IN THE HIGH COURT OF SOUTH AFRICA,
NORTH WEST DIVISION, MAHIKENG

CASE NO: UM169/2019

In the matter between:

SAKELIGA NPC	1st Applicant
JACOBUS JOHANNES ROOTMAN	2nd Applicant
JACOBUS PHILIPPUS SNYMAN	3rd Applicant

and

KGETLENGRIVIER LOCAL MUNICIPALITY	1st Respondent
THE MUNICIPAL MANAGER, KGETLENGRIVIER LOCAL MUNICIPALITY	2nd Respondent
IDEALPREPAID	3rd Respondent
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	4th Respondent
THE MINISTER OF FINANCE	5th Respondent
THE MEMBER OF THE EXECUTIVE COMMITTEE FOR LOCAL GOVERNMENT, NORTH WEST PROVINCE	6th Respondent
THE MEMBER OF THE EXECUTIVE COMMITTEE FOR FINANCE IN THE NORTH WEST PROVINCE	7th Respondent

---

INDEX

ITEM NO.	DESCRIPTION	PAGE NO.
1.	Third Respondent's Answering Affidavit in Urgent Application	1 - 63
2.	Annexure A - Resolution of Board of Directors	64 - 65
3.	Annexure B - Confirmatory Affidavit by Anna-Marie Thysse	66 - 67
4.	Annexure C - Letter to Kriek Wassenaar & Venter Ing dated 9 February 2023	68 - 70
5.	Annexure D - Letter from Kriek Wassenaar & Venter Ing dated 17 February 2023	71 - 72
6.	Annexure E - Third Respondent's website	73 - 79
7.	Annexure F - Letter from Kgetlengrivier Local Municipality dated 18 June 2019	80 - 82
8.	Annexure G1 - Correspondence from Andreas Peens Attorneys dated 8 October 2019 and 19 September 2018	83 - 88
9.	Annexure G2 - Letter from Kgetlengrivier Local Municipality dated 4 October 2019	89 - 90
10.	Annexure H - Letter from Third Respondent to the Municipal Manager of Kgetlengrivier Local Municipality dated 22 October 2019	91 - 94

DATED AT **SANDTON** ON THIS **17TH DAY** OF **MARCH 2023.**

MG ATTORNEYS INCORPORATED
Attorneys for Third Respondent
Vunani Office Park
Block B, Ground Floor
151 Katherine Street
Sandton, Johannesburg
Tel: 010 312 6732
Email: notices@mglaw.co.za
Ref: 231A

c/o MAPONYA ATTORNEYS
Office CB29, 1st Floor
Megacity Shopping Centre
Cnr Sekame Road & Dr James Moroka Drive
Mmabatho
Tel: 018 384 2823
Email: thabiso@maponya.co.za

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
MAHIKENG

AND TO: **KRIEK WASSENAAR & VENTER INCORPORATED**
Attorneys for the Applicants
First Floor, Norex House
79 Rauch Avenue
Georgeville
Pretoria
Tel: 012 803 4719
Email: peter@kriekprok.co.za
Ref: P Wassenaar / QB0393
C/O SMIT STANTON INC
29 Warren Street, Mahikeng

Tel: 018 381 0180
Fax: 086 274 6253
Email: litigation1@smitstanton.co.za
Ref: N Neethling

AND TO: **THE STATE ATTORNEY**
Attorney for the First Respondent
Corner Sekame Road & Dr James Moroka Drive
1st Floor, East Gallery
Megacity Complex
Mmbatho
Private Bag x51
Mmabatho
2735
ENQ/: Ms L.L Maleka
Ref: 1483/19/p14
Tel: 018 384 0161/0269
Email: LMaleka@justice.gov.za

AND TO: **MOSIRE TSIANE ATTORNEYS**
Attorneys for the First and Second Respondents
Ground Floor, Stand 85
Afrisport Building
Temba, 0407
Tel: 012 717 7987
Fax: 012 717 8307
Email: mosiretsiane@lantic.net
Ref: KLM3980/019
C/O KGOMO ATTORNEYS
56 Shippard Street
Mafikeng
Tel: 018 381 0495

