



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

Case No: 2515/2025

In the matter between:

**LINDEKA NONGQAYI
NONKUSELO MAZATU**

1st Applicant
2nd Applicant

and

**KING SABATA DALINDYEBO MUNICIPALITY
THE MUNICIPAL MANAGER: KSD LOCAL MUNICIPALITY
EASTERN CAPE DEVELOPMENT CORPORATION**

1st Respondent
2nd Respondent
3rd Respondent

JUDGMENT

ZONO AJ:

Introduction

[1] The applicants are two major female persons residing at erven 117 and 118 Windsor Hotel, Sutherland Street, Mthatha. The basis of their occupation of the premises

is not apparent from the papers. They reside therein with their respective children who are still school goers.

[2] The applicants approached this court for the relief that is more fully set out in the notice of motion. The relief sought in the notice of motion is couched in the following terms:

- “1. *That the applicants be and are hereby granted leave to bring this application as one of urgency dispensing with normal processes in terms of rules 6(12) of the Uniform Rules of Court.*
2. *That a rule nisi do hereby issue calling upon the respondents to show cause, if any, on **Tuesday 24 June 2025** at 09h30 am or so soon thereafter as the matter may be heard why the following order should not be made final:*
 - 2.1 *That termination of electricity supply on erven 117 and 118, Windsor Hotel, Sutherland Street, Mthatha be and is hereby reviewed, corrected, declared unlawful and is set aside.*
 - 2.2 *That the instruction to terminate the electricity supply at Windsor Hotel and given by the third respondent to the second respondent be and is hereby declared unlawful and / or is reviewed, corrected and set aside.*
 - 2.3 *That the first and second respondents be and are hereby directed to reconnect the electricity supply to Windsor Hotel, Mthatha forthwith.*
 - 2.4 *That the respondents are hereby interdicted and / or restrained from terminating the electricity supply to the said premises without affording the applicants and or occupiers of the premises notice and an opportunity to make representation and / or without following a due process of the law.*
 - 2.5 *That the applicant’s failure to exhaust the internal remedies as may be provided for in any other law be and is hereby condoned.*
 - 2.6 *That the first and second respondent be and are hereby directed to pay the costs of this application jointly and severally with the third respondent to pay costs only in the event of opposition.*
 - 2.7 *That the court grants such further and or alternative relief.*

3. *Paragraph 2.3 to 2.4 shall operate as an interim order or mandamus pending the finalization of this application.” (sic)*

[3] The nature of these proceedings is that of a review application. In addition to paragraph 2.1 and 2.2 of the notice of motion (“review”) the main deponent makes the following allegations in the founding affidavit:

“17. This is an application seeking, in the main, review and setting aside of the decision to disconnect the supply and an urgent order directing the respondent to reconnect the electricity supply to the premises known as Windsor Hotel in the district of Mthatha.

18. There are other ancillary relief sought as is apparent from the pre-fixed notice of motion”.(sic)

[4] The applicants state that, by virtue of their residence and occupation of the property, they were users and consumers of the electricity supplied to the premises by the municipality. They have been enjoying the beneficial use of the electricity supply without hindrance. On 5th May 2025 the municipality’s officials disconnected electricity supply from applicants’ premises without the requisite notice, accordingly the disconnection or termination was unlawful. The applicants’ ultimate submission in this regard is that the electricity supply was terminated in a procedurally unfair and illicit manner. The applicants contend that they were not informed of the reasons for disconnection and their right to make representations. They were not informed of their right to review or appeal the decision.

[5] The applicants further direct their attack to the third respondents’ (ECDC) request made to the municipality to terminate the electricity supply to erven 117 and 118, Mthatha. The request is dated 3 December 2024, and it describes the ECDC as a consumer in a contract with the municipality for the supply of electricity to ECDC owned properties. Essentially the request was made by ECDC, the consumer, to the municipality who is the credit provider, for termination of their contract in respect of ECDC properties listed in the annexure attached to the letter or notice. Erf numbers 117 and 118, listed as item number

57 of the listed ECDC properties. The ECDC gave the municipality 4 (four) days' termination notice. I will turn to that notice later in this judgment.

