



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2024-035891

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>20/10/2026</u> DATE	 _____ SIGNATURE

In the matter between:

RENNIDA (PTY) LTD

Applicant

And

THE CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

Respondent

JUDGMENT

Mahosi, J

Introduction

[1] The applicant, Rennida (Pty) Ltd, owns a commercial property in Lambton Gardens, Germiston. For several years, it let the property to Captain Sand CC (“Captain Sand”), which contracted directly with the respondent, the City of Ekurhuleni Metropolitan Municipality, for electricity supply and maintained its own municipal account. Captain Sand stopped paying the Municipality, accumulated arrears of more than R1.1 million, and vacated the property. The electricity supply was disconnected in 2021, at the request of the applicant’s managing agent on the applicant’s version and as a credit control measure on the respondent’s, and has not been restored since.

[2] When the applicant asked the respondent to open an electricity account in its own name and to reconnect the supply, the latter refused. It took the position that the applicant, as owner, is jointly and severally liable with Captain Sand for Captain Sand’s electricity consumption charges, and the supply would be restored only once the applicant paid the tenant’s debt or signed an acknowledgement of debt for it. The applicant challenges the decision on the basis that the respondent’s own Electricity By-laws place liability for electricity consumption charges solely on the consumer, and that the respondent’s stance is unlawful.

[3] The notice of motion is in two parts. In Part A the applicant seeks, in the main, an order declaring that it is not a statutory surety for, or co-principal debtor in respect of, Captain Sand’s municipal debts for electricity supplied to the property; the review and setting aside under the Promotion of Administrative Justice Act¹ (“PAJA”) of the respondent’s decisions to hold it liable for those debts and to refuse to reconnect the supply until they are paid; and an order substituting the respondent’s decisions with orders that a new electricity account be opened in the applicant’s name and the supply reconnected. Alternative relief, premised on the principle of excussion, is sought if the applicant is found liable. Condonation is sought under section 9 of PAJA insofar as it may be necessary.

¹ Act 3 of 2000

[4] Part B concerned billing for water consumption on the applicant's own account from a meter not on the property. It is common cause that the respondent adjusted the water account after the application was launched and that Part B has been resolved, save for costs.

[5] The respondent opposes Part A and filed an application to condone the late filing of its answering affidavit. In its answering affidavit, it raised two points in limine: the non-joinder of Captain Sand and Ms Jennifer Araujo (who signed the lease as surety), and the applicant's alleged failure to exhaust internal remedies. On the merits, it contends that the applicant is liable for its tenant's electricity charges by virtue of section 118(3) of the Local Government: Municipal Systems Act² ("the Systems Act"), its Electricity Supply By-law and the decision of the Constitutional Court in *Mkontwana v Nelson Mandela Metropolitan Municipality and Another*³ ("*Mkontwana*"). It further contends that the relief is incompetent, offends the separation of powers, and involves disputes of fact that cannot be resolved on the papers.

[6] The matter was argued on 13 April 2026, on which day counsel for the respondent handed up supplementary heads of argument dated 12 April 2026, raising further points, including the non-joinder of the respondent's appeal authority. The matter stood over, and the applicant delivered supplementary heads in response on 14 April 2026.

Background

[7] The material facts are largely common cause. The applicant has been the registered owner of Portion 16 of Erf 59, Klippoortje Agricultural Lots, Registration Division IR, Gauteng, held under Deed of Transfer T8356/1998 (described in the lease as Erf No. M88 000 00000059, Portion 00016, in the District of Germiston), situated at the corner of Webber and Olivier Streets, Lambton Gardens ("the property"), since 1998.

² Act 32 of 2000

³ 2005 (1) SA 530 (CC)

[8] Captain Sand occupied the property as a tenant for an extended period. The respondent refers to a lease concluded in 2011; the applicant annexes a later lease signed on 12 June 2019 for the period 01 February 2019 to 31 August 2021. Nothing turns on the difference. Clause 7 of the 2019 lease and clause 30 of its general conditions provide that the lessee must bear the cost of all electricity and water consumed on the premises, and clause 30 also provides that, should the lessee register as a consumer with the respondent, it must ensure that the account is paid in full each month. Ms Araujo bound herself as surety and co-principal debtor to the lessor for the lessee's obligations under the lease.

[9] Captain Sand registered as a consumer with the respondent and was allocated its own municipal account for electricity and other services. The account appears in the papers under the numbers 261 582 1712 and 260 721 8365; it is common cause that it was in Captain Sand's name, distinct from the applicant's account (number 260 119 8070).

[10] Captain Sand defaulted on its obligations to both the applicant and the respondent. The respondent avers that it disconnected supply in February 2015, that a payment arrangement concluded in 2017 was not honoured, and that the last payment on the account was received on 27 August 2018. It avers that a disconnection was followed by an illegal reconnection, and that it effected a "level 3" disconnection in May 2021. As early as May 2015, the applicant's attorneys wrote to Captain Sand demanding that it settle its municipal account. On 02 March 2021, the applicant's managing agent asked the respondent to terminate the electricity supply to the property. The supply was disconnected in May 2021 on the respondent's version, or in July 2021 on the applicant's. Captain Sand then vacated the property without settling its account. By July 2022 the arrears stood at some R1 135 672.04.