Fax: 018 381 0496
Email: info@kgomoattorneys.co.za

IN THE HIGH COURT OF SOUTH AFRICA,
NORTH WEST DIVISION, MAHIKENG

CASE NO: UM169/2019

In the matter between:

SAKELIGA NPC	1st Applicant
JACOBUS JOHANNES ROOTMAN	2nd Applicant
JACOBUS PHILIPPUS SNYMAN	3rd Applicant

and

KGETLENGRIVIER LOCAL MUNICIPALITY	1st Respondent
THE MUNICIPAL MANAGER, KGETLENGRIVIER LOCAL MUNICIPALITY	2nd Respondent
IDEALPREPAID	3rd Respondent
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	4th Respondent
THE MINISTER OF FINANCE	5th Respondent
THE MEMBER OF THE EXECUTIVE COMMITTEE FOR LOCAL GOVERNMENT, NORTH WEST PROVINCE	6th Respondent
THE MEMBER OF THE EXECUTIVE COMMITTEE FOR FINANCE IN THE NORTH WEST PROVINCE	7th Respondent

---

FILING NOTICE

BE PLEASED TO TAKE NOTICE that the Third Respondent hereby presents its Answering Affidavit in Urgent Application for filing.

DATED AT **SANDTON** ON THIS **17TH DAY** OF **MARCH 2023.**

MG ATTORNEYS INCORPORATED
Attorneys for Third Respondent
Vunani Office Park
Block B, Ground Floor
151 Katherine Street
Sandton, Johannesburg
Tel: 010 312 6732
Email: notices@mglaw.co.za
Ref: 231A

c/o MAPONYA ATTORNEYS
Office CB29, 1st Floor
Megacity Shopping Centre
Cnr Sekame Road & Dr James Moroka Drive
Mmabatho
Tel: 018 384 2823
Email: thabiso@maponya.co.za

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
MAHIKENG

AND TO: **KRIEK WASSENAAR & VENTER INCORPORATED**
Attorneys for the Applicants
First Floor, Norex House
79 Rauch Avenue
Georgeville
Pretoria
Tel: 012 803 4719
Email: peter@kriekprok.co.za

Ref: P Wassenaar / QB0393

C/O SMIT STANTON INC

29 Warren Street, Mahikeng

Tel: 018 381 0180

Fax: 086 274 6253

Email: litigation1@smitstanton.co.za

Ref: N Neethling

AND TO: **THE STATE ATTORNEY**

Attorney for the First Respondent

Corner Sekame Road & Dr James Moroka Drive

1st Floor, East Gallery

Megacity Complex

Mmbatho

Private Bag x51

Mmabatho

2735

ENQ/: Ms L.L Maleka

Ref: 1483/19/p14

Tel: 018 384 0161/0269

Email: LMaleka@justice.gov.za

AND TO: **MOSIRE TSIANE ATTORNEYS**

Attorneys for the First and Second Respondents

Ground Floor, Stand 85

Afrisport Building

Temba, 0407

Tel: 012 717 7987

Fax: 012 717 8307

Email: mosiretsiane@lantic.net

Ref: KLM3980/019

C/O KGOMO ATTORNEYS

56 Shippard Street
Mafikeng
Tel: 018 381 0495
Fax: 018 381 0496
Email: info@kgomoattorneys.co.za

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH WEST DIVISION, MAHIKENG)

CASE NO: UM169/2019

In the matter between:

