

# Municipalities Must Obey Their Own By-Laws:

*A Municipality Body may only serve documents, such as Notices of Disconnection, if it is in compliance with the Municipal by-laws.*

## INTRODUCTION

In the recent judgment of *Tony Magqazana v Buffalo Municipality and The Municipal Manager: Buffalo City Metropolitan Municipality*<sup>1</sup>, the High Court held that a Municipality must obey its own by-laws, and that the Municipality must serve a notice of disconnection in compliance with section 6(1)(a)-(e) of the Municipality's by-laws published on 10 December 2009 in the Provincial Gazette No. 2245-Buffalo City Municipality-Electricity Supply-By-Laws<sup>2</sup>. If the Municipality fails to comply with their own by-laws, then the service of a disconnection notice is considered defective.

The recent judgment was heard in the Eastern Cape High Court. The Respondents (The Municipality) were called to court on a Rule Nisi- where they had to show cause as to why a final order in favour of the Applicant (Tony Magqazana), should not be handed down.

## BACKGROUND

The Applicant is the owner of an immovable property in the Eastern Cape. On 22 August 2023, the Municipality disconnected the electricity supply to the property. The Applicant's attorneys sent a letter to the Municipality, and the Applicant contended that she never received a disconnection notice. The Municipality, however, claimed that they did indeed serve a disconnection notice on the Applicant on or about 09 May 2023. It was later submitted by the Respondent that they served the notice by placing it in the Applicants post-box.

## ISSUE BEFORE THE COURT

The main issue for determination before the Court was whether the Applicant indeed received notification of the disconnection, before the Municipality disconnected her electricity supply. More specifically, the dispute was whether the Respondents served the pre-termination notice to the Applicant in terms of the methods prescribed in section 6(1)(a)-(e) of the Municipal by-laws. It should be noted that the Applicant was **entitled** to a disconnection notice before she was disconnected.

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The Municipality's right to disconnect the services to the property of any individual is subject to section 21(1)(b) of the Municipal by-laws.

Section 21(1)(b)<sup>3</sup> of the Municipality's by-laws provides as follows:

### **"21 Right to disconnect Supply**

*The Municipality has the right to disconnect the supply of electricity to any premises:*

- (a) without notice where –*
- (v) there is grave risk to person or property if the supply is not disconnected; or*
- (vi) there is evidence of tampering as envisaged in Section 26 of this by-law;*
- (b) Subject to 14 (fourteen) days written notice where–*
- (vii) the person liable to do so fail to pay any charge due to the Municipality in connection with any supply of electricity which such person may have received from the Municipality in respect of such premises; or*
- (viii) any of the provisions of this By-Law and/ or Regulations are being contravened and the person responsible has failed to remedy the default after such notice has been given, and*
- (ix) after any such disconnection, the fee as prescribed by the Municipality shall be paid".*

The Respondents' right to disconnect the electricity supply of the Applicant is accordingly subject to the Municipality's compliance with the notice requirement prescribed in section 21(1)(b) of the Municipal By-Laws. The service of the above-mentioned notice must be effected at least 14 ("Fourteen") days before termination or disconnection of electricity supply. Furthermore, and material to the dispute of the case, is that the Municipality must serve the written notice in compliance with section **6(1)(a)-(e)** of the same Municipal by-laws.

**Section 6(1)** of the Municipal by-laws provides as follows:

### **"6 Service of notice**

- (1) Any notice or other document that is served on any person in terms of this by-law 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 service 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."

The Municipality is therefore obligated to serve the consumer with 14 ("Fourteen") days' notice using one of the above-mentioned methods in section 6(1)(a)-(e).

The Respondent argued that they complied with the National Credit Act 34 of 2005<sup>4</sup>, and that the pre-termination notice was delivered in compliance with the Municipal by-laws as well as the rules of the Magistrates Court. The Respondent however, failed to provide any specific provisions for the abovementioned Act, by-law or Rules.

In this case, the Honourable court quoted Liebenber NO and Others v Bergrivier Municipality [2012] ZASCA 153; [2012] 4 All SA 626 (SCA)<sup>5</sup> where it was stated that:

*"In our law, administrative functions performed in terms of incorrect provisions are invalid, even if the functionary is empowered to perform the function concerned by another provision. In accordance with this principle, where a functionary deliberately chooses a provision in terms of which it performs an administrative function but it turns out that the chosen provision does not provide authority, the function cannot be saved from invalidity by the existence of authority in a different provision."*<sup>6</sup>

The applicability of this quote to the current case, according to the Honourable High Court, is that section 6(1)(a)-(e) of the Municipal by-laws does not provide for service by placing a document in a post-box. Only Rule 9(5) of the Magistrates Court Rules provides for service via a post- box, however, Rule 9(5) of the Magistrates Court Rules<sup>7</sup> does not provide methods of service for section 6(1)(a)-(e) of the Municipal by-law.

Therefore, the principle of *Unius est exclusio alterius* (express mention of one thing is the exclusion of another) would be applicable to section 6 of the by-laws. Thus, the express mention of the methods of service under the Municipal by-laws section 6(1)(a)-(e), excludes any other method of service not expressly provided for under that provision.

## COURT ORDER

The Court held that service by the Respondent, by placing a copy of the disconnection notice in a post box is specifically excluded in terms of section 6(1)(a)-(e) of the by-laws. The Municipality therefore had no power to serve the notice otherwise than in terms of items 6(1)(a)-(e) of the by-laws, and that service of a notice outside of these items is a nullity or is null and void, and or ineffective.

The Court held that the rationale behind this is that the Applicant has a right to 14 (fourteen) days' written notice, the notice gives rise to certain rights of the Applicant:

1. For the Applicant or consumer to make written representation to her nearest Municipal Revenue Management office.
2. For the Applicant or consumer to settle the arrear amount in full; and
3. For the Applicant to enter into a formal arrangement with the Municipality before the expiry of 14 ("Fourteen") days of receipt of notice.

The Applicant was not afforded any of these rights as the Respondents conduct, by deviating from the statutorily enshrined methods of delivering the notice, violated the applicants rights (which is based on the maxim *Ubi jus, ibi remedium* [where there is a right there is a Remedy] which applies to the facts of this case). The court, therefore, ordered in favour of the Applicant.

## CONCLUSION

It has therefore been held by the High Court that a Municipality must obey its own by-laws and must serve a notice of disconnection in compliance with section 6(1)(a)-(e) of the Municipality's by-Laws. If they do not comply with their by-laws, then the service is considered defective.

<sup>1</sup>*Magqazana v Buffalo Metropolitan Municipality and Another (EL1386/2023) [2024] ZAECELLC 7 (5 March 2024)*

<sup>2</sup>*Municipality's By-Laws published on 10th December 2009 in the Provincial Gazette No. 2245-Buffalo City Municipality- Electricity Supply- By- Laws, item 6(1)(a)-(e)*

<sup>3</sup>*ibid at item 21(1)(b)*

<sup>4</sup>*National Credit Act 34 of 2005*

<sup>5</sup>*Liebenber NO and Others v Bergrivier Municipality [2012] ZASCA 153; [2012] 4 All SA 626 (SCA)*

<sup>6</sup>*ibid at paragraph 93*

<sup>7</sup>*Rules Regulating The Conduct Of The Proceedings Of The Magistrates' Courts Of South Africa, Rule 95.*



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