondent:

ADVOCATE B LUKHELE instructed by JL RAPHIRI
ATTORNEYS

