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A municipality may disconnect services even if you've specifically paid for such services but failed to pay for assessment rates on a consolidated account. This was decided by the Constitutional Court in a Judgment that was delivered on Friday, 26 April 2013 in the matter of Rademan v Moqhaka Local Municipality and others (CCT41/12 [2013] ZACC 11).

The facts of the matter are as follows:

1. Ms Rademan ("**Rademan**") owns property within the jurisdiction of the Moqhaka Local Municipality (the "**Municipality**") and her claim arose as a result of the Municipality having disconnected electricity supply due to her consolidated municipal account being in arrears.
2. Rademan's municipal account was consolidated in that the Municipality accounted to her for rates, electricity and other municipal services. Rademan was dissatisfied with poor service delivery by the Municipality and in protest, withheld payment of assessment rates. Rademan continued to pay for her for municipal services except for rates which was the result of her account having run into arrears.
3. Upon the electricity to her property having been disconnected, Rademan launched an Application at the Magistrate's Court which Application was granted in her favour. The Municipality appealed, which appeal was upheld by the Bloemfontein High Court, setting aside the Order of the Magistrate's Court and replacing it with an Order dismissing Rademan's Application.
4. Rademan then appealed to the Supreme Court of Appeal who likewise dismissed her appeal (with costs), declaring that in terms of Section 102 of the Municipal Systems Act 32 of 2000 ("**MSA**") a municipality had the power to consolidate accounts of a resident into one account in which event Rademan was required to pay the whole account. The Supreme Court of Appeal held that if the resident did not pay the whole amount due, the municipality had the power to cut off electricity supply to the property.
5. Rademan thereafter launched an Application at the Constitutional Court upon which her Counsel contended that:
 - 5.1 Since Rademan's electricity account was not in arrears, the Municipality had no power to cut her electricity;
 - 5.2 The Municipality's right or power to cut off Rademan's electricity supply was restricted by Section 21(5) of the Electricity Regulation Act No. 4 of 2006 ("**ERA**") unless at least 1 of the 3 conditions in terms hereof was met. The conditions are as follows:
 - a. The customer is insolvent

- b. The customer has failed to honour, or refuses to enter into an agreement for the supply of electricity.
 - c. The customer has contravened the payment conditions.
- 6. It was common cause that (a) above was not present, however the parties focussed on the condition set out in (c) above.
- 7. In arriving at its Judgment, the Court referred to various provisions of the Constitution of South Africa 1996, the MSA as well as the Municipality's by-laws and stipulated that:
 - 7.1 It was clear from the provisions of Section 1 of the by-laws that no customer may be provided with municipal services unless he or she has applied to the Council for the supply of the relevant municipal service.
 - 7.2 Section 1(g) of the by-laws makes it clear that from the application for the municipal services that a resident or ratepayer makes to the Council, constitutes the agreement between the Municipality and the customer concerned.
 - 7.3 It is clear from the MSA and the by-laws that residents and ratepayers are bound by the by-laws.
 - 7.4 The Municipality's conditions of payment for the supply of its services and payment of rates are to be found in the provisions of the Constitution and MSA as well as provisions of the by-laws. The conditions include:
 - 7.4.1 the obligation on the customer's part to *"to pay promptly service fees, surcharges on fees, rates on property and other taxes, levies, and duties imposed by the Municipality;*
 - 7.4.2 the obligation *"to comply with the by-laws of the Municipality applicable to them";*
 - 7.4.3 payment of *"all municipal services consumed from the commencement date of the agreement until the account has been settled in full;*
 - 7.4.4 that *"a customer may not elect how an account is to be settled if it is not settled in full or if there are arrears".*
 - 7.4.5 that whenever a user of any service –
 - 7.4.5.1 fails to make full payment on the due date or fails to make acceptable arrangements for the repayment of any amount for services, rates or taxes;
 - 7.4.5.2 fails to comply with a condition of supply imposed by the Municipality;

The Municipality *"may restrict or disconnect the supply of water and electricity or discontinue any other service to any premises".*