[6] The applicants contend that they should have been notified of the termination of agreement / contract between the municipality and ECDC. They make an assertion that, as users and consumers of the electricity supply, they should have been given an opportunity to make representations as to why the request for disconnection should not be effected. Their right to be informed or notified of the decision taken by the respondents is rooted in the notion that they are users and consumers of the electricity supply to the property they occupy.

[7] The applicants conclude that the respondents' decision to terminate electricity supply adversely affected their rights and legitimate expectations. Their legitimate expectations were created by the fact that they had been receiving the electricity supply from the time they had started occupying the premises. They relied on the rules of natural justice and Promotion of Administrative Justice Act 3 of 2000 (PAJA). It is their case that the municipality provided electricity to the premises for the benefit of the occupiers thereof.

[8] Although the applicants contend that they have a right to be notified of the proposed decision to terminate electricity supply, they do not advance their argument and spell out the nature and the source of their right to the electricity supply. Their lack of disclosure of the nature and source of their right to electricity supply is intertwined with another failure to set out the basis of their occupation of the premises. I will turn to this later in the judgment.

[9] Only the first and second respondents are opposing this application. In so doing they have not only filed their notice to oppose, they have also filed their answering affidavit. The third respondent, ECDC is not opposing this application. I may mention from the onset that the majority of allegations in the answering affidavit filed by the municipality' parties affect the ECDC as they refer to the relationship between the municipality and the

ECDC. The second respondent, the municipal manager, deposed to the answering affidavit.

10] The municipality contends that it provides municipal services such as electricity to each household on the basis of the contract entered into between the owner of the property and the municipality at the time when the owner takes ownership of the property. The municipality had a contract with the ECDC for the supply of the municipal services to the property described as erven 117 and 118, Mthatha. The contract was partly written and partly informed by the provisions of the Credit Control and Debt Collection Policy 2024 – 2025 (“the policy”) and the municipality Electricity By law (By-Law) published on 18 July 2024. The contract complied with the aforesaid statutory prescripts and was accordingly lawful. Of importance the municipality pleads that the municipality would terminate the contract on notice to the ECDC and on good cause, such as failure to pay for municipal services.

[11] During December 2024 ECDC terminated the contract aforesaid with effect from 10 December 2024 in terms of the letter or notice dated 3 December 2024. The relevant contents of the notice or letter are set out hereinafter as follows:

- “1.1 The ECDC in its capacity as a consumer in the contract with the municipality for the supply of electricity to ECDC properties (their properties as described in Annexure “A” hereto) and is the registered owner of the properties, hereby gives its (4) four days written notice for the discontinuance of the electricity supply to the properties.*
- 1.2 The ECDC gives the municipality its written notice for the discontinuance of the electricity supply to the properties in terms of section 24 of the King Sabata Dalindyebo Municipality, electricity supply By-Law.*
- 1.3 The ECDC gives its notice that the municipality is to discontinue the use of supply to the properties with effect from Tuesday 10 December 2024.*
- 1.4 The ECDC will not be liable for any payments due or that arise in terms of the tariff for the supply of electricity to the properties after the expiry of the notice above, being after 10 December 2024...”*

2. ...
3. ...”

[12] It is fundamentally important that the municipality accepted the termination of the contractual relationship between it and the ECDC. That is borne out not only by the conduct of terminating the electricity supply to the property, also by its strong reliance on the notice of termination dated 3 December 2024. I am therefore justified to conclude that the termination of the contract was by consent, as the termination of the electricity supply was.

Discussion and analysis

[13] The contract is a matter between the parties thereto, and no one who is not a contracting party will incur any liability or derive any benefit from the terms thereof. The contract regulates the relationship between the two contracting parties. It is generally governed by the sphere of private law.

[14] *Christie*¹ aptly puts it under the heading “Privity of Contract”:

“The basic idea of contract being that people must be bound by the contracts they make with each other it would obviously be ridiculous if total strangers could sue or be sued on contracts with which they were in no way connected. The doctrine which prevents a ridiculous situation arising is usually known as the doctrine of privity of contracts. Parties who are not Privy to a contract cannot sue or be sued in it”.

