



**IN THE HIGH COURT
OF SWAZILAND
JUDGMENT**

Case No. 1160/2016

In the matter between

KANG FA KNITWEAT (PTY) LTD

Applicant

And

SWAZILAND WATER SERVICE CORPORATION

Respondent

Neutral citation: *Kang Fa Knitwear (Pty) Ltd v Swaziland Water Service Corporation* (1160/2016) [2017] SZHC 140 (09 June 2017)

Coram: **MAMBA J**

Heard: **07 April 2017**

Delivered: **09 June 2017**

[1] *Civil law – Water Services Corporation acting in terms of Section 18 (1) (a) of the Water Services Corporation Act of 1992 and discontinuing supply of services to customer or consumer. Corporation entitled to do so where sum owing and due for more than 14 days and is not subject of a bona fide dispute between the parties.*

[2] *Civil Law – powers of Water Services Corporation per section 18 (1) (a) of enabling Act – what is a bona fide dispute. Consumer admitting liability and seeking to pay debt in instalments. That is not a dispute let alone a bona fide one. Corporation entitled to discontinue supply of service.*

- [1] The Applicant is a company duly registered with limited liabilities in Terms of the company laws of Swaziland and operates or runs a business in Siteki in the Lubombo region. It has its principal place of business there (Siteki). The applicant's business operations has its sewer pipes linked to the main sewer pipes operated, managed or run by the respondent. The applicant has been in occupation of the said premises since 2004.
- [2] The Respondent is the Swaziland Water Services Corporation, a statutory entity established and governed or regulated in terms of the Water Services Act of 1992 (as amended) and has its principal place of business at Ezulwini in the Hhohho region.
- [3] It is common cause that the applicant is expected and required to pay for the services rendered to it by the respondent. It is common cause further that the applicant is indebted to the respondent for such services. The applicant states that its indebtedness is due to the fact that for a long time, it did not know that it had to pay for such services and in fact did not receive any monthly statements for such charges from the respondent. The current amount owed to the respondent is over E160, 000-00. In its founding affidavit, the applicant states that:

'21. We do not dispute our liability to pay but we also demand to be charged fairly and on 30 days basis like all consumers and not to be burdened with a massive demand for a number of years back.'

[4] Following the arrears stated above, the respondent discontinued the services rendered to the applicant by blocking the sewer pipes linked to the respondent's network or sewer system. This was done on notice dated 25 May 2016.

[5] In response to the said discontinuation or disconnection, the applicant filed an urgent application before this court for the reconnection of its sewer system to that of the respondent. This application was filed *ex parte* and on an urgent basis on 01 July 2016. A *rule nisi* returnable on 08 July 2015 was granted by this court in favour of the applicant.

[6] The respondent immediately complied with the *rule nisi* and reconnected or restored the sewer services to the applicant. The *rule nisi*, however, lapsed, i.e. it was neither discharged or confirmed. Meanwhile, the

applicant continued enjoying the benefits thereof without paying for the sewer services.

[7] In or about October 2016, the respondent forwarded a detailed running statement of its charges to the applicant and demanded payment thereof. In response, the applicant requested to liquidate the said debt by monthly instalments and also requested to be given copies of the said monthly charges. The respondent furnished the requested statements to the applicant. Thereafter, the applicant did not indicate how it wished to liquidate the arrears. This silence by the applicant prompted the respondent again to discontinue or block the sewer service in question.

[8] Following the actions of the respondent stated in the preceding paragraph, the applicant has filed this urgent application seeking *inter alia* for an order:

‘3.1 Directing the respondent to forthwith unblock the sewer line connecting applicant to the main sewer network.’

[9] The applicant states that the respondent has resorted to self-help and this is unlawful. The applicant avers that:

- ‘14. The purpose of the current application is to seek a restriction order against the respondent for unlawfully disconnecting the applicant’s line from the network contrary to the due legal procedure for disconnection. There is a bona fide dispute about the amount and the respondent cannot resort to disconnection of the services.
15. The respondent has acted unlawfully in proceeding with the disconnection, despite knowing that the applicant has a bona fide dispute on this matter.’

[10] The respondent denies that it has acted unlawfully or that there is a bona fide dispute between the parties regarding the sum that is the subject of this application.