[11] The applicant's managing agent then applied to the respondent to have the supply restored and to have future consumption billed to the applicant, either on its existing account or on a new one. The respondent's officials refused, insisting that the

applicant first sign an acknowledgement of debt for Captain Sand's arrears. The applicant declined.

[12] On 28 March 2023 the applicant's attorneys demanded that an account be opened and the supply reconnected. On 18 April 2023 an official at the City's Germiston customer care centre informed them by telephone that no account would be opened because the applicant and Captain Sand were jointly and severally liable for the arrears, and that the applicant had to pay them or enter into a payment arrangement. A request for the legal basis of that assertion went unanswered. A letter of demand followed on 22 June 2023. On 04 July 2023 the respondent's debt collector informed the applicant that the account had been handed over for collection and that a landlord becomes responsible when a tenant leaves without paying.

[13] On 07 and 10 July 2023 the applicant's attorneys drew the debt collector's attention to section 34 of the respondent's Electricity By-laws, which are discussed hereunder. On 07 August 2023, the respondent's Corporate Legal Services department responded in writing. It relied on the arrears on the tenant's account, the credit control measures it said it had taken, section 118(3) of the Systems Act, clause 30 of the lease and paragraph 6(d) of its Credit Control Policy. It concluded that the owner was bound by the claim and could not be absolved of liability. It refused to open a new services account until the outstanding amounts were settled in full or a suitable payment arrangement was made.

[14] On 15 September 2023 and on 17 October 2023, the applicant's attorneys delivered a letter, first to the respondent's Corporate Legal Services department and then to the Municipal Manager, styled a letter of demand and appeal in terms of section 62 of the Systems Act. It contested the respondent's reliance on section 118(3) of the Municipal Systems Act, relied on section 34(2) of the By-laws and the decision of the Full Court of this Division in *Ekurhuleni Metropolitan Municipality v Anzotrax (Pty) Ltd t/a Topbet Germiston*⁴ ("Anzotrax"). Further, the applicant appealed against the respondent's refusal to open an account in the applicant's name.

⁴ (A5059/2015) [2016] ZAGPJHC 178 (1 June 2016); 2016 JDR 0615 (GJ)

[15] On 28 September 2023 the respondent's Water, Sanitation and Energy Oversight Committee resolved to note a report requesting final Council approval of an amended Electricity Supply By-law, headed "Revision of 11 August 2022" ("the 2023 By-law"), and to approve it. The papers do not show whether, or when, the Council passed it or published it in the Provincial Gazette.

[16] By 12 April 2024, when this application was issued, the respondent had not responded to the appeal. It was served on 23 April 2024 and set down on the unopposed roll for 10 June 2024. The respondent delivered a notice of intention to oppose on 06 June 2024. On 10 June 2024, Opperman J removed the matter from the roll and afforded the respondent 30 days to deliver its answering affidavit.

[17] In an outcome dated 04 July 2024, which the applicant says it received on 24 July 2024, the respondent's section 62 Appeals Committee, chaired by Mr Thabo Makhwiting, decided the appeal. It condoned the late lodging of the appeal and decided it on the merits. Relying on the 2023 By-law, a paragraph of the respondent's Consumer Agreement Policy, and *Mkontwana*, it found that the applicant is jointly and severally liable with Captain Sand for the outstanding debt on Captain Sand's account and dismissed the appeal on that issue. It expressly rejected the applicant's reliance on "section 34 of the erstwhile Electricity By-laws of 2002". On the second issue, it found that the City was not entitled to refuse to open a new account for the applicant on the basis that the outstanding debt had to be paid first, and upheld the appeal. It added, however, that the respondent remained free to implement credit control measures, including disconnection, against the property in respect of the outstanding debt after the account was opened.

[18] The answering affidavit, due on 23 July 2024, was delivered on 06 August 2024. The replying affidavit followed on 23 August 2024. In the interim, the respondent adjusted the applicant's water account, which, on its own version, was in credit by June 2024. The electricity supply to the property has, on the papers, remained disconnected since 2021.

Condonation for the late answering affidavit

[19] The respondent's answering affidavit was ten court days late. The applicant opposes condonation and seeks to have it treated as *pro non scripto*.

[20] The principles are settled. Condonation is not had for the mere asking; the party seeking it must give a full and reasonable explanation for the default, and the court exercises a discretion having regard to the degree of lateness, the explanation, the prospects of success, the importance of the matter, prejudice to the other side and the interests of justice ⁵.

[21] The respondent's explanation for the delay is thin. The deponent lists the dates on which drafts passed between the respondent, its attorneys and counsel, and attributes the delay to the "complexity" of the application and the work required to assess it. That does not explain why the respondent, which had already been granted double the ordinarily allowed period, could not comply, or why it did not seek an extension before the deadline passed. The applicant's criticism is justified, particularly since a court order fixed the time limit, not merely the Rules.

[22] Nevertheless, the delay was short. The applicant has not shown any prejudice beyond the delay itself, which the court can address more appropriately in costs. The issue is important to the respondent beyond this case, and it is in the interests of justice that the court decide it on a full record, with the defence properly before it. Moreover, the applicant has replied fully to the answering affidavit. Accordingly, the court grants condonation and will consider the respondent's conduct when making the costs order.