	1st Applicant
SAKELIGA NPC	
JACOBUS JOHANNES ROOTMAN	2nd Applicant
JACOBUS PHILIPPUS SNYMAN	3rd Applicant

and

KGETLENGRIVIER LOCAL MUNICIPALITY	1st Respondent
THE MUNICIPAL MANAGER, KGETLENGRIVIER LOCAL MUNICIPALITY	2nd Respondent
IDEALPREPAID	3rd Respondent
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	4th Respondent
THE MINISTER OF FINANCE	5th Respondent
THE MEMBER OF THE EXECUTIVE COMMITTEE FOR LOCAL GOVERNMENT, NORTH WEST PROVINCE	6th Respondent
THE MEMBER OF THE EXECUTIVE COMMITTEE FOR FINANCE IN THE NORTH WEST PROVINCE	7th Respondent

---

THIRD RESPONDENT'S ANSWERING AFFIDAVIT
IN URGENT APPLICATION

2

I, the undersigned,

MEIR GONEN

do hereby state under oath as follows:

1. I am an adult male businessman and the Chief Financial Officer of the third respondent. The third respondent is a private company with limited liability, duly incorporated in terms of the company laws of the Republic of South Africa.

2. The third respondent's principal place of business is at Sandhaven Office Park, 16 Pongola Crescent, Sandton, Johannesburg, 2196.

3. I enclose marked **"A"** a resolution by the board of directors of the third respondent authorising me to oppose this application, and to depose to any documents required for the opposition to this application.

4. The facts set out in this affidavit fall within my own personal knowledge, save where otherwise indicated or it so appears from the context. Where I do not have personal knowledge of facts referred to, I rely upon confirmatory affidavits.

5. The answering affidavit, covering complex facts and a myriad of statutory provisions from many different statutes, involving many people some of who were for many days unavailable as

a result of religious holidays, and dealing with a history of some three years took time to prepare and could not have been finalised earlier. I apologise for duplication; I am advised by counsel that all the facts and law will be presented to the Court in heads of argument in a structured manner eliminating repetition that was necessary to correct the applicants' repeated misrepresentations to this Court.

6. Ms Anna-Marie Thysse, the Project Manager, is a longstanding senior employee of the third respondent and has been involved in the project, including all communications with the Municipality, from inception during 2015. She is fully *au fait* with all the details. I enclose a confirmatory affidavit marked **"B"** from Ms Thysse.

7. I am not legally qualified. Insofar as I make submission of a legal nature, I do so on the advice of the third respondent's attorney and counsel.

8. I am a chartered accountant by profession. I have decades of experience in Project Finance and Service Delivery Projects. I consider myself an expert in this regard, and I am viewed by the industry as an expert. The third respondent is of the same repute.

9. I respond as comprehensively as I can in the permitted and available time period. Any allegation or averment not dealt with is denied.

THE THIRD RESPONDENT

10. The basis of operation of the third respondent is of central importance in this matter. I deal with this upfront, before the transaction in issue is dealt with.

11. The third respondent is a technology, systems, infrastructure and project management provider for a variety of services. It has an existing international and historical footprint for the rendering services in, *inter alia*, South Africa, Canada, Botswana, Namibia, India and Russia. The third respondent is South Africa's leading sub-metering solution provider and installer, offering services and products including electric, water and gas prepaid meters. The third respondent has over 200 000 installed prepaid meters across the country including Johannesburg, Pretoria, Cape Town, Durban, Port Elizabeth, Bloemfontein and smaller towns within South Africa. It also provides services to landlords, banks and vendors such as Choppies, Pick 'n Pay, Engen, Caltex and others.

12. The manner of operation of the third respondent is dealt with in more detail below, but for purposes of electricity, water and gas, the figure on page "**E2**" on page 79 of the founding papers is an adequate simplified demonstration. In terms of the cycle, a consumer buys services in a desired amount at one of very many retailers' point of sale. From there, almost immediately, the utility can be used until the credit is depleted. The funds

5

are collected from the retailer by the third respondent, who settles with the landlord or utility provider, in this case the first respondent. The funds therefore travel from the consumer to the retail outlet (e.g. a Shell garage or a Checkers point of sale) to the third respondent, who pays the first respondent. The third respondent accounts (and has been doing so for three years as at date of issue of this application, and for approximately six years as at date hereof) to the first respondent on a regular basis. Although such accounting and reconciliation is supposed to happen monthly, the third respondent has increased its settlement frequency and often pays advances to the first respondent to enable the first respondent to meet its obligations such as paying its employees. The third respondent has partnered with the national and international entities listed on "**D6**" to the founding affidavit.

