

# Municipality stumbles over disconnection hurdle

## Facts

The City of Johannesburg disconnected the water supply of a block of flats in Hillbrow, Johannesburg, because of non-payment and arrears. The residents urgently applied to the Witwatersrand High Court for the reconnection of their water supply as an interim measure pending finalisation of the case.

The residents argued that the municipality's disconnection of their water supply was unlawful. The municipality argued, first, that the identity of the applicant was not clear and that the application should have been brought in the names of a number of the residents or, at least, should have been supported by a resolution taken by the residents. The court held in *Residents of Bon Vista Mansions v Southern Metropolitan Local Council* 2002 (6)BCLR 625 (W) that due to the urgency of the matter and the fact that this case was about an interim order, the residents did not need to comply with these formalities. Furthermore, it was clear to the court that the person bringing the application was a resident.

Second, the municipality argued that they were wrongly cited as Southern Metropolitan Local Council and that they had been incorporated in the City of Johannesburg. The summons was served on the City of Johannesburg. The court held that the City of Johannesburg (the correct service provider) was actually before court. Furthermore, the court said that, if the applicant was confused by the

amalgamations in local government, he was not alone in this.

Third, the municipality questioned the urgency of the application and the short notice. The court held that the right to water is an essential and basic service and the absence of this service can have serious consequences on the health of the residents. The issue was thus indeed urgent.

The court held that, once water is disconnected, the burden of proof is on the municipality to justify the disconnection. First, the Constitution, in section 27, provides that everyone has the right of access to water. Municipalities have a duty to respect this right. Furthermore, the Water Services Act 108 of 1997 creates a legal framework for disconnection. Section 4(3) provides that disconnections must be fair and equitable. The municipality must give reasonable notice of its intention to disconnect water services and must provide an opportunity for the consumer to state his or her case. The municipality must inform the consumer of this right to give it real meaning. A municipality cannot disconnect water services if a consumer can prove that he is unable to pay for it.

The court held in favour of the residents on the grounds that the municipality did not prove that it had valid grounds for disconnecting the water supply, nor that it had acted according to fair procedures. The court also expressed doubt as to whether a standard notice saying that services would be disconnected if arrears were not paid (without saying that the consumer could make representations) met the requirements of the Act.

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## key points

- Water disconnections must be fair and equitable
- A municipality cannot disconnect water if a consumer can prove that he or she is unable to pay for it.
- The municipality must give reasonable notice of the intention to disconnect water and must provide an opportunity for representations.
- Once water is disconnected, the municipality must prove that it did so legally.