

ELECTRICITY CUT BECAUSE YOUR LANDLORD DID NOT PAY THE MUNICIPALITY

Wilrus Trading CC v The City of Tshwane Metropolitan Municipality and Another (36299/22) [2022] ZAGPPHC 509 (15 July 2022)

In addition to the load shedding woes, imagine the anguish of a tenant who finds that its electricity has been cut because the landlord failed to pay the relevant amounts to the municipality. This is in essence what prompted the tenant to approach the court for assistance, having paid the relevant dues to its landlord at all times. The tenant argued that constitutional court cases have held that the land owner as well as tenants have a right to be informed of a planned termination of electricity supply. Indeed, but does this apply in all instances? No, said the court here, and explained how the differentiation works.

The Judgment can be viewed [here](#).

FACTS

Wilrus Trading CC ('Wilrus Trading') leased a portion of premises from Dey Street Properties (Pty) Ltd ('Dey Street'). It operated a Shell gas service station from there.

The dispute arose after the City of Tshwane (the Municipality) cut the electricity supply to the premises. The history to the termination of the electricity is shortly as follows: Dey Street was the account holder at the Municipality. As far back as 2021, Dey Street was made aware that it will be migrated to an AMI pre-payment meter.

On 26 January 2022 Dey Street was informed of the migration and that payment was required to ensure a positive balance on the account in order to avoid a disconnection. From March 2022, Dey Street was invoiced in terms of the new AMI smart meter but, up to the time of the present matter, no payment was made. This was followed by various notices to Dey Street, the last being confirmation that the disconnection process had commenced. Dey Street did not communicate any of these matters to Wilrus Trading.

Wilrus Trading approached the Court when its electricity was cut and the local authority refused to re-instate its access. It had at all times duly paid its electricity in respect of the prepaid meter. Wilrus Trading argued that as tenant, it was entitled to have been informed of the termination of the electricity by way of a pre-termination notice so that it had an opportunity to approach the Municipality and make submissions.

By virtue of Section 21 of the City of Tshwane Metropolitan Municipality Standard Electricity Supply By-Laws, the Municipality is "required to give notice to any person liable for payment before it disconnects such electricity supply. Wilrus Trading argued that the Municipality had failed to comply with Section 102(2) of the Municipal Systems Act 32 of 2000 by disconnecting without prior notice.

The Municipality defended the matter, arguing that:

1. The notice issued to Dey Street was sufficient;
2. Wilrus Trading was not entitled to any pre-termination notice as no contractual relationship existed between the Municipality and Wilrus Trading;
3. As such, Wilrus Trading's recourse lies against Dey Street.

HELD

The Constitutional Court judgment in the Joseph matter

- In *Joseph & Five Others v the City of Johannesburg and Three Others (2009)*, the Constitutional Court ('the CC') was asked to decide whether tenants of a block of flats were entitled to notice before the municipal electricity utility, City Power, disconnected their supply. The tenants had paid for their electricity to the property owner, but this despite, the owner allowed substantial arrears to run up on the account, and City Power disconnected the electricity supply to the property, after giving the owner, but not the tenants, notice. In court, the tenants claimed that the disconnection without notice violated their constitutional rights. The primary issue in the case was whether the tenants were entitled to procedural fairness, considering the relationship between City Power as a service provider and the end users of that service. The CC considered that electricity is an important basic municipal service and decided that local government had a constitutional and statutory obligation to provide it as a public law right. Accordingly, the tenants were entitled to procedural fairness in the exercise of the right, and the CC found that this included adequate notice of at least 14 days before disconnection.
- Hence the principle enunciated in *Joseph* was that a broader constitutional relationship existed between a public service provider and members of the local community which gave rise to rights that require the application of section 3 of the Promotion of Administrative Justice Act (PAJA).

Procedural fairness for PAJA depends on the context of each matter

- Of relevance to this matter, our courts, including the CC in *Joseph*, emphasise that fairness needs to be determined in the light of the circumstances of a particular case. Whilst it is undisputed that the Municipality bears a constitutional and statutory obligation to provide electricity, the question whether a pre-termination notice should have been served on Wilrus Trading as tenant, in the context of the provisions of PAJA, constituted a separate enquiry.
- Wilrus Trading submitted that the pre-termination notice would have given it an opportunity to make representations. At least a written notice posted in a prominent place at its premises would have sufficed and would constitute adequate notice for the purpose of Section 3(2)(b)(i) of PAJA.
- In the present matter, Dey Street was given written notice of termination on various occasions; Wilrus Trading was oblivious to any such notice until the last hour, despite having paid its electricity costs in respect of the prepaid meter. In the present matter, there was no indication that it could have been expected of the Municipality, in carrying out its administrative functions, to still make enquiries if there are tenants on the property. Its by-laws made provision for notice to be given. It had duly complied with such obligation. It was certainly not practical to expect of the Municipality to enquire each time whether or not there were tenants on the property. Contrary to this, in *Joseph*, the City was well aware that residents were living in the building where it disconnected the electricity.
- Consequently, Wilrus Trading has failed to establish a legal relationship between it and the Municipality. It therefore did not have *locus standi* in these proceedings against the Municipality. Its remedy lies with the landlord, Dey Street where it has a contractual lease relationship.

CONCLUSION

The application was dismissed.