

HIGH COURT OF SWAZILAND

CIVIL CASE NO.849/2007

In the matter between:

MESHACK KUNENE

APPLICANT

AND

CORAM

FOR THE APPLICANT

FOR THE

SWAZILAND ELECTRICITY BOARD

RESPONDENT

**MAPHALALA PJ MR. J. MAVUSO MR. S.
DLAMINI**

**JUDGMENT
29th MAY 2009**

[1] This application before court is concerned with the very important issue of the protection of consumer rights where the Applicant a simple landowner at Nkwalini Zone **4** had

his electricity disconnected by the Respondent being Swaziland Electricity Board on account that he had fraudulently tampered with the supply of electricity to the sum of E45903.27.

[2] As a result of this state of affairs a tug of war has arisen where applicant contends that the electrical supply ought to be reinstated and the Respondent has taken the position that Applicant had unlawfully tampered with the supply of electricity and therefore the court should not come to his rescue.

[3] On the 30 March 2007, the Applicant filed before this court a Notice of Application directing- the Respondent to reconnect the Applicant's supply of electrical power at Hilltop under account number 1001075703 - SEB. Further directing the Respondent to pay costs of this application.

[4] The Applicant has filed thereto a founding affidavit where he outlines the material facts giving rise to this dispute. It is important in this judgment to relate these facts for a better understanding of this dispute between the parties.

[5] Sometime on or about April 2005, the Applicant undertook the project of having electrical power

provided to his homestead at Nkwalini Zone 4 by the Respondent. Before the Respondent could supply him with electrical power, he employed an electrician to do all the wiring of his homestead. The electrician did the wiring on the two houses. After the electrician had completed his job of wiring, the electrician completed a form specifying his identity. He then took the form to the Respondents offices here in Mbabane. A few days after having handed them the said form, personnel from the Respondent came and conducted tests on the installations. They did this in all the houses. Having satisfied themselves that the electrical installation was properly made, they then proceeded to supply the premises with electricity.

[6] On a monthly basis, their meter reader visited his homestead to record the units utilised. After the recording, he has always been furnished with an electricity bill which in most cases, he paid in time. Sometime on or about the 21st December 2006 two of Respondent's employees came to take meter readings and as usual they were allowed to do their work. The meter is locked up outside on what is commonly referred to as a meter box. They alone have the keys to the meter box. Whist taking meter readings, one of the two employees approached his daughter, Dudu Kunene and advised her that the

meter was not making any recordings notwithstanding that the electrical power in one of the house was on.

[7] Subsequent to the visit by the two employees his power supply was disconnected. This was notwithstanding the fact that he had paid his bills in full. Sometime in February 2007, he instructed his attorneys to find out from the Respondent, why they disconnected his electricity supply. Responding to his attorney's letter, they responded by saying the meter was by-passed and that seven (7) flats on his premises had been unlawfully supplied through the by-pass of the meter.

[8] The Applicant contends that the above observation in paragraph [6] *supra* to be strange because of the following:

(1) Since power was installed on the premises there have been no alterations of electrical cables and/or in the supply of power. As matter of fact the connections are as they were when the tests were conducted before supplying power.

(2) There are no seven (7) flats on the premises. There are two houses. The supply from my house to the other house is by way of an overhead cable which was in

existence when the Respondent tested the installations, followed by the actual supply of electrical power.

(3) The observation which was not made on my presence or the presence of any member of my family.

[9] After having disconnected his supply of electricity the Respondent has written to his attorneys advising them that they have been able to ascertain the loss suffered by the Respondent. They allege that their estimated loss over a period of thirteen (13) months is E13, 282-72 and demand a

penalty fee of E500.00. The Applicant further contend at paragraph 20 of his founding affidavit that he has not contravened any of the provisions of the Electricity Act No. 10 of 1963, the Respondent is legally obliged to reconnect the supply of his electrical power.

[10] The Respondent on the other hand has filed an opposing affidavit *disposed* to by the System Losses Manageress in the Respondent Busi Masangane. She addressed a point *in limine* that the application ought to be dismissed because there are disputes of fact which the Applicant ought to have foreseen. I must mention that indeed the court heard *viva voce*

evidence of the parties by consent, The IlesDondent also advanced a defence on the merits of the case.

[11] The crux of the Respondent's case is found at paragraph 14.2 of the answering affidavit where she states the following:

"14.2 The reason for the disconnection of the supply of electricity to the Applicant is as follows:

14.2.1 In my official capacity as the Respondent's system losses manageress and in line with Section24(6) of the Electricity Act No. 10 of

1963 (The Act), I commissioned the Respondent's system losses technician, Innocent Mkhonta, on or about 21 December 2006 to investigate whether the Respondent's meter at the Applicant's premises

was in good order in view of the fact that it had recorded no consumption of units since 30 March 2006 as more fully appears from annexure "BM1" hereto being a copy of the Respondent's schedule on the Applicant's account enquiry.

(4) The said Innocent Mkhonta conducted his investigations and established that the Applicant had been fraudulently abstracting the Respondent's electricity. In other words, the Applicant interfered with the Respondent's main fuses, apparatus and seals so that his consumption of electricity by passed the Respondent's meter.

(5) As will be apparent from annexure "BMI", not only is there reflection of non-consumption of units by the Applicant for some nine (9) months up to December 2006, but the Applicant appears to have consumed just three (3) units from February 3, 2006 to March 30, 2006 which was well below his average.

(6) The fraudulent conduct of the Applicant was in clear violation of Section 29 (i), (iv), (vii) and (x) read with Section 40 of the Act.

