

COURT ALLOWS BODY CORPORATE TO CUT ELECTRICITY TO SECTION

Body Corporate The S[...] v Katsi (2023/031774) [2025] ZAGPJHC 2 (3 January 2025)

Sound administration of a sectional title scheme cannot be achieved or maintained without collection of contributions due to the body corporate by owners. Sectional title law therefore empowers a body corporate to institute proceedings and obtain judgment against defaulters. Would a body corporate succeed in obtaining an additional order to cut electricity supply to the defaulting owner's unit? The court answered in the affirmative, in circumstances where the body corporate paid the Eskom account and thereafter charged the unit owners in accordance with their actual usage.

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

FACTS

In November 2024, the body corporate of a sectional title scheme approached the Johannesburg High Court for a judgment in the amount of some R107 000, in respect of arrear levies and unpaid electricity charges owed to it by an owner, Katsi. In addition, it sought authorisation to engage the services of an electrician to disconnect the electricity supply to Katsi's unit, until the outstanding electricity charges are brought up to date.

In this sectional title scheme, the body corporate receives monthly accounts from Eskom in respect of the total electricity consumption in the scheme. The body corporate pays the account and then collects the charge from the owners, individually, based on each unit's actual consumption. It has appointed a service provider to generate a report of the electricity consumption in respect of every unit after reading the meters.

Katsi acknowledged his indebtedness to the body corporate, but argued that it is not entitled to cut the electricity without a prior agreement between themselves and, in any event, that such relief would affect his constitutional right against the 'arbitrary deprivation of property in terms of section 25(1) of the Constitution' and 'the public law right to receive electricity from the municipality'.

The body corporate argued as follows:

1. Acknowledging that it cannot arbitrarily disconnect Katsi's electricity, it is therefore seeking the court's authorisation to do so.
2. The determination of the quantum of levies, was always subject to the formulation of the participation quota of each and every unit in the body corporate's scheme. However, pursuant to its annual general meetings held in 2021 and 2022, the trustees passed a further special written resolution in which it was resolved 'to recover all utilities at a different value, other than PQ values of the scheme or the liability of an owner in terms of section 3(1)(a) and 14(1)'. It argued that, accordingly, the existence of a tacit agreement was established between itself and Katsi, because upon becoming an owner in the scheme, Katsi became bound to the rules of the scheme and resolutions passed by the trustees.
3. That it has paid Katsi's electrical charges since February 2021, monthly, up to and including March 2023. It contended that the electricity consumption charges are the most prejudicial to it and its other members because if they are not recovered and paid to Eskom by the body corporate, a risk of disconnection of electricity supply to all the units in the scheme arises, and the scheme may even be put under administration. If the body corporate does not recover these payments, and continues to advance monies to Eskom, on behalf of owners of units who do not pay for electricity consumption, it will further deplete its funds necessary for maintenance of the scheme, and may ultimately cause the body corporate to have a negative bank balance. This would severely prejudice all the members of the body corporate who will be left without electricity and will suffer a significant decrease in their property values.

HELD

- Kasisi had conceded his indebtedness to the body corporate, but failed to put up a valid defence against the relief it sought. The body corporate is therefore entitled to an order against Kasisi in respect of the outstanding rates and electricity charges.

Disconnection of electricity supply to the unit

- The contentious issue raised in this matter is the body corporate's request for an order allowing it to arrange for the disconnection the electricity supply to Kasisi's unit in the event of the non-payment of the outstanding electricity charges within 10 days of the order, and authorising that the electricity supply remain disconnected until full payment of those charges.
- A body corporate's functions are governed by the Sectional Title Schemes Management Act, 8 of 2011 ('the STSMA'). Section 3 thereof makes provision for the passing of a resolution by trustees authorising the total amount of levies that the body corporate will charge its members in a given financial year. Such resolutions are passed annually pursuant to the ratification of the estimated income and expenditure for the ensuing financial year during the annual general meeting.
- Trustees in a sectional title scheme are obliged to recover levies from members on a monthly basis. The levies serve to procure funds in order to manage and administer the affairs of the body corporate, and to attend to the maintenance and upkeep of the scheme's common property, for the benefit of all members. The body corporate is almost completely dependent on the recovery of levies and municipal charges for its continued existence and financial sustainability. The STSMA entitles a body corporate to claim judgment against members for the outstanding levies. There is tension between competing interests in this matter: the right of the body corporate to be reimbursed for payments made on behalf of the unit owners, and the right of the owner to have access to electricity. This issue is subject to a variety of policy considerations.
- The body corporate is a non-profit association and precluded from deriving income from sources outside the scope of the Act. It is dependent on the recovery of the levies and municipal charges for not only its survival, but also to perform its statutory obligation to attend to the maintenance and administration of the scheme. It is obliged to pay Eskom, failing which the remainder of the owners of units of the body corporate will be left without electricity. The recovery of the electrical charges is therefore critical.
- The tacit agreement as alleged by the body corporate, is extant and entails that when the body corporate pays the electricity charges on behalf of the owners, they in turn have an obligation to reimburse it for such payment. And, if an owner fails to reimburse the body corporate, it is entitled to take the necessary steps to mitigate its losses and prevent further usage until the electricity charges had been paid.
- Given that the nature of the relationship is by agreement, there appears to be no basis on which to argue that the body corporate must continue to pay the electricity charges of a non-paying owner, who is able to enjoy the benefits of electricity, while the other owners are unfairly contributing towards the non-paying owner's usage of electricity.

CONCLUSION

The Court granted an order in respect of the outstanding contributions and allowed the body corporate to cut the electricity supply until the electricity charges are paid in full.