[11] Section 18 (1) of The Water Services Corporation Act provides that:

‘The Corporation may discontinue its services to a consumer if the consumer:-

- (a) fails within fourteen days of its becoming due to pay any sum, not being the subject of a bona fide dispute, due from the consumer for services supplied by the corporation under this Act:

Provided that if such consumer has given to the corporation a deposit as security for supply of its services, the corporation shall not discontinue the supply unless the sum due to it for the supply exceeds the sum deposited and payment of the sum has been demanded;

- (b) fails to pay any sum, not being the subject of a bona fide dispute, due by him to the corporation under this Act otherwise than for services supplied to that consumer;
- (c) fails to give any deposit or other security which that consumer is required to give under this Act;'

[12] In the present case, the following issues are not in dispute, namely:

- (a) The applicant is the consumer as referred to in the Act;
- (b) The respondent is the corporation;
- (c) The applicant is indebted to the respondent for services supplied by the respondent to the applicant;
- (d) The amount claimed or owing has been due for more than fourteen days.

- (e) The respondent has discontinued its services to the applicant;
- (f) The discontinuation has been effected or done due to the non-payment for the services supplied by the respondent to the applicant; and

[13] The only matter in issue is whether the sum due is the subject of a bona fide dispute between the parties. The applicant says it is, whilst the respondent avers that the sum due is not the subject of a dispute between them. I have referred above to the fact that the applicant does not deny liability to the respondent for the services rendered. The applicant further does not deny the extent of its liability to the respondent. The applicant has categorically stated in its founding affidavit that:

‘21. We do not dispute our liability to pay, but we also demand to be charged fairly and on 30 days basis like all consumers and not to be burdened with a massive demand for a number of years back.’

See also paragraphs 6 and 7 of the Applicant’s replying affidavit and in particular the applicant’s quibble about the varying monthly charges or estimates. This is not a bona fide dispute.

That, in my judgment is not a dispute, but, at best a plea that it be, in the future, provided with monthly statements or bills. Indeed, after the first disconnection, the applicant intimated to the respondent that it would propose or negotiate to pay the arrears by way of instalments. No concrete or firm proposal was, however, made in this regard. The amount remains due and owing for the services rendered by the respondent to the applicant.

[14] From the above facts, there is, in my judgment no dispute at all, let alone a bona fide one, between the parties regarding the amount for which the disconnection has been effected. That being the case, the respondent was lawfully entitled to discontinue the service.

[15] In his heads of argument, Counsel for the applicant urged the court to follow the judgment of this court by Mamba J in *SIMET HOLDINGS (PTY) LTD v SWAZILAND WATER SERVICES CORPORATION*, case 3529/2008, delivered on 12 February 2009 where the court stated as follows:

‘[9] Section 18 (1) of the Act authorises and or permits the respondent to discontinue its services to a consumer if

certain facts or circumstances exist or are present. These jurisdictional facts all pertain to unlawful use or consumption of the water or other services provided by the respondent or relate to damage or interfere with the apparatus or seals forming the infrastructure or equipment of the respondent. The question therefore is; in enacting these provisions, did parliament intend that the respondent should be its own police or investigator, be the prosecutor, the judge and jury and executioner in its own cause whenever it came to the conclusion that its services or equipment have been unlawfully interfered with by one of its customers? I do not think so. I can find no indication in the Act that would justify this conclusion.’

[16] The above excerpt has been quoted out of context. The facts in *SIMET (supra)* were markedly different from the present. This is borne out by the conclusion of the court where it stated that:

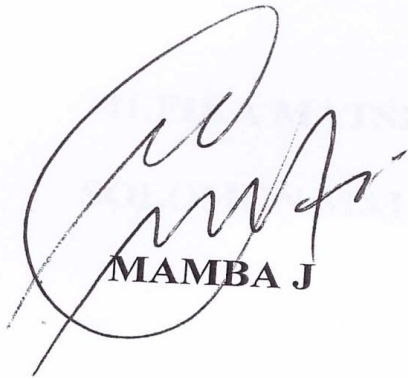
‘[13] --- In restrictively interpreting enabling or empowering provisions such as in the present case, the person claiming such powers is expected to do that which he is empowered to do and nothing more. -- The respondent did not just

discontinue the supply of water to the property as envisaged in the Act, but went further and removed the items referred to above. The respondent has not stated that the said removal was the only reasonable way of discontinuing the supply of water to the premises in the circumstances. The respondent was not entitled to resort to self-help and the application must therefore succeed with costs and it is so ordered.’

Thus the court held that the corporation had exceeded its powers by removing the equipment or items belonging to the applicant. Further, the jurisdiction of the court was not ousted by the provisions in question.

[17] In all cases, the corporation is expected to act within the four corners of the empowering legislation. For example, where the sum of money in issue is the subject of a bona fide dispute between the parties, the corporation is not empowered to effect a discontinuation of the supply of services to the consumer. The policy considerations behind these powers are discussed in *Rademan v Moqhaka Municipality and Others* (173/11) [2011] ZASCA 244 (01 December 2011).

[18] For the foregoing reasons, the application is dismissed with costs.



MAMBA J

For the Applicant : **Mr. S. Mavuso**

For the Respondent : **Mr. V. Thomo**