The preliminary points

Non-joinder of Captain Sand and Ms Araujo

[23] The respondent contends that Captain Sand and Ms Araujo have a direct and substantial interest in the relief and ought to have been joined. It relies on the lease,

⁵ See *Grootboom v National Prosecuting Authority and Another* 2014 (2) SA 68 (CC) para 23; *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532C–E

under which Captain Sand undertook to bear the cost of electricity consumed and Ms Araujo bound herself as surety and co-principal debtor.

[24] It is trite that a party must be joined if it has a direct and substantial interest in the subject matter of the litigation, that is, a legal interest in the right which is the subject matter of the dispute and which may be prejudicially affected by the judgment⁶. A mere financial or indirect interest does not suffice.

[25] In the current matter, neither Captain Sand nor Ms Araujo has such an interest. The applicant does not dispute Captain Sand's liability to the respondent. On the contrary, the applicant argues that Captain Sand alone is liable. The applicant seeks no order against either Captain Sand or Ms Araujo. The declarator and the review concern only whether the respondent may hold the applicant liable for Captain Sand's debt and withhold supply from the applicant on that account. Whatever the outcome, Captain Sand's liability to the respondent is unaffected. Ms Araujo's suretyship is an undertaking to the lessor under the lease; it does not extend to Captain Sand's obligations to the respondent and is not implicated by the relief. The rights and obligations under the lease between the applicant, Captain Sand and Ms Araujo are not before the court. This point has no merit and ought to be dismissed.

Failure to exhaust internal remedies

[26] Section 7(2)(a) of PAJA provides that no court shall review administrative action unless any internal remedy provided for in any law has first been exhausted. In this current matter, it is undisputed that an appeal under section 62 of the Systems Act is such a remedy. The respondent contends that the applicant launched the review before the appeal was decided and that the application was therefore premature. At the same time, it contends that the application became moot once the appeal was decided.

[27] Section 62(5) requires an appeal authority to commence with an appeal within six weeks and to decide it within a reasonable period. The applicant's appeal was delivered

⁶ See *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A); *Gordon v Department of Health, KwaZulu-Natal* 2008 (6) SA 522 (SCA) para 9

to the respondent's Corporate Legal Services department on 15 September 2023 and to the Municipal Manager, as section 62(1) requires, on 17 October 2023. There is no evidence that the appeal authority commenced with it within six weeks of the latter date. By the time the application was issued almost six months later, the respondent had given no indication that it was considering the appeal at all. The respondent decided only on 04 July 2024, after the application had been served and set down and after it had obtained time from this court to answer.

[28] The duty to exhaust internal remedies presupposes a remedy that is available, effective and adequate.⁷ A litigant who has invoked an internal appeal need not wait indefinitely while the appeal authority fails to perform its statutory duty. An internal remedy which the administrator does not engage with within the period prescribed by statute is, for the time being, not an effective remedy. The respondent cannot rely on its own failure to comply with section 62(5) to defeat the applicant's claim.

[29] In any event, the internal remedy has now been exhausted. The appeal authority has decided the appeal and confirmed the decision that the applicant is jointly and severally liable for the tenant's debt. The purposes underlying section 7(2), namely to allow the administration to correct its own errors and to bring its expertise to bear before a court intervenes, have been served. Directing the applicant to exhaust a remedy that has already run its course would be pointless.

[30] The respondent contends that the application is moot. However, the appeal outcome did not resolve the dispute. It confirmed the very decision the applicant challenges. The applicant's liability for Captain Sand's debt remains the central live controversy between the parties, and the supply remains disconnected. The respondent itself placed the appeal outcome before this Court and fully addressed it in reply. The review properly targets the respondent's decision to hold the applicant liable, as its appeal authority ultimately confirmed. The respondent has had every opportunity to justify that decision.

⁷ See *Koyabe and Others v Minister for Home Affairs and Others* 2010 (4) SA 327 (CC) paras 35–45.

[31] As to the time bar in section 7(1) of PAJA, the 180-day period runs from the conclusion of internal remedies. The application was not late. To the extent that condonation under section 9 of PAJA is necessary, the applicant has not unreasonably delayed, and the delay in the decision-making process is attributable to the respondent. To that extent, the period is extended under section 9(1)(b). Similarly, this point ought to be dismissed.

The alleged disputes of fact

[32] The respondent contends that material disputes of fact exist regarding the date of disconnection and the extent of the credit control action taken against Captain Sand, and seeks that the matter be referred to trial or dismissed. Neither dispute is material. Under the *Plascon-Evans* rule⁸ this Court accepts, for present purposes, the respondent's version that the supply was disconnected in May 2021 and that it took credit control measures against Captain Sand. The applicant indicated in its founding affidavit (para 23), and confirmed in reply (para 128), that it would accept the respondent's version of the disconnection date. In light of the above, the applicant's case succeeds on the respondent's version of the facts. The point must also be dismissed. Thus, the remaining questions for decision are of law.

