

# When There is a Dispute Between COJ and You: The City May Not Implement Debt Collection and Credit Control Measures Against You

*A Review of the Loulia Loizou v Matjhabeng Local Municipality and The Municipal Manager Matjhabeng Local Municipality Case*

## INTRODUCTION

In the case of Loulia Loizou v Matjhabeng Local Municipality and The Municipal Manager Matjhabeng Local Municipality, the court held that a Municipality may not disconnect an individual's water when there is a valid dispute between the Consumer and the Municipality. The Court held that an individual's Constitutional right to water is paramount, and a Municipality must abide by its own by-laws.

## BACKGROUND

The Applicant is the registered owner of the property situated in Virginia, Free State (hereinafter referred to as "the Property"). The Property is occupied by the Applicant, who resides in the Property and conducts a business from the said Property. The Applicant also has several tenants who rent in the Property for both residential and commercial purposes. Importantly, the tenants include individuals who are vulnerable and fragile, and in desperate need of water, which is supplied by the First Respondent.

A dispute arose between the parties in relation to the amount due in respect of water consumption at the Property. In relation thereto, the Applicant raised 3 (Three) formal disputes with the Municipality on the 2nd of May 2023, the 14th of August 2023, and the 15th of August 2023. The Applicant states that she is not indebted to the First Respondent, as she duly ensures that she makes monthly payments to the First Respondent.

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On the 21st of September 2023, the First Respondent unlawfully disconnected the water supply to the Property by the removal of the water meter at the aforementioned Property. Pursuant thereto, the Applicant launched urgent proceedings to have the water restored at the Property. However, subsequent to the issuing of the application, the First Respondent restored the water supply to the Property. The Court issued a rule nisi, calling the Respondents to show cause as to why the following should not be made a final order of Court:

"That the First Respondent be interdicted and restrained from reducing or disconnecting the water supply to the Property, pending the final adjudication of this Application and the internal dispute resolution process of the First Respondent."

The parties engaged in an internal dispute resolution process on 20 October 2023 at the First Respondent's offices. However, the dispute remained unresolved as there was no formal outcome issued by the First Respondent.

## THE APPLICABLE LAW

Section 33 of the Constitution<sup>1</sup> of the Republic of South Africa provides:

1. "Everyone has the right to administrative action that is lawful, responsible and procedurally fair;
2. Everyone whose rights have been adversely affected by administrative action has the right to be given reasons."

Section 34 of the Constitution further states that "Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court, or, where appropriate, another independent and impartial tribunal or forum".

Section 131 (3) of the Constitution further states that: "A municipality has the right to govern, on its own initiative, the local governmental affairs of its community, subject to national and provincial legislation, as provided for in the Constitution".

Section 152(1)(b) and (d) of the Constitution provides that the objective of the municipality and/or local government include, inter alia; “to ensure the provision of services to communities in a sustainable manner” and “to promote a safe and healthy environment”, while Section 156(2) authorizes the administering of by-laws for the effective administration of matters which it has the right to administer”. It should be noted that any by-laws should not conflict with national and/or provincial legislation.

The Local Government: Municipal Systems Act 32 of 2000<sup>2</sup> is the legislation enacted to give effect to the provisions in the Constitution pertaining to municipalities. Section 102 provides: “(1)(c) Implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person.”

It should be noted that the above-mentioned provision does not apply where there is a dispute between the municipality concerned and a person referred to in that subsection concerning any specific amount claimed by the Municipality from that person.

Section 29 of the Municipality’s Debt Collection and Credit Control policy provides that:

“The Municipality may, immediately on the expiry of the 7 (Seven) working day period allowed for payment in terms of the final demand notice limit or disconnect the municipal services specified in Sub-Section 28(1) (c) provided that municipal services and sanitation services may not be disconnected.”

Section 2 provides that: “The Municipality may only limit a domestic customers access to basic water services by:

- a. Reducing water pressure; or
- b. Limiting the availability of water to a specified period or periods during the day; or
- c. Disconnecting in-house and yard connections and making an alternative water supply service available to the domestic consumer, which alternative service may consist of a basic water supply services as prescribed by the Minister of water Affairs and Forestry in terms of the water Services Act, 1997 (Act No.108 of 1997).

## COURT ORDER

The Court held that the Respondent failed to comply with the legislation, as well as the Municipal Credit Control and Debt Control Policy. The fact that the Respondent denied the Applicant her Constitutional rights to access to water is unfair administrative action, which is an indication of the First Respondent’s mala fide.

The Court further held that the Applicant harbors a reasonable apprehension of irreparable and/or imminent harm to her right, if the interdict is not granted. The Court therefore granted the interdict in the favour of the Applicant.

<sup>1</sup>The Constitution of South Africa, 1996

<sup>2</sup>Local Government: Municipal Systems Act 32 of 2000



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