



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case no: 173/11

In the matter between:

OLGA RADEMAN

Appellant

and

MOQHAKA MUNICIPALITY

First Respondent

M A MOKGOSI

Second Respondent

M V DUMA

Third Respondent

JIMMY MASWANGANYI

Fourth Respondent

RUDOLPH MEYER

Fifth Respondent

Neutral citation: *Rademan v Moqhaka Municipality & others* (173/11)
[2011] ZASCA 244 (01 December 2011)

Coram: Lewis, Bosielo JJA and Petse AJA

Heard: 16 November 2011

Delivered: 01 December 2011

Summary: Municipality – Powers of a municipality to discontinue supply of electricity to defaulters – Appellant refusing to pay rates and taxes – Respondent justified in disconnecting appellant's electricity supply without a court order.

ORDER

On appeal from: Free State High Court, Bloemfontein (Jordaan J and Khan AJ sitting as court of appeal):

The appeal is dismissed with costs.

JUDGMENT

BOSIELO JA (Lewis JA and Petse AJA concurring):

[1] The appellant is a resident of No 1 Panorama Park, Kroonstad, which falls within the first respondent's jurisdiction. The first respondent is a municipality duly incorporated in terms of s 12 of the Local Government: Municipal Structures Act 117 of 1998 (the Municipal Structures Act). The second to fifth respondents are officials of the municipality. The appellant is a member of an association called Moqhaka Ratepayers and Residents Association. The appellant failed to pay her taxes and levies. On 17 August 2009, the municipality disconnected the electricity supply to the appellant because of her failure to pay. This was done without any court order. The appellant successfully launched an urgent application for the restoration of her electricity supply which was granted by the magistrates' court, Kroonstad. The appeal against this order by the first respondent to the Free State High Court, Bloemfontein was successful. The appeal to this court is with the leave of the high court.

[2] A brief account of the salient facts will suffice. The appellant, together with other residents of the municipality, are members of the Moqhaka Ratepayers and Residents Association. This is an organisation which comprised residents who

claimed to be unhappy with the municipal services rendered by the municipality. As a means of getting the respondent to attend to their various complaints, which included alleged poor service delivery, they decided to withhold payments of their rates and taxes. It is not clear from the papers when they stopped their payments. However, they continued to pay for their other municipal services like water and sanitation, electricity and refuse removal. Notwithstanding various demands for payment, the appellant persisted in her refusal to pay taxes and levies. Inevitably, this impasse culminated in the first respondent discontinuing any further supply of electricity to her. Hence this case.

[3] In its answering affidavit, the municipality admitted having disconnected the supply of electricity to the appellant. However, it denied that such disconnection was unlawful. The municipality cited as legal justification for the disconnection the fact that, notwithstanding lawful demand, the appellant refused to pay her rates and taxes. These taxes were said to be in arrears in the amount of R2 986.96. The municipality admitted that the appellant's accounts relating to other municipal services like electricity, water, sanitation, and refuse removal were up to date.

[4] Counsel for the appellant, contended that it is unlawful for a municipality to discontinue the supply of electricity without a court order. The argument was that this amounts to self-help which is not permissible in our law. The appellant relied on *Joseph & others v City of Johannesburg & others* 2010 (4) SA 55 (CC) where it was held that tenants of a building were entitled to 14 days' notice before the electricity supply to them could be discontinued. That case is not in point, however, since it did not concern persons who had contracts with a municipality.

[5] On the other hand, counsel for the municipality submitted that it acted lawfully in disconnecting the electricity supply to the appellant as she refused to pay her rates and taxes. Counsel contended that the fact that the appellant was

up to date with her payments regarding other municipal services including electricity is irrelevant, as the respondent is empowered by statute, in execution of its obligations to levy and collect rates and levies, (including other consumption charges) to consolidate the various accounts, and upon failure by a resident to pay any account, to discontinue any other municipal service. Responding to the argument about the absence of a court order, the municipality's counsel argued that a court order is not a statutory requirement.

[6] In a comprehensive and well-reasoned judgment, the court below held that the appellant had failed to prove that the disconnection of her electricity supply was unlawful. It found expressly that the disconnection was statutorily authorised.

[7] It is common cause that the first respondent is a local authority duly established in terms of the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act). In terms of the Constitution municipalities play a pivotal role in facilitating and ensuring efficient public administration at local government level. Section 151 of the Constitution provides that:

‘(1) The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.

(2) The executive and legislative authority of a municipality is vested in its Municipal Council.

(3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.

(4) The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.’

