

Pulling the Plug on Landlord Liability: Owners not Liable for Tenants' Electricity Debt Under Ekurhuleni's 2002 By-Laws

Rennida (Pty) Ltd v City of Ekurhuleni Metropolitan Municipality

INTRODUCTION

On 20 October 2026, the High Court of South Africa, Gauteng Division, Johannesburg, handed down judgment in **Rennida (Pty) Ltd v The City of Ekurhuleni Metropolitan Municipality** (case number 2024-035891) per Mahosi J. The court declared that the applicant, as owner, is not a statutory surety for, co-principal debtor in respect of, or otherwise liable for, the charges for electricity consumed by its tenant on the tenant's own municipal account. Importantly, the decision rests on section 34(2) of the City's Electricity By-laws of 2002, which governed the period during which the tenant's debt was incurred, and not on the amended by-law on which the City relied.

The judgment addresses a practice familiar to many landlords: a tenant registers as a consumer with the municipality, falls into arrears, vacates the property, and the municipality then refuses to open an account for the owner or reconnect the supply unless the owner pays the tenant's debt or signs an Acknowledgement of Debt ("AOD") for it.

This article summarises the facts, the court's findings and their implications for owners and landlords, including the important limits on the judgment's reach.

THE FACTS

Rennida (Pty) Ltd ("**the Owner**") has owned a commercial property in Germiston since 1998. It let the property to a close corporation ("**the Tenant**"), which registered as a consumer with the City of Ekurhuleni ("**the City**") and held its own municipal account for electricity, separate from the Owner's account.

The Tenant stopped paying, accumulated electricity

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23 October 2026

arrears of some **R1 135 672.04** by July 2022, and vacated the property without settling its account. The supply was disconnected in 2021 (at the request of the Owner's managing agent on the Owner's version, and as a credit control measure on the City's) and has not been restored since.

When the Owner applied for an electricity account in its own name and for reconnection, the City refused. Its officials, its debt collector and ultimately its Corporate Legal Services department took the position that the Owner was jointly and severally liable with the Tenant, and that no new account would be opened until the arrears were paid in full, an acknowledgement of debt was signed or a payment arrangement was concluded.

The Owner lodged an internal appeal under section 62 of the Local Government: Municipal Systems Act 32 of 2000 ("**Systems Act**") in September and October 2023. Having received no response for almost six months, it launched review proceedings in April 2024. Only after the application had been served and set down did the City's section 62 Appeals Committee decide the appeal on 4 July 2024, relying on the amended by-law (defined below) to confirm that the Owner was jointly and severally liable but finding that the City could not refuse to open a new account on the basis that the debt first had to be paid.

THE CITY'S ARGUMENTS

The City relied on the following to hold the Owner liable:

- Section 118(3) of the Systems Act, which makes amounts due for municipal service fees, rates and other municipal taxes a charge upon the property.
- An amended Electricity Supply By-law headed "Revision of 11 August 2022" ("the 2023 By-law").
- The Constitutional Court's decision in *Mkontwana v Nelson Mandela Metropolitan Municipality*.¹
- Its Consumer Agreement Policy, its Credit Control Policy and the lease between the Owner and the Tenant.

The City also raised a series of technical points, including non-joinder of the Tenant, its surety and the City's own appeal authority, a failure to exhaust internal remedies, disputes of fact, forum shopping and the separation of powers. In supplementary heads handed up at the hearing, it also contended that the appeal authority's decision stood until set aside.

THE COURT'S FINDINGS

Which by-law applies?

The court held that liability for electricity charges arises when the electricity is supplied and consumed and must be determined by the law in force at that time. The City's Electricity By-laws, which commenced on 24 April 2002 ("the 2002 By-laws"), were in force throughout the period of the Tenant's consumption.

The 2023 By-law only becomes applicable upon publication in the Provincial Gazette, and the papers did not show whether, or when, this occurred. On any version, it post-dated the consumption. Applying the presumption against retrospectivity, the court found that the City and its appeal authority had erred by simply applying the 2023 By-law to consumption that pre-dated it. Section 12(2)(c) of the Interpretation Act 33 of 1957, which preserves liabilities incurred under a repealed law, pointed the same way.