13. In response to an adverse comment in a local newspaper based upon incorrect facts, the third respondent issued a press release, the content whereof I have personal knowledge of and hereby confirm. It is a helpful explanation of the involvement of the third respondent in the business of the first respondent [note: square brackets have been inserted for purposes of clarification]:

> *"On the 6th of June [2017] Onze Nuus published an erroneous and false article involving IdealPrepaid*

pertaining to electricity services provided for Koster and Swartruggens. Onze Nuus did not attempt to contact IdealPrepaid for comment prior to publication of the article ...

IdealPrepaid is a technology provider for various services. It provides technology and services to municipalities, landlords, tenants, retailers, banks, ATM providers and others. IdealPrepaid provides metering services to over 95,000 [ninety-five thousand*] installations in South Africa and its technology (in some way or another) impacts millions of citizens on a monthly basis and is not always directly related to electricity.*

...

It is commonly known that most municipalities are in dire straits and cannot efficiently manage electricity usage by residences and consequently maintain their Eskom debt. Koster and Swartruggens are victims from the same epidemic prevalent in South Africa. In March 2016 [the agreement was concluded in September 2015*], IdealPrepaid became involved with the municipality [*of Koster*] with an objective to curb the problems associated with electricity usage. Hence, IdealPrepaid, at its own cost, provided meters, infrastructure and support services to enable the municipality to manage its electricity with an aim of ultimately reducing the debt to Eskom. It quickly became apparent [*as a result of investigations by IdealPrepaid*] that some residents have not paid for electricity for over five years while others had faulty or bypassed meters. The implementation of the IdealPrepaid system allowed Koster and Swartruggens to be at the technological forefront of healing an old Eskom ailment such that payment recovery has increased to more than 300% during the last few months [*this was approximately one year after the commencement in 2016*]. We have to closely monitor a reduction of the Eskom debt and ensure compliance by the municipality because if they don't our entire investment is at risk. ... Residents need to appreciate that we are the biggest advocates for their concerns regarding load shedding or power cuts. We have invested millions to get Koster and Swartruggens out of their problems. We need to make sure that Eskom remains tolerant to the historical debt of the municipality ensuring its reduction and avoidance of any future debt.*

7

...

We have established multiple retail points for residents so as to avoid waiting in cues, we increased the flexibility of payment methods, we added technology for collecting arrears payments, we are bridging the gap for Eskom, we are providing local upliftment and we have extended our call centre to be open 365 days a year until 10 pm for improved customer service. But no matter how hard we try, there are always people that are not satisfied. Perhaps some residents got so used to getting freebies that now they are upset for having to actually pay for services obtained.

Mrs Thysse further highlights the most residents appreciate that our company's success in making the municipality more efficient is also their success. IdealPrepaid is in the same team as all the people living in Koster and Swartruggens, "if we collect payment and ensure it is duly passed on to Eskom we are enhancing municipal efficiency which is better for everyone."

THE APPLICANTS

14. AD PARAGRAPH 2

14.1. I have no knowledge of the incorporation and business of the first applicant as described in paragraphs 2.1 to 2.6, but for purposes hereof, and in the absence of any contrary evidence, do not dispute these paragraphs, save as set out below.

14.2. Similarly, I do not, for purposes hereof, dispute paragraphs 2.7 and 2.8 dealing with the second applicant.

14.3. Similarly, and on the same basis, I do not dispute the description of the third applicant in paragraphs 2.9 and 2.10.

