**IN THE HIGH COURT OF SOUTH AFRICA**

**(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)**

Case No: EL516/2025

In the matter between:

**RICARDO WALTERS** Applicant

and

**BUFFALO CITY METROPOLITAN MUNICIPALITY** 1st Respondent

**THE MUNICIPAL MANAGER:**
**BUFFALO CITY METROPOLITAN MUNICIPALITY** 2nd Respondent

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**JUDGMENT**

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**ZONO AJ:**

**Introduction**

[1] An ugent order in the context of motion proceedings was obtained by the applicant on 20 March 2025 in terms of which an interim relief was granted. The following interim relief was granted as paragraphs 3.2, 3.3, and 3.4 of the court order:

> *"3.2 That the respondents be and are hereby directed to reconnect the electricity supply to the premises within 4 (four) hours after service of the court order, by the applicant's attorney, at the offices of the second respondent.*
>
> *3.3 That the respondents be and are interdicted and restrained from charging the applicants a reconnection fee as a result of the unlawful termination / disconnection / discontinuation / blocking of service.*
>
> *3.4 That the respondents are interdicted and restrained from unlawfully terminating / disconnecting / blocking the supply of electricity to the premises" (sic)*

[2] The applicant seeks the interim order to be made final and that an order declaring the respondents' termination / disconnection / blocking of the electricity supply to his property situating at No 1[...] L[...] Road, Buffalo Flats, East London to be declared unlawful. He further seeks an order of costs against the respondents.

[3] The high watermark of the applicant's case is that before the termination of electricity supply by the respondent to his property, the applicant was enjoying full and uninterrupted supply of electricity to his property. The electricity supply was terminated on 12 March 2025. The applicant laments that no notice had been given to him prior to the termination as required by law. There are no lawful grounds that would necessitate termination of electricity supply without notice.

[4] The application is opposed by the respondents. Notice to oppose and answering affidavit have been filed of record. Opposing papers have been followed by the filing of replying affidavit. Heads of argument and practice notes have been filed by both parties.

The matter was duly enrolled in the opposed motion court. Parties argued for the final relief.

**Legislative framework and analysis**

[5] The applicant relies on the provisions of section 115(1) of the Local Government Municipal Systems Act, 32 of 2000 which is the national legislation, provisions of which are worded as follows:

> *"Any notice or other document that is served on a person in terms of this Act is regarded as having been served-*
>
> *(a) when it has been delivered to that person personally;*
>
> *(b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;*
>
> *(c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgement of the posting thereof from the postal services is obtained;*
>
> *(d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a),(b), or (c) or*
>
> *(e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates."*

[6] The applicant also relies on the provisions of section 13(1) and 15(1) of the Electricity By-Law[1].Section 13(1) of the Electricity By-Law provides for service of any notice or documents in the manner provided in paragraph (a) to (e) of the section. Section 13(1) of the Electricity By-Law is crafted substantially in identical or similar terms as section 115(1) of the Municipal Systems Act. However, section 15(1) of the

[1] Published in the Provincial Gazette, extraordinary, 24 November 2023.

same Electricity By-Law provides for a notice period of 14 days. The correct wording of the provision is as follows:

> *"1. The municipality has the right to disconnect the supply of electricity to any premises after fourteen (14) days of written notice…"*

In a nutshell, the municipality is enjoined to serve written notice upon the consumer fourteen (14) days before the termination of the electricity supply. A similar provision is contained in section 14(6) of the Electricity By-Laws, wording of which is as follows:

> *"6. The termination shall be effected at no less than 14 working days after service."*

[7] Another important provision for purposes of this matter which is couched in similar terms of section 115(1) Municipal Systems Act and section 13(1) of the Electricity By-Law, is section 14(4) of the same Electricity By-Law. Section 14(4) of the Electricity By-Law provides as follows:

> *"4. If delivered by hand, the pre-termination notice shall be deemed to have been effectively and sufficiently served on the consumer-*
>
> *(a) when it has been delivered to them personally;*
>
> *(b) when it has been left at their place of residence or business with a person apparently above the age of sixteen (16) years old; or*
>
> *(c) when it cannot be delivered as contemplated in (a) and (b) above, if it is placed in a conspicuous place on the immovable property to which it relates."*

[8] Applicant's case is met with respondents' opposition. The respondents mount a case that the applicant was notified of the impending disconnection of his electricity supply as far back as on 22 March 2024 in terms of the Electricity By-Law. That notice was saved upon one *Mfuneko Ramncwana* who was the person apparently over the

age of sixteen (16) years at the applicant's place in question. This notice was served by *Athenkosi Smiles* of *Yanda Engineering and Projects* who was respondents' appointed service provider. The second notice was served by *Luvo Booi* of *Yande Engineering and Projects* who, on 24 February 2025, allegedly affixed the 14-day pre-termination notice at the gate of the applicant's property. Both notices are annexed to the papers, and they reflect applicants' address.