The City's supplementary heads of argument

[33] The City's supplementary heads of argument are dated 12 April 2026 and were handed up at the hearing on 13 April 2026. The respondent explains that the counsel it had previously briefed declined, at a late stage, to continue with the matter. The heads contend, in summary, that: (a) the appeal authority's decision of 04 July 2024 is administrative action which stands until set aside, no review of it is pending, and the City is therefore entitled to claim Captain Sand's debt from the applicant; (b) the appeal authority is a body separate from the municipality and ought to have been joined; (c) the applicant is not entitled to a declarator concerning a decision it had taken on internal appeal, and is forum shopping; and (d) the relief in Part B was not competent because the applicant did not follow the dispute procedure in the respondent's Credit Control and

⁸ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E–635C

Debt Collection Policy. They also repeat the contention that Captain Sand ought to have been joined, which has been dealt with above. The applicant seeks to strike out the supplementary heads on the ground that they introduce a new matter not foreshadowed in the answering affidavit.

[34] It is not necessary to strike out the supplementary heads. The heads of argument are not evidence. To the extent that they seek to introduce facts that are not on affidavit, those facts are disregarded. Further, to the extent that they raise points of law arising on the papers, the court may consider them, provided the other side is not prejudiced. The applicant has had the opportunity to respond in writing, and this Court has considered the points on their merits.

[35] At the outset, the supplementary heads misdescribe the relief. They proceed on the footing that the applicant seeks to review the appeal authority's failure to decide its appeal, and contend that this failure lies at the door of the appeal authority rather than the respondent. However, that is not the applicant's case. Prayer 1.4 of the notice of motion seeks the review of the respondent's decisions to hold the applicant liable for its tenant's debt and to refuse reconnection until that debt is paid. The appeal authority's delay is relevant only to the respondent's point on the exhaustion of internal remedies, which has been dealt with above.

Whether the appeal decision stands until set aside

[36] The respondent relies on the principle that an administrative act exists in fact and has legal consequences until a court sets it aside.⁹ The principle is correct, but it does not assist the respondent. It prevents parties from disregarding administrative decisions through self-help. The applicant has done exactly what the principle requires: it has approached the court to set the decision aside.

[37] Section 62(3) of the Systems Act requires the appeal authority to "confirm, vary or revoke the decision" appealed against. On liability, the appeal authority confirmed the

⁹ See *Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA); *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd* 2014 (3) SA 481 (CC).

07 August 2023 decision. It recorded that it was satisfied with the argument in the respondent's letter of that date and dismissed the appeal. What stands, therefore, is the respondent's decision that the applicant is liable, in its final and confirmed form. That is the decision challenged in prayer 1.4.1. The applicant could not have challenged the appeal outcome in its founding papers, because the outcome did not yet exist. The respondent raised it in its answering affidavit, and the applicant squarely took issue with it in reply, contending that it rests on a by-law that does not apply. The respondent has had a full opportunity to defend it and has done so. The respondent itself contends that its original decision was "subsumed under, and replaced by" the appeal ruling, and it has defended the two together, its case being "encapsulated in" the letter of 07 August 2023 and the appeal outcome. The appeal outcome, in turn, identifies the decision in the letter of 07 August 2023 as "the decision that is being appealed" and adopts its reasoning. In these circumstances, the review extends to the decision as confirmed on appeal. To require a further application to review the confirmation would elevate form over substance and serve only to add to the costs.

[38] It follows that the declarator sought in prayer 1.1 may be granted. Once the decision holding the applicant liable, including in its confirmed form, is set aside, nothing stands in the way of the court determining the question of law that it raised, and a declaration that the applicant is not liable will be conclusive of the dispute between the parties.

[39] It is also notable that the respondent's supplementary heads accept that, on the second issue, the appeal authority upheld the appeal and that the respondent is "ordered to open a new account for the Applicant". On the respondent's own argument, that part of the appeal decision binds it. There is no evidence that it has complied.

Non-joinder of the appeal authority

[40] The respondent contends that the appeal authority is a body separate from the municipality; that under section 62(4)(a) of the Systems Act the municipal manager is the appeal authority where the decision was taken by a staff member other than the municipal manager; and that the applicant ought at least to have cited the municipal

manager. It relies on *M5 Developments (Cape) (Pty) Ltd v Groenewald NO and Others* 2009 JDR 0094 (C), the appeal in that matter (*Groenewald NO v M5 Developments (Cape) (Pty) Ltd* 2010 (5) SA 82 (SCA)), *Dexalink (Pty) Ltd v Municipal Manager c/o City of Tshwane Metropolitan Municipality* 2023 JDR 3203 (GP) and *Long v Appeal Authority iro Ndlambe Municipality* (621/2022) [2023] ZAECKMHC 131; [2024] 1 All SA 364 (ECG), in each of which the appeal authority or its members were cited.

[41] Those authorities do not establish the proposition for which they are cited. They show that appeal authorities, or the persons constituting them, have been cited in reviews of section 62 decisions. None of them holds that the review of a municipal decision confirmed on internal appeal must fail unless the appeal authority is separately cited, or that the municipality itself is not a proper respondent. The *M5 Developments* matter concerned the scope of the municipal manager's powers on a section 62 appeal, not the necessity of joinder. In *Dexalink*, the municipal manager was cited care of the municipality. That a functionary was cited in other cases says nothing about whether its joinder is necessary in this one. The test remains whether the functionary has a direct and substantial interest which the judgment may prejudicially affect.