14.4. I have no basis for disputing that the deponent is the Chief Executive Officer of the first applicant.

14.5. I dispute paragraph 1.2. The deponent extensively relies upon unfounded hearsay and speculation. More importantly, nowhere does the deponent even suggest that he is duly authorised to launch this application and depose to the founding affidavit. The applicants will ask, at the hearing of the matter, for the application, as far as the first applicant is concerned, to be dismissed with costs on this basis alone.

14.6. I dispute the *locus standi* of all three applicants for purposes of the Part A **urgent application** and the part B **main application**, in terms of Promotion of Administrative Justice Act, 2000 (*"PAJA"*). I elaborate upon this below, but for present purposes dispute that any *"decision"* as contemplated in PAJA has been made as contemplated in the application, and, secondly, that there has been no *"administrative action … which adversely affects the rights of [any of the applicants] and which has a direct, external legal effect …"*. I deal with other failures, which are, with respect, fatal to the application, in terms of PAJA below.

9

THE RESPONDENTS

15. AD PARAGRAPH 3

15.1. I have no reason to dispute the citation of any of the respondents, and in the absence of any evidence to the contrary, admit the citation of all the parties in paragraphs 3.1 to 3.13.

15.2. I do not make any admissions in regard to submissions of law in these paragraphs.

THE PURPOSE OF THIS APPLICATION

16. AD PARAGRAPH 4

16.1. The purpose of the application is noted. In the urgent application in part A the applicants seek an interim interdict against *"the ... third respondent from requiring customers/ratepayers to make payments for municipal services into the bank accounts of the third respondent and not into the bank account held by the first respondent"*. Firstly, all customers and ratepayers have a choice to make payment for municipal services into a bank account of the third respondent or into a bank account of the first respondent. There is no obligation on any person to make payment for municipal services into the bank accounts of the third respondent. Secondly, no risk whatsoever has been demonstrated by the applicants. The requirements,

10

or lack thereof, for an interim interdict overwhelmingly favours the respondents and for the urgent application to be dismissed with costs. As far as part B of the application is concerned, being the review in terms of PAJA, it is aimed to *"set aside the appointment of the third respondent as a sub-contractor in order to collect monies for the payment of municipal services ... and to collect such payments for payment into the third respondent's own bank accounts"*. As set out in the founding affidavit the relief in part B is aimed at an *"appointment"* or some administrative action during or about September 2019. The applicants dispute that there was any administrative action or decision within the context of PAJA during or about September 2019. The application is, in terms of the express allegations in the founding affidavit, not aimed nor directed at any decision or administrative action during or about 2015 or 2016. The applicants, on their own version, record that they have been investigating this for some time, and that the first applicant anticipates litigation about this in due course.

16.2. Insofar as the applicant deals with the transaction between the first and third respondents during September 2015, and implemented from 2016, it does so purely by way of background, in order to provide background to an instruction from the first respondent during September

2019. Similarly, in terms of the recorded objections in the founding affidavit, the *"record of proceedings"* referred to in the notice of motion (in terms of rule 53(1)(b)) relate to some *"proceedings"* during or about September 2019. This is what the third respondent is dealing with and answering. As elaborated below, there are no such *"proceedings"* within the ambit of PAJA, in the event of PAJA being found to be applicable.

16.3. The applicants do not make out a case for an interdict, nor for a review of any decision.

16.4. The allegations of non-compliance with the principle of legality are disputed. There were no legislative requirements in issue or of application during September 2019 that prohibited an instruction to the third respondent to collect fees (in terms of a longstanding agreement) as per the first respondent's policies.

16.5. The allegations of illegal conduct and failure to comply with procurement legislation, the Constitution, the Local Government Municipal Finance Management Act (*"MFMA"*), the Local Government Municipal Systems Act (*"the Systems Act"*) and the Municipal Supply Chain Management Regulations (*"SCMR"*) are denied. As before, this application, in express terms and in its entirety, is aimed at alleged illegal conduct and a failure to comply

12

with procurement legislation during or about September 2019. All of this is disputed and denied.