[9] Applicant's property in question situates at No 1[...] L[...] Road, Amalinde Forest, East London. Both *Athenkosi Smiles* and *Luvo Booi* deposed to their respective affidavits attesting to the fact that they effected service of the notice respectively in the manners referred to above. In reply, the applicant vehemently denies respondents' assertions relating to service of the notices. The applicant states that he occupies his premises on a permanent basis. With regard to the first notice, the applicant refutes that *Mfanelo Ramncwana* resides at the premises. The applicant firmly states that he does not know *Mfanelo Ramncwana* and further lists the names of the occupants of his promises. *Ramncwana* is none of those listed. The applicant further assails the appointment of *Yande Engineering and Projects* as respondents' service provider. The applicant complains about the lack of resolution or authority that appointed *Yande Engineering and Projects*. This point is unmeritorious and deserves a short shrift.

[10] A letter dated 31 January 2023 is annexed to the papers. Its addressee is *Yande Engineering and Projects*. Its contents certainly appoint and give authority to *Yande Engineering and Projects* to deal with matters relating to disconnections of the electricity supply. The power to serve pre-termination notice is incidental to and implied in the express powers relating to termination or disconnection of electricity supply. A power to serve pre- termination notice is a power without which a lawful termination of the electricity supply can be achieved. It is without a doubt that the appointment or authority is for a lawful termination or disconnection of electricity supply. Therefore, lawful termination can only be achieved if there is a pre-termination notice. It is in that context that the service of the pre-termination notice is necessarily part of the authority to disconnect the electricity supply to consumers.

[11] The correct text of the letter dated 31 January 2023 is relevant to be set out for a correct and proper interpretation. The contents of the letter are as follows:

> ***"CONTRACT NO: CE 224: THE DISCONNECTION, RECONNECTION, AND INSPECTION OF ELECTRICAL SERVICES/METERS FOR BCMM FOR A PERIOD OF THREE (3) YEARS.***
> *I have pleasure in informing you that the City Council has accepted the tender for the Contract No:**CE 224: The Disconnection, Reconnection and Inspection of Electrical Services/Meters for BCMM for a period of three (3) years** to be awarded to the following bidder, **Yande Engineering & Projects for being the highest point scorer on the Price and BBBEE scoring on a Rates only basis** as per BAC number (296/22) BCM Bid Adjudication Committee held on 08 December 2022.*
> *This contract is rate-based contract as quantities were estimated and used for evaluation purposes only and that the actual quantities will be based on demand and budget availability.*
> *This award is in line and accordance with the terms and conditions of contracts as stipulated in the tender document. The contract will be effective from the date of acceptance signed by the bidder.*
> *L. MBULA*
> *ACTING CITY MANAGER" (sic)*

[12] In *Endumeni Municipality*[2] Wallis JA held that:

> *"18... Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must*

[2] Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 296 (SCA) para 18.

*be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."*

[13] I have already indicated the context in which the appointment of Yande Engineering and Projects was made. As Lord Steyn said[3] *"In law, context is everything."* This *dictum* was approved by the Supreme Court of Appeal.[4] Powers [of the respondents' service provider] will include those which are reasonably necessary or required to give effect to and which are reasonably or properly ancillary or incidental to the express powers that are granted.[5]

Accordingly, it is reiterated that the power to lawfully disconnect or terminate electricity supply implies the power to serve pre-termination notice.

[14] In conclusion on this aspect, there is no proper application before this court to set aside service providers' appointment, or to declare the service of the pre-termination

[3] R v Secretary of the State for the Home Department, Ex park Daly [2001] UKHC 26; [2001] 3 ALL ER 433 (HL) at 447(a).

[4] Aktliebolaget Hassle and Another v Triomed (Pty) Ltd 2003 (1) SA 155 (SCA) para 1; Minister of Home Affairs and Others v Scalabrini Centre, Cape Town and Others 2013 (6) SA 421 (SCA); 2013 (4) All SA 471 (SCA) para 89.

[5] Administrator, Transvaal v Brydon 1993 (3) SA 1 (A) 9C – D; Moleah v University of Transkei and Others 1998 (2) SA 522 (TK) at 538 I.

notice unlawful as a result of unlawful appointment of the service provider. It is well settled in our law that until a decision is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked.[6] The respondents who appointed the service provider accepts that it acted within its mandate and service of the pre-termination notices is within service providers' mandate.

**Issue for determination**

[15] The central issue in this matter is the delivery of the pre-termination notice. Whether or not pre-termination notice was served upon the applicant is not only in issue, it is also in serious dispute. There are obvious factual disputes herein.