[42] An appeal authority deciding an appeal against a municipal official's decision exercises a power within the municipality's administration. It has no interest in the outcome distinct from the municipality's. Where the appeal authority is the municipal manager, it is the head of the municipality's administration and its accounting officer (section 55 of the Systems Act). The applicant cited the respondent "care of the Municipal Manager", as appears from paragraph 6 of the founding affidavit, and served the application on it. The respondent placed the appeal outcome before the court and has defended it through its own legal department and counsel. An order against the respondent binds its functionaries, including its appeal authority.

[43] The respondent's position on who the appeal authority is remains unclear. Its supplementary heads say that the municipal manager is the appeal authority. Mr Makhwiting, as chairperson of the "section 62 Appeals Committee", signed the appeal outcome. There is no evidence on the papers of who constituted that committee, or of

the delegation under which it acted. The respondent cannot fault the applicant for failing to join a functionary that it has not itself identified on the papers.

[44] Finally, even if joinder of the appeal authority had been desirable, non-joinder would not ordinarily warrant dismissal of the application. The usual course would be to direct joinder. A court may, however, dispense with joinder where the absent party's interest is adequately represented and no prejudice results. That is the position here. Besides, the point was raised for the first time at the hearing, almost two years after the answering affidavit was delivered. The respondent, of which the appeal authority forms part, has fully represented its interests. For the above reasons, the point is dismissed.

The declarator and the allegation of forum shopping

[45] There is no bar to seeking a declarator together with review relief. Section 21(1)(c) of the Superior Courts Act¹⁰ empowers this court to enquire into and determine any existing, future or contingent right or obligation. Section 8(1) of PAJA empowers it to grant any order that is just and equitable in review proceedings. The respondent is correct that declaratory relief is discretionary. The court first asks whether the applicant has an interest in an existing, future, or contingent right or obligation, and then whether the case is a proper one for the court to exercise its discretion.¹¹ In *casu*, both requirements are met. The respondent asserts that the applicant owes it more than R1.1 million and, on that basis, withholds electricity from its property. The applicant has a direct and live interest in the determination of whether it is liable, and a declarator will resolve the dispute between the parties.

[46] As to the allegation of forum shopping, the applicant did not bypass the internal forum. It lodged an internal appeal and approached the court only after almost six months had passed without any response. The appeal authority has since decided the question against it. The applicant is not seeking to avoid a forum; the internal forum has

¹⁰ Act 10 of 2013

¹¹ See *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* 2005 (6) SA 205 (SCA), at paras 16–18.

pronounced, and this court remains the forum. As such, this allegation is without foundation.

Part B, the Credit Control and Debt Collection Policy

[47] The respondent argues that the relief in Part B was incompetent because the applicant did not lodge a dispute under clause 5 of its Credit Control and Debt Collection Policy. It relies on *Body Corporate of Willow and Aloe Grove v City of Johannesburg*¹² (“*Willow and Aloe Grove*”), which emphasises that disputes about specific charges must be dealt with through the co-operative process prescribed by the Systems Act and the municipality’s policy. Part B no longer requires determination, and the argument is relevant only to costs. On the facts, it fails. The applicant did declare a dispute in terms of section 5 of the Policy and section 62 of the Systems Act (founding affidavit paragraphs 92 to 95 and annexure LM24). The respondent did not respond, and its debt collector pursued the disputed amount regardless. The answering affidavit does not deny any of this. As *Willow and Aloe Grove* itself makes clear, the process places obligations on both parties. In this matter, it was the respondent that did not engage with the applicant.

Other contentions

[48] The supplementary heads refer to findings by “Cassim AJ” that the applicant wishes to consume services without paying for them. No such judgment is before me or identified in the papers. Moreover, the contention is contrary to the record. Throughout, the applicant has tendered to open its own account and to pay for its own consumption. The contention is, therefore, rejected.

[49] Finally, the contention in the respondent’s principal heads of argument that the relief would offend the separation of powers is unfounded. Deciding whether a municipality has acted in accordance with its own by-laws and national legislation is the ordinary business of the courts. The applicant does not ask the court to devise policy or to create a special dispensation. It asks the court to hold the respondent to the law as it

¹² [2023] ZAGPJHC 1451

stood, and the respondent's contention that exceptional circumstances are required before a court may intervene does not arise.

The merits

Is the applicant liable for Captain Sand's electricity charges?

[50] The central question is whether the respondent was entitled to hold the applicant, as owner, liable jointly and severally with Captain Sand for the electricity consumption charges on Captain Sand's account. If it was not, the decisions founded on that premise cannot stand.

Which by-law applies

[51] The respondent's Electricity By-laws, which commenced on 24 April 2002 ("the 2002 By-laws"), were in force throughout the period during which Captain Sand consumed the electricity in question. By its own terms (section 53(2)), the 2023 By-law becomes applicable only upon publication in the Provincial Gazette. The papers do not show whether, or when, it was passed by the Council and so published. The document annexed to the answering affidavit is headed "Revision of 11 August 2022" and was approved by the Water, Sanitation and Energy Oversight Committee on 28 September 2023 for submission for final Council approval. The applicant's own papers are inconsistent on the date. On any version, however, the amended by-law post-dates the consumption and the accrual of the debt.