In *Gugu*² Van Zyl ADJP (as he then was) shared the same sentiments.

[15] It is hard to comprehend how a non-party to the contract can seek, by subterfuge, to enforce a contract to which he or she is not a party if there is no legal basis for that endeavor. The legal basis would be “*stipulatio alteri*” if same is relied upon. Unfortunately,

¹ R H Christie: *The Law of Contract in South Africa*, 5th Edition, page 260.

² *Gugu and Another v Zongwana and Others* 2014 (1) All SA 203 (ECM) para 21.

nowhere in the applicants' papers does it appear that the agreement between the municipality and the ECDC was entered into for the benefit of third parties. The reason for that is plain and understandable; the applicants disavow any reliance on the contract which they knew at least at the time when the notice or letter terminating the contract between the municipality and the ECDC was communicated to them on 16 May 2025.

[16] I have indicated earlier that the applicants have not pleaded the source of their entitlement to the electricity supply. They clearly do not allege any right to the electricity supply, whereas the effect and the true nature of these proceedings are about the enforcement of the right to the electricity supply. What the applicant seeks to be restored is electricity supply to the property. A further bizarre is that the applicants do not disclose any legal relationship to the property. What they disclose is that at some point there were proceedings to evict them from the premises. That clearly demonstrates that they are not occupying the property at the behest of the ECDC, who is the owner thereof.

[17] However, they formulated their case to find basis on the grounds of the procedurally fair administrative actions. The gravamen of their contention is that, municipality's decision to terminate the electricity supply was procedurally unfair because no notice was given to them prior to the termination of the electricity supply. They do to impugn the agreement to terminate the contract between the municipality and the ECDC. It is re-iterated that as outsiders to contract, they cannot impugn parties' arrangement to terminate their relationship. The application to review and set aside the instruction (which effectively is a notice of cancellation of contract), and acceptance thereof is without merit. The practical effect of the applicants' review application is to reinstate, revive and or breath life to an extinct contract between the municipality and the ECDC. They do so for their baseless benefits.

[18] The applicants' reliance on PAJA is equally misplaced for multifarious reasons. PAJA is a sphere of public law which should have little application, if any, on private law matters. The agreement between the contracting parties is a private law matter which should not be convoluted with public law principles, without special circumstances.

[19] A PAJA review may be instituted if there are substantive rights to be adversely affected by the decision of the administrator. A fair administrative procedure is necessary only if there are substantive rights to be affected by the administrative action. It is only at that stage that a complaint about unfair procedure may be raised. It is the existence of a substantive right that attracts a fair procedure. I deal hereinafter with the relevant provisions of PAJA.

[20] Section 3 of PAJA deals with procedurally fair administrative action. Subsections 1 and 2(a) provide thus:

“1. Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.

2(a). A fair administrative procedure depends on the circumstances of each case”

Subsection 2(b) of PAJA provides clearly that a notice can be given to the person referred to in subsection 1. A person referred to in subsection 1 is the one whose rights (substantive rights) will be adversely affected by administrative action. PAJA becomes available if there are substantive rights to be materially and adversely affected by the administrative action.

[21] The applicants do not disclose the nature of the rights they have in the property which would entitle them to the electricity apply. I have indicated earlier in this judgement that the applicants' papers are bereft of the nature and source of the right that they seek to protect. In the light of the fact that they were, at some stage, sought to be evicted by ECDC where the municipality was also a party in those proceedings manifests that they occupy those premises without the will of the ECDC, the owner thereof. In the absence of proved legal right, PAJA cannot come into their rescue. A notice to them was not necessary.

[22] The applicants appropriate to themselves the word of a user and a consumer of the electricity supply at the instance of the municipality. Because they call themselves users and consumers of the electricity supply, they seek refuge to the municipal By-Law and the Policy referred to above. Their contention is that those two instruments afford them the right to the given notice. This does not detract from the fact that a notice must be given to a person whose rights are to be materially and adversely affected.

