

## COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA  
Gauteng Local Division, Johannesburg

CASE NO: **2024-016733**

In the matter between:

**31 KOCH STREET JOUBERT PARK CC** Plaintiff / Applicant / Appellant

and

**CITY OF JOHANNESBURG  
METROPOLITAN MUNICIPALITY, CITY  
POWER JOHANNESBURG (PTY) LTD**

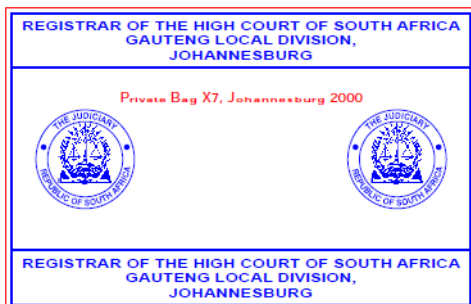
Defendant / Respondent

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### JUDGMENT CASSIM AJ

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**Registrar of High Court , Gauteng  
Local Division, Johannesburg**

REPUBLIC OF SOUTH AFRICA



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

Case No: 016733 - 2024



REPORTABLE: No ✓	
OF INTEREST TO OTHER JUDGES: No	YES
REVISED: NO	
DATE	SIGNATURE
22/02/2024	<i>[Handwritten Signature]</i>

In the matter between:

31 KOCH STREET JOUBERT PARK CC

APPLICANT

and

THE CITY OF JOHANNESBURG  
METROPOLITAN MUNICIPLAITY

FIRST RESPONDENT

CITY OF POWER JOHANNESBURG (SOC) LTD

SECOND RESPONDENT

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JUDGMENT

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1. This dispute commenced in 2020 and since then, there have been no less than 5 court orders. (Molahletsis J, on 8 September 2020, Wright J on 29 October 2023, Mdalana – Mayisela J on 1 November 2023, Pearse AJ on 29 November 2023 and Manoim J on 20 December 2023). The disputes centres on the issue of applicant challenging the electricity amounts claimed by respondents for past services rendered and refusal to pay the current services premised on a counterclaim for damages to be set-off. Set-off of an illiquid claim is not permissible. Moreover, there is no specificity provided as to the damages claim.

## General Observations



2. The usual pattern is this. The landlord refuses to pay past or current charges on the premise that it is in excess of usage and the claims are thus unlawful. This is the usual challenge. The respondents in turn cut off supply and there is a stalemate. The landlord approaches this court on an urgent basis and a practical solution is usually arrived at. The landlord pays a nominal monthly sum pending the resolution of the dispute. The dispute is endless and there is no mechanism fixed by the court to bring about an expeditious resolution i.e. expeditious court supervised process. This suits the landlord who continues paying a nominal fee. In my view, such arrangements must be deprecated. It prejudices honest people who pay their electricity bills and unduly taxes the fiscus and the public.
3. When in frustration the respondents terminate the services, there is a further urgent application or resort to self-help. There are three principles I wish to articulate. Firstly, our courts should not encourage illegality in any form. Self-help

and resort by landlords to illegally reconnect services cannot be tolerated. Secondly, everybody, in particular, poor people, are entitled to basic rights but with that comes obligations. One of the objects of the Systems Act is 'to ensure universal access to essential services that are affordable to all'. This cannot be interpreted and applied where a landlord collects rental including electricity and water charges but fails to pay the applicable levies imposed by the authorities. Such an application of constitutional thinking is warped. It is the responsibility of the municipality and local authorities to provide basic municipal services. The local authorities who failed to do so, fail in their constitutional mandate. And the democratic process hopefully should ensure competent authorities who can provide basic services. Thirdly, our courts must be vigilant in ensuring that members of the public pay their dues. South Africa has become a country of entitlement where rich and poor want the best in lifestyle but are reluctant to pay their dues. This must not be countenanced by our courts.



### The material facts concerning this application

4. I have gathered these facts from court scripts, court orders, and the address by the legal representatives to me on both the 19<sup>th</sup> and 21<sup>st</sup> February 2024. On 21 February Mr Dempster, attorney acting for the applicant, 31 Koch Street, Joubert Park CC (**"the applicant"**) replaced advocate Van Wyngaard. Advocate Sithole appeared on both days for the Metropolitan Council and City Power (**"the respondents"**).

5. Since 2015, applicant has paid no monies in respect of electricity and water charges ("the service charges") in respect of this building which has 79 units save for one month, namely April 2023, when it paid an amount of R2,000.00 for service charges. The R2,000.00 is split between power R1,210.53 and water R788.96. The general ledger of the first respondent records a date of 11 April 2023. Applicant's justification is that it has a damages claim and would wish to set aside such damages claim from the amount claimed by the respondents for service charges. The damages claim is not articulated with any particularity in any of the papers and Mr Dempster could not articulate with any precision facts to support such claim. Presumably, this will be a counterclaim or maybe a claim for damages, the particularity whereof is not revealed to the court. It may also consist of defences to the monthly claims from 2015 to date. This is now a period of almost 9 years. Significantly, no payments have been made and thus a money claim for damages may be a ruse.