Section 34 of the 2002 By-laws

Section 34(1) of the 2002 By-laws makes the owner and consumer jointly and severally liable for financial obligations, but expressly subject to section 34(2), which provides that liability for electricity consumption "shall be the sole responsibility of the consumer".

The court found the provision clear: the owner shares liability for other financial obligations under the by-laws, but not for electricity consumed by a consumer who is not the owner. This accords with the Full Court's earlier decision in *Ekurhuleni Metropolitan Municipality v Anzotrax (Pty) Ltd t/a Topbet Germiston*,² which held that section 34 is "clear and unambiguous" and that joint and several liability under it "excludes indebtedness arising from the consumption of electricity". The court held that this reading binds it, notwithstanding that Anzotrax arose from the converse situation. As the Tenant was the consumer, it alone was liable under section 34(2).

Section 118(3) of the Systems Act

The court held that section 118(3) creates security: it burdens the property with a charge in the municipality's favour, ranking ahead of mortgage bonds. It does not make the owner a debtor, still less a co-principal debtor, and it does not permit a municipality to refuse supply to an owner as a means of compelling payment of someone else's arrears.

The court further held that *Mkontwana* concerned the constitutional validity of the embargo on transfer in section 118(1) and did not decide that an owner is personally liable for an occupier's consumption charges. The court also referred to *Jordaan and Others v City of Tshwane Metropolitan Municipality and Others*,³ in which the Constitutional Court held that the section 118(3) security does not survive transfer to a new owner.

Importantly, the court made clear that it was not determining the extent of the City's rights under section 118(1) or 118(3) in respect of the property itself.

Policies, the lease and credit control

The court held that a municipal policy is subordinate to the by-laws and cannot impose a liability that the by-law in force excludes. The lease regulates the relationship between landlord and tenant and cannot create a liability to the City. The City's credit control powers under section 102 of the Systems Act may only be used against "persons liable for payments to the municipality"; section 102 does not itself make anyone liable. In the court's words, the City's remedy for the Tenant's debt lies against the Tenant.

Internal remedies

Section 62(5) of the Systems Act requires an appeal authority to commence with an appeal within six weeks and to decide it within a reasonable period. The court held that an internal remedy which the administrator does not engage with within the prescribed period is not an effective remedy, and the City could not rely on its own failure to comply with section 62(5) to defeat the application. In any event, the appeal had since been decided, so the remedy had been exhausted.

Technical points dismissed

The court condoned the late filing of the City's answering affidavit, despite describing the explanation as thin, and dismissed all of the City's preliminary points. The Tenant and its surety had no direct and substantial interest in the relief. The City's appeal authority, being part of the municipality's own administration, did not need to be separately joined, and the point was, in any event, raised for the first time at the hearing, almost two years after the answering affidavit was delivered. The alleged disputes of fact were immaterial, as the Owner succeeded on the City's own version.

THE ORDER

The court:

- Declared that the Owner is not liable for the electricity charges levied on the Tenant's municipal account.