[8] As a local sphere of government with the right to govern the local government affairs of its community, a municipality has wide-ranging duties and obligations. Essentially every municipality stands at the coal-face of delivery of

various municipal services for its communities. Service delivery has become the core if not the primary function of every municipality in line with its objects as set out in s 152 of the Constitution which provides:

‘(1) The objects of local government are –

- a) to provide democratic and accountable government for local communities;
- b) to ensure the provision of services to communities in a sustainable manner;
- c) to promote social and economic development;
- d) to promote a safe and healthy environment; and
- e) to encourage the involvement of communities and community organisations in the matters of local government.

(2) A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).’

[9] It follows that for a municipality to be able properly and efficiently to execute its constitutional and statutory obligations to deliver municipal services to its residents it requires sufficient resources and revenue. In order to put the municipality in a position to render the required municipal services, the ratepayers must make regular payments of taxes and levies and consumption charges. There is in fact a duty on ratepayers that, inasmuch as they are entitled to demand that the municipality should deliver municipal services to them, they must also make corresponding payment for such municipal services. See ss 5(1) (g) and 5(2)(b) of the Systems Act. This is part of their civic and contractual responsibilities.

[10] To ensure regular payment of fees for municipal services rendered, every municipality is required by law to have a credit control and debt collection policy.

Section 96 of the Systems Act provides:

‘A municipality –

- a) must collect all money that is due and payable to it, subject to this Act and any other applicable legislation; and
- b) for this purpose, must adopt, maintain and implement a credit control and debt

collection policy which is consistent with its rates and tariff policies and complies with the provisions of this Act.'

[11] It follows that for municipalities to be able efficiently to deliver the multiplicity of municipal services which they have to in terms of the Constitution and various statutes, it is important that they are able to levy and collect their rates and taxes and payments for other municipal services from the ratepayers falling within their jurisdiction. Municipalities are obliged to levy and collect rates and taxes from their residents as authorised by s 229 of the Constitution.

[12] In addition, s 73 of the Systems Act provides that:

- '(1) A municipality must give effect to the provisions of the Constitution and –
- (a) give priority to the basic needs of the local community;
 - (b) promote the development of the local community; and
 - (c) ensure that all members of the local community have access to at least the minimum level of basic municipal services.
- (2) Municipal services must –
- (a) be equitable and accessible;
 - (b) be provided in a manner that is conducive to –
 - (i) the prudent, economic, efficient and effective use of available resources; and
 - (ii) the improvement of standards of quality over time;
 - (c) be financially sustainable;
 - (d) be environmentally sustainable; and
 - (e) be regularly reviewed with a view to upgrading, extension and improvement.'

[13] Appreciating the difficulties experienced by municipalities when ratepayers protest and refuse to pay for municipal services, the Legislature has provided in s 96 (set out above) for every municipality to have a credit control and debt collection policy. Furthermore municipalities are mandated by s 96(1)(a) to collect all money that is due and payable. Section 97(1)(g) of the Systems Act in turn decrees that provision should be made for termination of municipal services or restriction of the provision of municipal services when payments of ratepayers are in arrears. In addition, s 25 of the Credit Control and Debt Collection by-laws

of 14 May 2004 (the by-laws) gives a municipality the power to restrict and disconnect supply of municipal services. It provides:

‘(1) The Municipality may restrict or disconnect the supply of water and electricity or discontinue any other service to any premises whenever a user of any service –
(a) Fails to make full payment on the due date or fails to make acceptable arrangements for the repayments of any amount for services, rates or taxes.’

[14] Section 25(3) of the by-laws provides as follows:

‘The right to restrict, disconnect or terminate service due to non-payment shall be in respect of any service rendered by the Municipality and shall prevail notwithstanding the fact that payment has been made in respect of any specific service and shall prevail notwithstanding the fact that the person who entered into an agreement for supply of services with the municipality and the owner are different entities or persons, as the case may be.’

[15] For a proper understanding of the legal issue facing us in this appeal, one should ask: what is a municipality expected to do when faced with a number of its residents who steadfastly refuse to pay their taxes and levies? Is a municipality expected to approach the court each time a ratepayer defaults to seek a court order authorising discontinuation of services?

[16] Such a proposition is both unrealistic and untenable. Given the rate of the protests and demonstrations for delivery across the country concomitant with the refusal by ratepayers to pay their rates and taxes and fees for municipal services, I am of the view that it would not be practical for municipalities to pursue these matters in court. It cannot be gainsaid that such a step would result in the municipalities being mired in such cases, losing precious time in the process and incurring high legal bills unnecessarily.