[16] The starting point should be Rule (6)(5)(g) of the Uniform Rules. The said rule provides thus:

> *"(g) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the aforegoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or by other person to be subpoened to appear and be examined and cross examined as a witness or it may refer the matter to trial with appropriate directions as to the pleadings or definition of issues, or otherwise."*

[17] During argument of this matter, applicant's counsel, Mr. Du Plessis was invited to make submissions about an appropriate relief in the event that this court finds that there is a serious dispute of fact besetting this matter. His submission was twofold: firstly, he submitted that there is no dispute of fact in the matter; secondly in a somewhat

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[6] Oudekraal Estates (Pty) Ltd v City of Cape Town and Others 2004 (6) SA 222 (SCA) para 26; South African Broadcasting Corporation Soc Ltd and Others v Democratic Alliance and Others 2016 (2) SA 522 (SCA) para 45.

alternative argument, which appeared to be accepting that there is a dispute of fact in the matter, he submitted that respondents' version should be rejected as farfetched, implausible and as is clearly untenable. The ultimate summit of his argument was that applicants' version must be accepted, and a final relief be granted. No application for the hearing of oral evidence was ever made, either on the papers nor during the argument of the case. Accordingly, an option of considering referral of the matter for hearing of oral evidence is not on the table. I will therefore not deal with such cases where or in which an application for hearing of oral evidence has been made.

[18] Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the *Plascon-Evans* rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's affidavits, which have been admitted by the respondent, together with the facts alleged by the latter, justify such an order. It may be different if the respondents' version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, or palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.[7]

[19] In *Headfour (Pty) Ltd*[8] Hefier JA held thus:

> *"12 Recognizing that the truth almost lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must in the event of conflict, accept the version set up by his opponent unless the latter's allegations are, in the opinion of the court, not such as to raise a real, genuine or bonafide dispute of fact or are so far- fetched or clearly untenable that the court is justified in rejecting them merely on the papers*…"[9]

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[7] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) 634 – 5.
[8] Wightman t/a JW Construction v Head four (Pty) Ltd and Another 2008 (2) All SA 512 (SCA) para 12.
[9] See footnote 7 above at 634E – 635C.

*See also the analysis by Davis J in* Ripoll-Dausa *v Middleton NO and Others (1574/04) [2005] ZAWCHC 6; 2005 (3) SA 141 (C) at 151 -153 with which I respectfully agree. (I do not overlook that a reference to evidence in circumstances discussed in the authorities may be appropriate."*

[20] In sum, it raises a real dispute that *Athenkosi* states under oath that on 22 March 2024 he delivered the 14-day pre-termination notice at applicant's premises upon one *Mfanelo Ramncwana* who allegedly accepted the service on behalf of the owner*. Mr. Ramncwana* is described by the respondents as a tenant in the applicant's premises. I cannot shy away from the fact that the said pre-termination notice is signed and the name of Mfanelo Ramncwana is written as a person who received the notice. The word '*tenants'* (sic) and the date of 22 March 2024 are also found at the foot of the notice. The reason I find that there Is a real and a *bona fide* dispute in this regard is because the applicant seriously disputes the factual allegations.

[21] In addition to the alleged service by *Athenkosi Smiles*, *Luvo Booi* states under oath that on 24 February 2025 he delivered the fourteen (14) day pre-termination notice by affixing the notice at the gate of the applicant's property. The dispute referred to above is not fictitious. In the light of the above circumstances, I cannot reject respondents' case merely on papers. The only available avenue in these circumstances is to dismiss the applicant's application. I find that the gate at which the notice was placed is a conspicuous place in the applicant's property, as contemplated by section 115 of Municipal Systems Act and section 13 and 14 of the Electricity By-Law.

[22] It is undesirable that a court *'mero motu'* orders a referral of oral evidence.[10] I have stated above that no application has been made for the referral of the case for the hearing of oral evidence. Therefore, because of that the court would not probe and debate with counsel the principles involved when such application is made.

[10] Joh-Air (Pty) Ltd v Rudman 1980 (2) SA 420 (T) at 428 – 9; Santino Publishers CC v Waylite Marketing CC 2010 SA 53 (GSJ) at 26F – B.

[23] The only outstanding issue now is the one of costs. The applicant's application has failed. I see no reason why a general rule cannot be applied. Costs should follow the result.

[24] In the result I would make the following order:

24.1 The application is dismissed.

24.2 The Rule Nisi granted by this court on 25 March 2025 is discharged.

24.3 The applicant is ordered to pay costs of the application.

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**AS ZONO**

**JUDGE OF THE HIGH COURT (Acting)**

Appearances

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| Date heard | 29 May 2025 |
| Date delivered | 10 June 2025 |