- 7.5 *“the right to restrict, disconnect or terminate a service due to non-payment shall be in respect of any service rendered by the Municipality and shall prevail notwithstanding the fact that payment has been made in respect of any specific service”*; and
- 7.6 that where one account is rendered for more than one municipal service provided, all arrears due and payable by a customer constitute a consolidated debt, and any payment made by a customer of an amount less than the total amount due will be allocated in reduction of the consolidated debt in the following order towards-
- 7.6.1 payment of the current account
 - 7.6.2 payment of arrears
 - 7.6.3 payment of interest where applicable; and
 - 7.6.4 costs incurred in taking relevant action to collect amounts due and payable.
8. Attention was also drawn to the provisions of section 102 of the MSA as well as those of section 25(1) and (3) of the by-laws which gives the Municipality the power to consolidate the accounts of consumers. When that has been done, the various amounts due become what the by-laws call a “consolidated debt”.
9. The Court stipulated that the effect of the various accounts becoming one consolidated account, is that the customer is in breach of his or her obligations if a customer only pays part of such account.
10. In light of this, the Court concluded that paying the various components of her account but not paying for rates, Rademan elected how she was to settle her account which is precluded by section 18(3) of the by-laws and consequently placed herself in default. Accordingly, the contention that Rademan did not owe anything on electricity and therefore the Municipality was not entitled to disconnect her electricity, was rejected.
11. The Court furthermore held that the Municipality is not confined to cutting of the supply of a particular service but may cut off the supply of any service to the resident.
12. During the hearing, there was much debate whether there was a conflict between Section 21(5) of the ERA and the MSA on the one hand and the by-laws on the other, the Court held that there was no such conflict (alternatively that the ERA was not applicable).
13. Accordingly, the Court concluded that-
- 13.1 Rademan failed to settle her account in full as she withheld payment for the rates;
 - 13.2 The fact that Rademan paid the electricity component of her account did not preclude the municipality from cutting off her electricity supply after she had failed to pay her account in full;
 - 13.3 Rademan, as a customer of the Municipality, contravened the Municipality’s conditions of payment as set out in the by-laws read with the MSA and the agreement between the parties;

- 13.4 The condition prescribed by section 21(5)(c) of the ERA for the termination of a customer's electricity supply by the Municipality was met; and
- 13.5 The Municipality was entitled or had the power to cut off Rademan's electricity supply.

What we take from this (depending on the applicable municipal and jurisdictional by-laws) is that a consolidated account must be paid in full failing which a municipality may disconnect services. Furthermore, it may choose which services in particular it wishes to disconnect (or all, presumably).

What remains to be adjudicated on is the situation where there are separate municipal accounts (whether by virtue of a tenant having opened an account for certain services in his or her name or whether the municipality renders accounts for services and rates separately). Given the same set of circumstances, would the Court's Judgment be any different?

Furthermore, in light of this Judgment, would the situation be any different in circumstances where the tenant has paid the account for services in full (opened in his or her name) and the owner has defaulted on his or her rates account?

Well, one can speculate that this can indeed happen taking cognisance of the contents of a letter issued by the City of Cape Town to conveyancing attorneys dated 18 April 2013. The letter stipulates *inter alia* that the following measures will be used to enforce debt collection upon receipt of an application for municipal clearance (which is required for the registration of transfer of ownership) in terms of Section 118(2) of the MSA:

- (a) Attempting to obtain full payment of all municipal debt from the seller;
- (b) Requesting the seller to authorise the conveyancer to provide an undertaking that payment will be made of any unpaid debt, out of the proceeds of the sale of the property, if sufficient, upon registration of transfer in preference to any bond holder;
- (c) Informing the purchaser that should there be any municipal debt outstanding against the property, such debt is a charge against the property, and that such purchaser shall be liable for such debt which is still owing after registration and that the continued supply of municipal services to the property may be affected while the debt remains outstanding;**
- (d) Interdicting the transfer of the property until the municipal debt is paid in full;
- (e) Interdicting the distribution of the proceeds of the sale.

The above measures (some more onerous than others) will undoubtedly result in effective debt collection. However given the steadfast approach, it is clear that the registration process will in all likelihood be delayed or frustrated in cases where the seller has a valid defence in not effecting payment of certain services (or rates for that matter). To enable expeditious registration, the seller may be forced to settle all indebtedness under protest and raise issue with municipality separately.

The City of Cape Town is one of the best performing municipalities and it remains to be seen whether other local authorities will follow suit with the same or similar action to enforce debt collection.