(7) In line with Section 29(2) of the Act, the Respondent then lawfully disconnected supply of electricity to the Applicant.

17. Based on the electrical appliances found in the Applicant's premises (see annexure "BM2" hereto) and the Respondent's policy on estimation of charges relating to such matters, the sum due to the Respondent from the Applicant is E4,903-27 (four thousand nine hundred and three Emalangeneni twenty seven cents). A copy of the schedule of estimation is annexed hereto marked "BM3".

[12] As I have stated in paragraph [10] *supra* I heard *viva voce* evidence of the parties and also conducted an inspection *in loco* of the premises in this case. The Applicant gave evidence stating his version of events. Thereafter followed the evidence of his daughter Dudu Kunene. She testified that she was present when they subsequently cut off the power, she is the one who notified the Applicant about the Respondent's disconnection of power. She is also the person who related to the Applicant the message that he should report to the SEB offices on arrival. After the Applicant closed its case, Lazarus Tsela was called in by the Respondent as its first witness (DW1). This witness was introduced as the technician who supplied the Applicant's homestead with electricity. I must mention that a useful summary of evidence is found at page 9 of the Applicant's Heads of Arguments.

[13] The court then proceeded with the inspection *in loco* where it was showed the roof box which was

installed on the roof of the rooms to support the dumbbell cable. The court was also shown the meter box and how the meter was secured with a padlock in the meter box.

[14] The Respondent then led the evidence of Innocent Mkhonta (DW2) this is the witness who attended to checking if there was no fraudulent abstraction at the Applicant's homestead. The summary of his findings is that whilst electricity was being used the meter was not making any recordings as it was not turning. The last witness to be called by the Respondent was Mr. Petros Tass Nkambule (DW3) who is the Branch Superintendent at Stonehage, her in Mbabane. His evidence is on how Respondent calculates its losses.

[15] In arguments before counsel on both sides filed very comprehensive Heads of Arguments for which I am grateful to counsel for the very high standards exhibited. I wish to express my profound apology for the delay in issuing judgment due to other urgent matter which clamoured for my attention.

[16] It is contended for the Applicant that when the incident complained of wjbfat happened, the law governing the relations between the parties was the Electricity Act No. 10 of 1963. When the matter

came up for the hearing of oral evidence, the Electricity Act No. 10 of 1963 had been repealed and substituted with the Swaziland Electricity Company Act 2007 which came into effect on the 26th January 2007. Applicant contends that even though there are similarities on the provisions governing the usage of power in the two statutes, primarily the resolution of the dispute between the parties falls to be determined according to the Electricity Act No. 10 of 1963 under which these proceedings commenced.

[17] The Applicant contends that in relation to the prohibition contained under this section being Section 29 of the Electricity Act No. 10 of 1963 based on the evidence led before court the Applicant wishes to submit as follows:

(8) When his supply of electricity was connected, both houses on his premises had been prepared for the connection.

(9) That the Respondent alone had the keys to the meter box.

(10) That he paid his bills as presented to him by the Respondent.

(11)The Respondent's System Losses Technician failed, as an expert to say how the fuses and apparatus were interfered with and to specify which seals had been removed and how this affected the meter reading.

(12)The Respondent System Losses Technician does not say that he found the padlock used to secure the meter box tampered with.

(13)When the investigation was conducted he was not present to establish first hand what the Respondent's alleged problem was with his power.

(g) In view of the above, Applicant states that he went to the Respondent's offices here in Mbabane and was instructed to bring the person who wired his house.

[18] The final argument advanced for the Applicant is that the probative value of the direct evidence presented by DW2 Innocent Mkhonta was highly compromised by the fact that having identified the "problem" to having been between the roof box and meter box at the end of the day DW2 was unable to say whether such was due to human interference or an Act of God and if due to human interference to state what was done to disable the system wherefore Applicant prays for an order in terms of

the Notice of Motion subject to such conditions the court may impose.

[19] The Respondent on the other hand contends that the fraudulent abstraction of electricity by the Applicant is the most evidence and acceptable conclusion from any of the unconvincing suggestions by the Applicant. In this regard the court was referred to the case of *Santam BPK V Portieger 1997(3) SA* and that of *Skiya Property Investments*

(Pty) Ltd vs Llogs of Lonson Underwriting 2002(3) SA 765 (T), that the Respondent was thereby authorised by Section 29(1) (a) (x) to disconnect the Applicant's supply of electricity.

[20] Having considered the able arguments of counsel in this matter I am inclined to agree with the arguments advanced for the Respondents. The Applicant failed to explain why the cable flew over the rooms into the house if the supply of electricity by the Respondent was also made to the rooms. The Applicant failed to explain his zero consumption of units for 9 (nine) months beginning March 2006 to December 2006 notwithstanding; that he had a television set, a hi-fi stereo, five lighting points and other appliances in the rooms whose nature he claimed ignorance of. Therefore DW2's evidence of

the appliances he found in the entire premises and set out at pages 28 to 29 of the Book of Pleadings should be accepted as correct.

[21] The Applicant conceded that the current state where the supply cable flies over the rooms was consisted with the Respondent's version as presented by DW1, namely that only the Applicant's main house was supplied with electricity.

PRINCIPAL JUDGE

A handwritten signature in black ink, consisting of a stylized 'M' and 'A' intertwined, with a horizontal line through the middle. The signature is written over the printed name 'S.B. MAPHALALA'.

[22] In the result, for the afore-going reasons the application is dismissed with costs.