[17] I have no doubt these powers were given to municipalities to enable them to collect all moneys that are due and payable to them in the most cost-effective

manner. Commenting on the power of a municipality to discontinue municipal service as a means of getting the ratepayers to pay their accounts, Yacoob J remarked as follows in *Mkontwana v Nelson Mandela Metropolitan Municipality, Bisset & others v Buffalo City Municipality & others; Transfer Rights Action Campaign & others v MEC, Local Government and Housing, Gauteng & others (Kwazulu-Natal Law Society and Msunduzi Municipality as Amici Curiae)* 2005 (1) SA 530 (CC) para 52:

‘It is emphasised that municipalities are obliged to provide water and electricity and that it is therefore important for unpaid municipal debt to be reduced by all legitimate means. It bears repeating that the purpose is laudable, has the potential to encourage regular payments of consumption charges, contributes to the effective discharge by municipalities of their obligations and encourages owners of property to fulfil their civic responsibility.’

[18] The central dispute in this matter is whether the municipality was justified in disconnecting the electricity supply to the appellant whilst her account for electricity was up to date. The answer to this question is to be found in 102 of the Systems Act which provides:

‘(1) A municipality may –

- a) consolidate any separate accounts of persons liable for payments to the municipality;
- b) credit a payment by such a person against any account of that person; and
- c) implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears of any of the accounts of such a person.’

[19] This section makes it clear that in pursuit of its obligation to charge and receive payments for municipal services, a municipality has the option to consolidate the accounts for various services it provides. This is intended to circumvent the very problem confronting us in this appeal, that is, allowing residents to choose which account they wish to pay and which they will not pay. Such tactics should not be allowed as they have the potential to frustrate a municipality in governing its area and, importantly meeting its constitutional

obligations. It should be borne in mind that water and electricity are not the only municipal services that a municipality is responsible for. There is a plethora of other municipal services for which a municipality is responsible like building of roads and their maintenance, sewerage systems, refuse collection, recreational facilities. All these services are financed amongst others, by the revenue which a municipality collects from ratepayers as payment for these various municipal services. Such money is split and used to provide the various essential municipal services. Thus a failure to pay rates and taxes is likely to have very serious consequences. I say this conscious of ratepayers' rights to protest and demonstrate whenever they have valid complaints against the municipality. However, we live in a democracy where there are various lawful methods that ratepayers can use to ensure proper municipal services. The unilateral refusal by ratepayers to pay for services which they enjoy cannot be condoned.

[20] One of the primary obligations and responsibilities a municipality bears is to ensure that there is provision of municipal services to communities in a sustainable manner. A municipality can only provide essential municipal services like water and electricity if it has sufficient revenue to do so, particularly because it has to purchase some of these services from other suppliers, like Eskom and the Water Board. It is therefore imperative that ratepayers understand this inter-relationship and their obligations to pay for their services. Sadly, in the past few years, public demonstrations and protests by communities complaining of failure by municipalities to provide municipal services or the provision of poor municipal services have become a common feature in our print and electronic media. In many instances these public demonstrations and protests arise because the residents fail to appreciate that for a municipality to supply such municipal services, they must pay their levies, taxes and duties as responsible residents. As the Constitutional Court aptly held in *Pretoria City Council v Walker* 1998 (2) SA 363 (CC) para 93:

'Local government is as important a tier of public administration as any. It has to continue functioning for the common good; it, however, cannot to do so efficiently and

effectively if every person who has a grievance about the conduct of a public official or a governmental structure were to take the law into his or her own hands or resort to self-help by withholding payment for services rendered. That conduct carries with it the potential for chaos and anarchy and can therefore not be appropriate.’

[21] Having considered all the relevant legislation, it is clear to me that there is no statutory instrument which requires a municipality to obtain a court order authorising the discontinuation of a municipal service. With regard to the argument of a letter of demand preceding discontinuance, there is incontrovertible evidence that such a letter was sent to the appellant but that, in line with resolutions taken by the Moqhaka Ratepayers and Residents Association, she decided not to pay. In any event s 21(2) of the by-laws provides that failure to deliver or send a final demand within seven working days does not relieve a customer from paying arrears.

[22] The nature of the application by the appellant was not clear. The magistrate regarded it as a *mandament van spolie*. The high court considered that a *mandament* was inappropriate having regard to the statutory framework. It is not necessary for this court to decide whether a *mandament* is possible where the supply of municipal services is regulated by statute and by the contract between the parties.

[23] In the circumstances, the appeal is dismissed with costs.

L O BOSIELO
JUDGE OF APPEAL

APPEARANCES:

For Appellant:

C F Van Rooyen SC

Instructed by:

Grimbeek Van Rooyen, Kroonstad

Symington & De Kok, Bloemfontein

For Respondent:

J Y Claasen SC

Instructed by:

Du Randt & Louw, Kroonstad

Rosendorff Reitz Barry, Bloemfontein