[52] The liability for the price of electricity arises when it is supplied and consumed. Whether a person is liable for that charge must be determined by the law in force when the liability arose. There is a well-established presumption that legislation, including subordinate legislation, does not operate retrospectively to impose obligations in respect of past events, unless a contrary intention appears expressly or by necessary implication.¹³ The respondent has not pointed to anything in the 2023 By-law that

¹³ See *Veldman v Director of Public Prosecutions, Witwatersrand Local Division* 2007 (3) SA 210 (CC) para 26; *National Director of Public Prosecutions v Basson* 2002 (1) SA 419 (SCA), at para 12.

displaces the presumption, nor does it contend that the 2023 By-law operates retrospectively. It simply applies it, which is an error. Section 12(2)(c) of the Interpretation Act 33 of 1957 points the same way: the repeal of a law does not affect any right, privilege, obligation or liability acquired, accrued or incurred under it.

[53] The appeal authority itself recognised that section 34 was a provision of “the erstwhile Electricity By-laws of 2002”. It then dismissed the applicant’s reliance on it on the strength of the 2023 By-law’s provisions, without asking whether the later instrument could govern liability for consumption that occurred years before it was adopted. Sections 5(2), 8(8), 18(7), 31(1) and 50(5), on which the appeal authority and the answering affidavit rely, are provisions of the 2023 By-law. They are irrelevant to the question whether the applicant is liable for Captain Sand’s consumption up to May 2021. This Court expresses no view on their meaning, validity or effect in relation to liabilities arising after they came into force.

Section 34 of the 2002 By-laws

[54] Section 34 of the 2002 By-laws, headed “Owner’s and consumers liability”, provides:

- “(1) The owner and the consumer shall be jointly and severally liable for compliance with any financial obligation, except as provided in section 34(2) or other requirement imposed upon them by these Bylaws.
- (2) The liability for compliance with any financial obligation in respect of the consumption of electricity shall be the sole responsibility of the consumer.”

[55] The provision is clear. Subsection (1) sets out a general rule of joint and several liability for the owner and consumer for financial obligations under the by-laws, but it expressly subjects this to subsection (2). Subsection (2) carves out financial obligations for electricity consumption and makes them “the sole responsibility of the consumer”. Read in context and with regard to its purpose¹⁴, the provision draws a deliberate

¹⁴ See *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA), at para 18.

distinction: the owner shares liability for other financial obligations under the by-laws, but not for the charges for electricity consumed by a consumer who is not the owner. Any other reading would render subsection (2), and the express exception in subsection (1), meaningless.

[56] It is undisputed that Captain Sand was the consumer. The 2002 By-laws define a consumer as “a person to whom the Council has agreed to supply electricity or is actually supplying electricity, or if there is no such person, the owner of the premises”. Captain Sand occupied the property, applied to the City for supply on 16 January 2012, concluded a consumer agreement with it, and was billed on its own account. The applicant was not the consumer of that electricity. Under section 34(2), Captain Sand alone was liable for its consumption charges. The respondent’s own letter of 07 August 2023 records that there has been no consumption on the account since May 2021, so no question arises of charges incurred by the applicant as consumer by default.

[57] The Full Court of this Division considered section 34 in *Anzotrax*. That case arose from the converse situation, in which the respondent sought to disconnect a paying tenant on account of the owner’s arrears. The respondent is correct that the facts are different. But the Full Court held that section 34 is “clear and unambiguous” and that joint and several liability under it “excludes indebtedness arising from the consumption of electricity”¹⁵. That reading binds this Court and accords with the plain meaning set out above, and the respondent has offered no alternative interpretation of section 34(2). Its answer is simply that the provision has been replaced, which, for the reasons given, does not assist it.

Section 118(3) of the Systems Act

[58] The respondent relies primarily on section 118 (3) of the Systems Act, in its letter of 07 August 2023 and in argument. It provides that an amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property.

¹⁵ *Anzotrax* above n4, para 6

[59] Section 118(3) creates security. It burdens the property with a charge in the municipality's favour, ranking ahead of registered mortgage bonds.¹⁶ It does not, in terms, make the owner a debtor, still less a co-principal debtor jointly and severally liable with the occupier. A charge upon property is a real right of security in respect of a debt owed by someone. It does not create a new personal obligation in the owner to pay that debt on demand. Nor is there anything in section 118(3) that permits a municipality to refuse to supply electricity to an owner who is not otherwise liable, as a means of compelling the owner to pay someone else's arrears.

[60] The respondent's reliance on *Mkontwana* is misplaced. That case concerned the constitutional validity of section 118(1) of the Systems Act and comparable provincial legislation, which prevent the transfer of property until a clearance certificate is issued. The Constitutional Court held that the embargo on transfer did not amount to an arbitrary deprivation of property, because the relationship between the owner, the property and the consumption charge was sufficiently close to justify the owner bearing the risk of non-payment in that way. The passage relied on by the appeal authority, in which the Court observed that the owner would have chosen the tenant, explains why it is not arbitrary to make the owner bear the risk of the embargo on transfer, which is limited to amounts that fell due in the two years before the application for a clearance certificate. The passages on which the respondent and its appeal authority rely must be read in that context. The Court was not asked to decide, and did not decide, that an owner is personally liable, jointly and severally with the occupier, for the occupier's consumption charges. Still less did it decide that question in the face of a by-law that expressly provides that the consumer alone is responsible for electricity consumption. The Constitutional Court, in *Jordaan and Others v City of Tshwane Metropolitan Municipality and Others*¹⁷, has since held that the security in section 118(3) does not survive transfer to a new owner, reading the section so as to avoid an arbitrary deprivation of property.

