

# Can the municipality cut your power due to your landlord's debt?

In the case of *Leon Joseph & Five Others v The City of Johannesburg and Three Others*, the city of Johannesburg disconnected the electricity to a block of 44 apartments because the landlord was in arrears of about R400 000. The tenants approached the High Court for an order for reconnection of the electricity, and an order declaring that they were entitled to procedural fairness in terms of the Promotion of Administrative Justice Act (PAJA).

Section 3 of PAJA provides that an administrative action which “materially and adversely affects the rights or legitimate expectation” of any person must be procedurally fair. The act further provides that for an administrative action to be procedurally fair, adequate notice must be provided. In other words, the tenants argued that it was unfair that their electricity was disconnected without them receiving a pre-termination notice.

The city of Johannesburg argued that they had no contractual agreement with the tenants, but only with the landlord. As such, the City argued, the tenants did not have a direct right to receive electricity from them, and consequently had no right which was affected when the electricity was disconnected. The High Court agreed with this reasoning.

The tenants then took the matter to the Constitutional Court, arguing that the right they were aiming to protect through PAJA was not the right to receive electricity from the municipality, but rather (i) their right to access to adequate housing under section 26 of the Constitution; (ii) their right to human dignity under section 10 of the Constitution; and (iii) their contractual right to electricity in terms of their contract with the Landlord. It was these rights which they claimed were “materially and adversely” affected when the City disconnected the electricity. As such, the tenants argued, they were entitled to receive adequate notice in terms of section 3 of PAJA.

The Constitutional Court held that municipalities are obliged to provide water and electricity to the residents in their area as a matter of public duty, regardless of whether a formal agreement exists. It held that: “When the [tenants] received

electricity, they did so by virtue of their corresponding public law right to receive this basic municipal service. In depriving them of a service which they were already receiving as a matter of right, City Power was obliged to afford them procedural fairness before taking a decision which would materially and adversely affect that right." Consequently, the Constitutional Court did not even consider the rights which the tenants claimed were being affected, instead it held that the tenants indeed had a right to receive electricity, which right was effected when the electricity was disconnected. As such, the tenants had a right to receive adequate notice of the disconnection. Important, is that the Constitutional Court said that the city was aware that it was providing electricity to the tenants living in the building, and not to the landlord

Consequently, the Constitutional Court ordered that the electricity to the tenants must be restored. The Court also highlighted information which must be covered in a pre-termination notice for it to be "adequate". In this regard, the Court said: "it must contain all relevant information, including the date and time of the proposed disconnection, the reason for the proposed disconnection, and the place at which the affected parties can challenge the basis of the proposed disconnection. Moreover, it must afford the applicants sufficient time to make any necessary enquiries and investigations, to seek legal advice and to organise themselves collectively if they so wish. At a minimum, it seems to me that 14 days' pre-termination notice is fair."

However, the Court also warned that fairness must be determined in the light of the circumstances of each particular case. This was evident in another judgement of the Gauteng Division of the High Court, *Wilrus Trading CC v The City of Tshwane Metropolitan Municipality*. In the *Wilrus Trading*-matter the Tswane Municipality also disconnected the electricity to a building which was occupied by a tenant, operating as a fuel garage. The pre-termination notice was provided to the landlord, but not to the tenant. The tenant approached court on the basis that disconnecting the electricity was procedurally unfair, and substantiated its argument on the Constitutional Court's judgement in the *Leon Joseph*-matter

However, in the *Wilrus Trading*-matter the High Court held that: "Fairness cannot be reduced to a one-size fits all approach". The court said that it cannot be expected of a municipality to know that anyone else, but the owner is residing at a property and will be affected by the disconnection of the electricity. The court further held that it would be absurd to expect that a municipality must first

enquire if there are other individuals residing on a property who will be effected by the disconnection of the electricity.

In other words, in the Wilrus Trading-matter the court distinguished from the Leon Joseph-matter on the basis that in the Leon Joseph-matter the municipality was aware that tenants were occupying the property, whilst it was not so aware in the Wilrus Trading-matter.

Based on these judgements, I believe that if tenants would want to ensure that they also receive the pre-termination notice, they must inform their municipality that they are indeed occupying the premises and not the owner of a property. However, as the judgements have emphasized, what is deemed to be fair will always boil down to the circumstances of each specific matter.

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