

# From the COURTS

## Disconnecting basic municipal services

From May 2002 to February 2003, three High Court Provincial Divisions heard arguments on almost the same scenario: urgent applications brought by residents against their municipality for disconnection of either their water or electricity supply, due to non-payment.

Each judgment raises questions, but also adds to the municipal practice of disconnection of municipal services, currently being developed under the new local government dispensation. Two of the three judgments are discussed here in chronological order of the judgment date.

The third judgment, handed down in *BG Beck v Kopanong Local Municipality* (case no. 3772/2002, *unreported*) in the Orange Free State Provincial Division, will be discussed at length in a later issue of the *Local Government Bulletin*.

### Who may approach the Court?

*Highveldridge Residents Concerned Party v Highveldridge TLC and Others 2003(1) BCLR 72 (T)*

#### Facts

The Highveldridge TLC disconnected the water supply to indigent households in the Lebohang Township in July 2001. The reason was in dispute.

On the municipality's own admission, the water supply was not disconnected as such, but interrupted at various stages due to technical problems. The residents argued that this was because of non-payment of their municipal water accounts. The Highveldridge Residents Concerned Party applied to the Transvaal Provincial High Court for temporary relief in the form of an

interim interdict ordering the reconnection of the water supply, pending final resolution of the matter on the merits.

The Applicant described itself as a voluntary association representing the Lebohang Township residents and lodged class proceedings on behalf of all affected residents in terms of section 38 of the Constitution.

## Issues and rulings

Before considering the merits of the case, the Court had to consider the issue regarding the Applicant's *locus standi*. The municipality contended that the Applicant did not fall within the ambit of 'anyone' as contemplated in section 38 of the Constitution. The Applicant's constitution did not authorise it to institute court actions, nor did it grant legal personality to the voluntary association. Nor could the Court, after considering various judgments dealing with the approach to standing based on section 38 of the Constitution, classify the Applicant as an unincorporated voluntary association with *locus standi* as provided for in common law. This meant that the Applicant had to have a corporate or legal personality before it could sue in its own name, or be sued.

However, in the spirit of section 39 of the Constitution, dealing with the development of the common law, the Court held that restrictions placed on the Applicant by the common law could not and should not apply without due cognisance of section 38 of the Constitution. The Court therefore ruled that the Applicant had *locus standi* (the right to sue) as 'an association' in this matter.

In dealing with the merits of the matter, the Court commented in length on the municipality's attitude, which reflected 'a certain disinterest in, and even contempt of the plight of those people whose supply of water had been interrupted'. Throughout the trial the municipality showed a 'degree of unwillingness to co-operate, which is unacceptable on the part of an organ of State'.

The Court found on the facts that there was 'a well-grounded apprehension of irreparable harm' to the residents of the township if the water supply was not restored. It therefore ordered the reconnection of the water supply pending final

## Key points

- A voluntary association may bring a class action, dealing with the disconnection of the water supply to township residents.
- Applicants bringing class actions for the disconnection of municipal services must follow a two-phase procedure in ensuring that the residents they represent are individually identified and notice is given of the court action.
- A municipality is not entitled to discontinue the supply of pre-paid electricity when residents are in arrears on their water accounts.
- The legality of credit control and debt collections policies, without their proper promulgation as a by-law, is questionable.

resolution of the matter on the merits.

To assist the municipality, the Court ordered that the Applicant should follow a two-stage process, first, by making available a list of individual members of the community and members of the association involved in this matter, and second, by giving its members and other individual township residents notice of the current and future court proceedings.

## Which municipal service may be terminated due to non-payment?

*Hartzenberg & Others v Nelson Mandela Metropolitan (Despatch Administrative Unit) [2003] JOL 10625 (SE)*

### Facts

The Applicants, residents of the township of Reservoir Hills (Despatch), unlawfully occupied houses owned by Saambou Bank. Their water accounts were in arrears. Saambou Bank wanted to sell the houses but first had to obtain clearance certificates from the municipality indicating that all municipal services had been paid for in full.

Saambou Bank could not accept responsibility for any outstanding service charges as that the applicants occupied the houses unlawfully. The municipality responded by terminating the supply of pre-paid electricity to the households in question.

### Issues and ruling

The only issue before the Court was whether the municipality was entitled to cut the pre-paid electricity supply of the Applicants because of their failure to pay their water accounts. In considering the matter, the Court interpreted two sets of statutory provisions, namely section 19 of the Standard Electricity Supply By-law (Province of the Cape of Good Hope, 1987) and sections 96, 97(1)(g) and 102 of the Municipal Systems Act.

The Court held that the words 'any supply' used in section 19 of the former dealt specifically with the supply of electricity (whether pre-paid or otherwise) and with no other service, and ruled that if the legislature wanted to refer to another municipal service it would have specifically done so. Therefore, the municipality could not use this provision to argue that the electricity supply could be terminated due to the applicants' non-payment of another supply, namely the water supply.

The Court held that the mentioned provisions of the Systems Act also did not assist the municipality in its cause and did not provide it with any powers to terminate the electricity supply. Important to note is the Court's comment on the status of the municipality's credit control policy. It interpreted section 98 of the Systems Act as requiring the municipality to adopt a by-law to give effect to its credit control and debt collection policies. As the municipality could not provide such a by-law to the Court, the legality of the policies was questioned.

The Court ruled that the municipality was not entitled to discontinue the supply of pre-paid electricity due to the Applicants being in arrears on their water accounts, and the municipality was ordered to reconnect the electricity supply.

Charmaine Maré  
Local Government Project  
Community Law Centre

## Transfer of property and outstanding municipal accounts

Before an owner can sell his/her property, a clearance certificate must be obtained from the municipality in terms of section 118 of the Structures Act to effect transfer of the property.

Section 118 provides that a registrar of deeds may not transfer a property except on the production of a clearance certificate by the municipality. This is issued only if the owner has paid in full for all municipal services for the two years preceding the date of application for the certificate.

### Constitutionality of section 118 of the Structures Act

*Geyser v Msunduzi Municipality 2003 (3) BCLR 235 (N)*

#### Facts

Geyser leased her property to tenants who failed to pay the electricity and water accounts, resulting in arrears of R125 034.68. She only discovered the arrears when she tried to transfer the property. The buyer cancelled the deal because she was unable to give transfer of the property without a clearance certificate from the municipality.

#### Issues and rulings

Geyser applied to court for an order declaring that the words 'municipal services fees' in section 118 of the Structures Act do not include charges for electricity and water, and alternatively, that section 118 is unconstitutional because it is inconsistent with section 25 of the Constitution (the right to sue).

Geyser maintained that the words 'municipal services fees' exclude services for electricity and water. She argued that Msunduzi municipality charges certain services, such as property rates, to