¹⁶ *BOE Bank Ltd v City of Tshwane Metropolitan Municipality* 2005 (4) SA 336 (SCA), at paras 7 and 10.

¹⁷ 2017 (6) SA 287 (CC)

[61] Section 34(2) of the 2002 By-laws and section 118 of the Systems Act do not conflict. Section 34(2) determines who is personally liable for the electricity consumption charge. Section 118 provides the municipality with security, in relation to the property, for charges owing in respect of it. That the City may have remedies in relation to the property under section 118 does not mean that the owner is personally liable for the occupier's debt. Nothing in this judgment determines the extent of the respondent's rights under section 118(1) or section 118(3) in respect of the property, which are not the subject of the relief sought.

The Consumer Agreement Policy and section 102

[62] The appeal authority also relied on paragraph 7(x) of the respondent's Consumer Agreement Policy. That paragraph deals with the termination of a consumer agreement. It provides that where a consumer other than the owner terminates the agreement, the service "will automatically be transferred back to the owner". It concerns the ongoing supply of services and says nothing about liability for arrears accumulated by the former consumer. In any event, a policy is subordinate to the by-laws that give it effect and cannot impose a liability that the by-law in force excludes. Nor does paragraph 6(d) of the respondent's Credit Control Policy, on which its letter of 07 August 2023 relied, assist it. It permits the Council to extend liability for a company customer's arrears to the directors, members or trustees of that customer; it says nothing about the owner of the property. Clause 30 of the lease, also relied on, regulates the relationship between lessor and lessee and cannot create a liability to the respondent.

[63] The respondent's reliance on its general duty to collect money due to it as contemplated in section 96 and its credit control powers provided in section 102 of the Systems Act does not advance its case. Those provisions empower the respondent to collect money that is owed to it by the persons who owe it. Section 102(1) permits a municipality to implement credit control measures in relation to arrears on the accounts of "persons liable for payments to the municipality". It does not make anyone liable. Its application depends on the person against whom it is used being liable in the first place. The laudable purpose of ensuring that municipal debt is collected does not entitle the

respondent to collect it from someone who, under its own by-laws, does not owe it. The respondent's remedy for Captain Sand's debt lies against Captain Sand.

Conclusion on liability

[64] It follows that the applicant is not liable, whether as statutory surety, co-principal debtor or otherwise, for the electricity consumption charges incurred by Captain Sand on its own account. The respondent's decision to the contrary, first taken by its officials and in its letter of 07 August 2023 and then confirmed by its appeal authority on 04 July 2024, was materially influenced by an error of law (section 6(2)(d) of PAJA), contravenes section 34(2) of the 2002 By-laws (section 6(2)(f)(i)), and was taken based on irrelevant considerations, namely the provisions of the 2023 By-law, while the relevant consideration, section 34(2), was disregarded (section 6(2)(e)(iii)). For these reasons, it stands to be reviewed and set aside.

[65] In view of this conclusion, it is unnecessary to decide the applicant's further grounds of review, including its contention that the decisions were taken for an ulterior purpose, or its alternative case based on excussion. It is likewise unnecessary to decide whether any part of Captain Sand's debt has prescribed.

The refusal to reconnect and the appropriate remedy

[66] The respondent's appeal authority has already found that the respondent was not entitled to refuse to open an account in the applicant's name on the basis that Captain Sand's debt had first to be paid. That finding is correct. The respondent has not sought to resile from it, and in its supplementary heads it accepts that the appeal outcome requires it to open a new account for the applicant. Yet the papers show that the supply to the property has not been restored, and the appeal authority's outcome expressly contemplates that the respondent may continue to disconnect the supply on account of the tenant's arrears once a new account is opened.

[67] The refusal to reconnect the supply until Captain Sand pays the arrears rests on the same erroneous premise as the liability decision. As aforesaid, the respondent may use its credit control powers against a person liable to it. It is not entitled to withhold

electricity from an owner willing to contract and pay for its own supply as leverage to extract payment of a debt the owner does not owe. Thus, the decision to refuse reconnection is reviewable on the same grounds as the decision on liability and must also be set aside.

[68] The applicant seeks that the court substitute its own decision for the respondent's by directing that a new account be opened within 14 days of the applicant's application and that the supply be reconnected within 7 days of that application. Substitution under section 8(1)(c)(ii)(aa) of PAJA is appropriate only in exceptional cases. The relevant considerations include whether the court is in as good a position as the administrator to make the decision, whether the decision is a foregone conclusion, the delay involved, and whether the administrator has shown bias or incompetence¹⁸.

[69] This is such a case. The question is one of law, which the court is as well placed to decide as the respondent. Once the court accepts that the applicant is not liable for Captain Sand's debt, the only lawful outcome is to open an account for the applicant on the ordinary terms that apply to any consumer and reconnect the supply. The respondent's own appeal authority has accepted as much in respect of the account. The applicant has been without electricity at its property since 2021 and has been pressing for a resolution since at least early 2023. Remitting the matter to the respondent would serve only to prolong a dispute that should long since have been resolved.