6. In this case, the crucial question is whether the landlord has paid for the past usage or not? What steps have been proven to address this? How are the current charges being dealt with? I am not unmindful of the order of Wright J made on 29<sup>th</sup> October 2023 in terms of which the respondents were ordered to reinstate service charges. Court orders must be obeyed. However, in this context there are three riders. First, the order was granted *ex parte*. Second, the respondent's reconsideration application instituted on 31<sup>st</sup> October 2023 has not been heard – this is a lapse on the part of the court. Third, the pattern in this case and in similar matters amounts to perpetuating illegality. From what I can gather from the papers on 11<sup>th</sup> November 2023, applicant took the law into its own hands and reconnected

the electricity. This may have safety repercussions for the residents of the 79 units and the public at large. Thus, whilst court orders must be complied with, there are good reasons to deviate – the order was given without *audi* and courts should not lend its imprimatur to illegality.

7. What is of stark absence in all the papers before me is information peculiarly in the knowledge of the applicant. The applicant does not take the court into its confidence. Say for instance, there is a case to be made that the applicant is subsidising social housing for impecunious people upholding constitutional values, then the facts must be presented to the court in order to weigh up conflicting interests and to give just and equitable remedy. On the other hand of the spectrum the landlord may be charging substantial rental, which includes a fee for service charges, but is not paying a dime. This is not only illegal but morally reprehensible and the courts must not countenance this.
8. Applicant's attorney could not be of any assistance in what the income by way of rental is earned by the applicant and the expenses. I also have already alluded to the fact that there is no legal basis articulated by reference to facts as to any claim the applicant may have. If it has a claim, it can pursue it in the appropriate forum, but it cannot be allowed to use that as an excuse not to pay for service charges.
9. Counsel for the respondents referred me to a letter dated 31<sup>st</sup> October 2023, addressed by second respondent to the applicant. In that letter, the facts are set out as to why disconnection was carried out. On the facts of this letter, the process that was followed in terms of the by-laws and in response to 'the discovery of illegal connections'. There were according to this letter illegal connections on 18 July 2023, 5 September 2023, 27 September 2023, 25 October 2023, and 27 October



2023. Annexures 1 – 4 were attached to the letter in support of these allegations. This would explain the reason why the disconnection took place, the urgent *ex parte* application before Wright J and subsequent proceedings what have to this date not provided any legal or practical solution.

10. The respondents require applicant to pay R804 022,50 which is a rate of R10 177,50 for the 79 units in the building and a new service connection fee of R77 000,00 excluding VAT to reinstate services. This will then result in the resumption of services. In terms of the Manoim J order, a new meter would be installed starting afresh and going forward the applicant must pay for service charges based on the meterage and the system applied to all other law-abiding citizens. I see nothing untoward with this requirement. The applicant has not paid any monies since 2015 to the present time except for a payment of R2000. How this factor did not feature in the applications before the court escapes my comprehension of material facts which a court must take into account in coming to a lawful decision.



11. There was no proper disclosure to Wright J in the *ex parte* application which in itself enables this court to deviate therefrom (*Schlesinger v Schlesinger* 1979 (4) SA 342 (W)).

12. In the result, I make the following orders:

12.1. The respondents are ordered to reconnect basic charges to the applicant at its premises at 31 Koch Street, Joubert Park, within 7 days of applicant paying R805 022,50 being the prescribed rate in terms of the applicable by-

laws for reconnection at the rate of R10 177,50 per unit and R77 000,00 excluding VAT for a new service connection.

12.2. Thereafter, applicant must pay monthly for service charges as determined by the meterage readings in terms of the new reconnected system.

12.3. Applicant is directed to bring its damages claim for losses it allegedly suffered by the respondents overcharging the applicant (presumably prior to 2015) and whatever amount a court of law is found to be owing to the applicant must forthwith be paid by the respondents.



12.4. The costs of this application are to be paid by the applicant.

*N Cassim AJ*

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**N CASSIM AJ**

**ACTING JUDGE OF THE HIGH COURT**

**GAUTENG DIVISION, JOHANNESBURG**

**APPEARANCES.**

**COUNSEL FOR THE APPLICANT:      ADV M VAN WYNGAARD**

**ATTORNEYS FOR THE APPLICANT:    DEMPSTER Mc KINNON INC**

**Ms J DAMON**

**COUNSEL FOR THE RESPONDENT:    ADV E SITHOLE**

**ATTORNEYS FOR THE APPLICANT:    MADLOPHE THENGA ATTORNEYS**