- Reviewed and set aside the City's decision to hold the Owner jointly and severally liable, including as confirmed by its section 62 Appeals Committee, and its decision to refuse reconnection until the Tenant's debt was paid or an AOD signed.
- Substituted those decisions, ordering the City to open a new electricity account in the Owner's name within 14 calendar days of the Owner's application, and to reconnect the supply within 7 calendar days of the account being opened.
- Prohibited the City from making payment of the Tenant's arrears, or the signing of an AOD for them, a condition of opening the account or of the reconnection or continued supply of electricity.
- Ordered the City to pay the Owner's costs, including the costs of Part B (a separate water billing complaint that the City resolved only after the application was launched), on the punitive attorney-and-client scale, together with the costs of the condonation application and of the matter standing over on 13 April 2026, including the costs of counsel. The court declined to award costs on the attorney-and-own-client scale sought by the Owner.
- Where the owner is not liable for the tenant's arrears on that basis, the City may not refuse to open an account in the owner's name, or refuse to reconnect the supply, as leverage to compel payment of those arrears. The owner nonetheless remains subject to the ordinary requirements for supply and to lawful credit control measures in respect of its own liabilities.
- Owners should exercise caution before signing an AOD for a tenant's debt, as doing so may amount to an acknowledgement of a liability that the owner does not otherwise bear.
- Section 118 of the Systems Act gives the municipality security over the property but does not make the owner personally liable. The judgment does not determine the extent of the City's rights under section 118(1) (for example, at the clearance certificate stage) or section 118(3).
- The judgment is confined to liability for consumption that occurred while the 2002 By-laws were in force. It does not determine the position of owners in respect of debts incurred after the amended by-law came into operation: the court expressly declined to express a view on the meaning, validity or effect of the provisions of the 2023 By-law (including sections 5(2), 8(8), 18(7), 31(1) and 50(5), on which the City relied) in relation to liabilities arising after it came into force. Owners facing claims for more recent consumption should not assume that Rennida assists them.
- Owners should, where appropriate, lodge a section 62 appeal, but need not wait indefinitely where the City fails to engage with it within the statutory period.
- Landlords should continue to monitor tenants' municipal accounts and enforce lease obligations, as their contractual remedies against the tenant (and any surety) remain available.

The court found substitution appropriate because the question was one of law, the only lawful outcome was to open an account and reconnect the supply, and the property had been without electricity since 2021. The Owner remains subject to the ordinary requirements applicable to any applicant for supply, such as application forms and any lawfully required deposit or connection fee.

PUNITIVE COSTS

The court emphasised that an organ of state is held to a higher standard and, citing *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd*,⁴ that government must "do right and do it properly". The City had been referred to section 34(2) of its own By-laws in July 2023 and in the appeal and never engaged with it, failed to decide the internal appeal timeously and then argued the application was premature, filed its answering affidavit late in breach of a court order, and raised new points on the day of the hearing.

IMPLICATIONS AND LIMITS OF THE JUDGMENT

- Where a tenant contracted directly with the City of Ekurhuleni for electricity and held its own account, the owner is not personally liable, under section 34(2) of the 2002 By-laws, for that tenant's electricity consumption charges incurred while those by-laws were in force. The protection derives from that provision and does not, without more, extend to consumption governed by the amended by-law.

CONCLUSION

Rennida confirms that, in respect of consumption governed by the 2002 By-laws, the City's remedy for a tenant's unpaid electricity consumption charges lies against the tenant, not the owner. A municipality's legitimate interest in collecting debt does not entitle it to collect that debt from someone who, under its own by-laws, does not owe it.

The judgment is marked as not reportable. Each owner's position will depend on the by-law in force when the consumption occurred, the account arrangements in place, and the facts of the particular matter. Where significant amounts are involved, obtaining legal advice before paying, signing an AOD or entering into a payment arrangement is advisable.

ABOUT THE CASE AND OUR ROLE

HBSchindlers Attorneys and Notaries acted on behalf of the successful applicant in *Rennida*. The judgment clarifies that owners in Ekurhuleni are not liable for electricity consumption charges incurred by their tenants on the tenants' own accounts during the period governed by the 2002 By-laws.

Our firm regularly acts in municipal law and billing dispute litigation, assisting clients to hold municipalities to their statutory and constitutional obligations.

¹ Mkontwana v Nelson Mandela Metropolitan Municipality and Another 2005 (1) SA 530 (CC).

² Ekurhuleni Metropolitan Municipality v Anzotrax (Pty) Ltd t/a Topbet Germiston (A5059/2015) [2016] ZACPJHC 178 (1 June 2016).

³ Jordaan and Others v City of Tshwane Metropolitan Municipality and Others 2017 (6) SA 287 (CC).

⁴ MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd 2014 (3) SA 481 (CC), at para 82.



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