[70] This Court's order does not relieve the applicant of the ordinary requirements that apply to any applicant for supply, such as the completion of the respondent's application forms and the payment of any deposit or connection fee lawfully required of every consumer. It precludes the respondent from making payment of Captain Sand's arrears, or signing an acknowledgement of debt in respect of them, as a condition of supply. To allow for the opening of the account, the period for reconnection runs from the opening of the account rather than, as prayed, from the application.

¹⁸ See *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* 2015 (5) SA 245 (CC) paras 47–49

Part B and costs

[71] Part B no longer requires determination on the merits, but the costs incurred in respect of it must be dealt with. The applicant raised the complaint about billing on a meter that was not on the property with the respondent in August 2022. The respondent's own inspection confirmed that the meter was not there. The applicant lodged a formal dispute; the respondent's debt collector nevertheless pursued the disputed amount, and the applicant appealed to the Mayor's office. None of this produced a result. The water account was adjusted only after the applicant launched this application. The applicant was compelled to litigate to obtain that relief and is entitled to its costs of Part B.

[72] The applicant has succeeded in Part A and is entitled to its costs. It seeks costs on the attorney-and-own-client scale. The respondent, in turn, prayed that the court dismiss the application and award punitive costs.

[73] It is trite that costs on a punitive scale mark the court's disapproval of a litigant's conduct, including conduct that is vexatious, obstructive, or an abuse of process.¹⁹ An organ of state is held to a higher standard. As Cameron J observed in *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd*²⁰, government is not an indigent or bewildered litigant, and it must do right and do it properly.

[74] In the current matter, the respondent's conduct warrants a punitive order. It was referred to section 34(2) of its own By-laws in July 2023 and again in the appeal, and never engaged with the provision other than by applying a by-law adopted after the event. It refused to reconnect the supply to the applicant's property after Captain Sand vacated, and maintained that refusal from at least April 2023, ignored a request in April 2023 for the legal basis of its stance, and when it eventually gave one in August 2023, relied on a provision that does not bear the meaning it attributed to it. It failed to deal with the applicant's internal appeal within the period prescribed by section 62(5), and then contended that the applicant had approached the court prematurely. It filed its

¹⁹ See *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC), at para 223.

²⁰ 2014 (3) SA 481 (CC), at para 82

answering affidavit late, in breach of a court order, and provided only a perfunctory explanation. It raised technical points of no substance, and introduced further points for the first time on the day of the hearing, with the result that the matter could not be completed on that day. The applicant, a private property owner, has had to bear the cost of all of this.

[75] This Court is not persuaded, however, that the exceptional scale of attorney and own client is justified. An order on the attorney-and-client scale adequately marks the court's disapproval. That order includes the costs of the respondent's application for condonation, the costs of Part B, and the costs occasioned by the matter standing over on 13 April 2026.

Order

[76] Accordingly, the following order is made:

1. The late filing of the respondent's answering affidavit is condoned.
2. The respondent's points *in limine*, including the contention raised in its supplementary heads of argument that its appeal authority ought to have been joined, are dismissed.
3. It is declared that the applicant is not a statutory surety for, co-principal debtor in respect of, or otherwise liable for, the charges for electricity supplied to and consumed at Portion 16 of Erf 59, Klippoortje Agricultural Lots, Registration Division IR, Gauteng, held under Deed of Transfer T8356/1998 (described in the lease as Erf No. M88 000 00000059, Portion 00016, in the District of Germiston) ("the property"), levied on the municipal account held by Captain Sand CC (referred to in the papers as account numbers 261 582 1712 and 260 721 8365).
4. To the extent necessary, the period for the institution of these review proceedings is extended in terms of section 9(1)(b) of the Promotion of Administrative Justice Act 3 of 2000.

5. The following decisions of the respondent are reviewed and set aside:
 - 5.1 the decision to hold the applicant jointly and severally liable with Captain Sand CC for the electricity consumption charges on the account referred to in paragraph 3, including that decision as confirmed in paragraph 18A of the outcome of the respondent's section 62 Appeals Committee dated 4 July 2024; and
 - 5.2 the decision to refuse to reconnect the electricity supply to the property until the amounts owing by Captain Sand CC have been paid in full or an acknowledgement of debt in respect of them has been signed.
6. The decisions referred to in paragraph 5 are substituted with the following:
 - 6.1 the respondent shall open a new electricity account in the name of the applicant for the supply of electricity to the property within 14 (fourteen) calendar days of the applicant's submission of an application for such an account;
 - 6.2 the respondent shall reconnect the electricity supply to the property within 7 (seven) calendar days of the opening of that account; and
 - 6.3 the respondent shall not make the payment of any amount owing by Captain Sand CC, or the signing by the applicant of an acknowledgement of debt in respect of any such amount, a condition of the opening of the account or of the reconnection or continued supply of electricity to the property.
7. The respondent shall pay the applicant's costs of the application, including the costs of Part B, the costs of the application for condonation and the costs occasioned by the matter standing over on 13 April 2026, on the scale as between attorney and client, such costs to include the costs of counsel.



D. Mahosi
Judge of the High Court
Gauteng Division, Johannesburg

Delivered on: This judgment was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to this matter's electronic file on CaseLines. The date and time for hand-down is deemed to be 20 October 2026.

Appearances

For the applicant: Advocate T Paige-Green
Instructed by: HBG Schindlers Attorneys

For the respondent: Advocate E N Sithole
Instructed by: Seanego Incorporated Attorneys