[23] Section 7(1) of the Municipality Policy provides thus:

“(1) A consumer who requires the provision of the municipal services must apply for the service from the municipality.” For the applicants to have the right to the electricity supply, they must avail themselves to these provisions. In fact the municipality is on record to say that after the termination of the contract between it and the ECDC, it called upon anyone who would want to be the consumer of the electricity to make an application. I will turn to this point later in this judgment.

[24] Section 8(1) of the Municipality Policy provides that *“On application for the provision of the municipal services the consumer deposit prescribed by the council shall be paid.”* A prescribed fee must be paid at the time of the application. In terms of section 7(9) of the Policy, the application for the provision of the services must be made 10 (ten) days prior to the date on which the services required to be connected. A person is a consumer entitled to the services if he or she complies with the provisions of the Policy and any other law.

[25] There is no allegation that the applicants made the requisite application for them to be consumers of municipality’s electricity supply. They are therefore not consumers as contemplated in the Policy. Even if it can be found that they are consumers, it is easy to find that they are unlawful consumers, as they are not entitled to those services without the requisite application having been made and approved.

[26] It is a basic principle of our law that a court can never lend its aid to the enforcement of an illegal act. An act that has been performed in violation of a statutory prohibition may,

generally, have no legal consequences.³ In terms of the Policy, municipal services like the electricity supply may only be provided once there is agreement to do so. That agreement is entered when an application for municipal services is made by the consumer and approved by the municipality. It will be an enforcement of an illegal act if the municipality is compelled to provide services without the satisfaction of a lawful requirement to successfully make an application for services. It will be a contravention of the law to render the services to persons who will not pay for municipal services as sections 9 and 10 of the Policy which require that those services must be paid for by its consumers.

[27] This now takes me to another point. The applicants seem to deny that there was an invitation made by the municipality for new consumers to enter into agreement for services relating to electricity supply to be given. This dispute is neither here nor there as the Policy does not provide for an invitation to be made to the prospective consumers. An invitation to enter into new agreements is not provided for in the policy.

[28] However, even if it was provided for, the dispute of fact that would be created would be the one that would lead to the dismissal of the application. I have found that the application papers do not make out a case for they do not establish applicants' right to receive electricity supply from the municipality. It is impermissible to apply for the referral to oral evidence or trial where the applicants themselves do not make out a clear case, but leave the case ambiguous, uncertain or fail to make out a cause of action⁴. On the same authority of "*Mamadi*" the litigants are eschewed from applying for a referral to oral evidence when he fails to convince a court that it's application can prevail by application of the *Plascon-Evans Rule*. Litigants should, as a general rule, apply for a referral to oral evidence or trial, where warranted, as soon as the affidavits have been exchanged⁵.

³ Cool Ideas 1186 CC v Hubbard and Another 2014 (4) SA 474 (CC), 2014 (8) BCLR 869 (CC) para 77.

⁴ Mamadi and Another v Premier of Limpopo Province and Others 2024 (1) SA 1 (CC) para 45.

⁵ Law Society of the Northern Provinces v Megami 2010 (1) SA 181 (SCA); 2010 (1) All SA 315 (SCA) para 23.

[29] In conclusion, the municipality was not exercising a public power when it was giving effect to the cancellation of the contract between it and the ECDC. In fact, the termination of the electricity supply was consequential upon lawful termination of the contract. When the municipality was terminating the electricity supply it was doing so in terms of the contract it had with the ECDC. It was not at all performing a public duty, it was exercising a contractual right founded on the agreement between it and the ECDC⁶.

[30] In the circumstances the applicant's explanation must fail. I see no reason why costs should not follow the result.

[31] In the result the following order shall issue:

30.1 The application is dismissed with costs.

AS ZONO

JUDGE OF THE HIGH COURT (Acting)

Appearances

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⁶ Metropolitan Council v Metro Inspection Services Western Cape CC and Others 2001 (3) SA 1013 (SCA); 2001 (10) BCLR 1026 A para 18.

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Date heard

29 May 2025

Date delivered

13 June 2025