THE *LOCUS STANDI* OF THE APPLICANTS

17. AD PARAGRAPH 5

17.1. I admit allegations of fact in paragraphs 5.1 to 5.5, save as set out below. I dispute the first applicant's *locus standi*, *inter alia*, on the basis that no right pertaining to the first applicant or all three applicants has been infringed or threatened.

17.2. The application and relevance of the broad categories of statutes (without specifics as to sections relied upon) by the applicants are disputed. I dispute that the alleged *"broader public interest"* as defined gives the applicants *locus standi*. It bears emphasis that the applicants in this paragraph, and repeatedly later in the founding affidavit, allege unlawfulness and illegality for want of compliance with statutory provisions, but there is no definition, identification or description of any act, decision or conduct on the part of the first respondent at which this is aimed. The applicants cannot sustain an application of this nature with broad, sweeping allegations of illegality, without a precise set of facts to which it applies. It is noteworthy that the applicants have made no attempt whatsoever to obtain clarity from anyone of the first to third respondents as to

13

what the position is and how it came that the third respondent collects fees for services other than electricity. With respect, the application, from inception, is ill-conceived, unprepared and has been launched recklessly. If the applicants had requested the necessary information this application would never have seen the light of day. There is no suggestion whatsoever that anybody who has been visited with a request for information refused to participate. Notwithstanding complete transparency about the transaction from 2015, and *"out of the blue"* the respondents find themselves in unnecessary litigation.

17.3. The third respondent disputes the application of the Promotion of Administrative Justice Act, 2000 (*"PAJA"*). The conduct complained of in the review application does not fall within the ambit of PAJA. The conduct does not constitute administrative action as defined in PAJA.

17.4. Insofar as PAJA, or sections thereof, may be found to be of application (which is not the case), the third respondent disputes any non-compliance.

17.5. Insofar as the applicants seek to rely upon PAJA, they have not complied with the provisions of, *inter alia*, sections 4 to 7. The applicants have not exhausted any domestic remedies provided for in PAJA at all. This includes, *inter alia*, non-compliance with a request for

14

reasons for the administrative action and non-compliance with the provisions of sections 6 and 7. In addition, and insofar as PAJA may be of application, the applicants have failed to comply with section 7 of PAJA.

17.6. I dispute any non-compliance with PAJA, and that it is open to the applicants to proceed in terms of PAJA.

17.7. I dispute that the first applicant has the right to represent *"the broader public interest"*, and that this is sufficient for *locus standi*. The fact that the first applicant has members who conduct businesses within the area of the first respondent, who are customers of the first respondent and who may be affected by decision by the first respondent (insofar as there was a decision, which is disputed) to appoint the third respondent for the collection of non-electricity revenue, does not give the first applicant *locus standi*. The applicants do not even identify the specific right in the Bill of Rights which have allegedly been violated. As before, sections 7 and 8 of the MFMA does not prohibit the collection of revenue for municipal services by the third respondent into its accounts.

17.8. I dispute paragraph 5.3. In particular, the first applicant does not provide any details of the *"various members"* and *"customers of municipal services"* referred to in paragraph

5.3. I also dispute the allegations of any conduct in conflict with sections 7 and 8 of the MFMA.

17.9. I dispute paragraph 5.4. This is not a class action. It is noted with considerable disquiet that the applicants label this as a class action, without even purporting to comply with the stringent and peremptory requirements set out in our law for class actions. The requirements are not even touched upon. It is, with the greatest of respect, a non-starter for the applicants. The first applicant has no right, authority nor any *locus standi* to act *"in the interest of a group or class of persons being customers and/or ratepayers of municipal services in the area of the first respondent"*. The attempt in paragraph 5.4 to turn this application into a class action is, with respect, misguided. Class actions *per se* do not form part of South African common law. Section 38(c) of the Constitution provides that any person can act as a member of a class in approaching a court *"when alleging that a right in the Bill of Rights has been infringed or threatened"*. There are numerous requirements for a class action, none of which have been complied with by the applicants. Firstly, the issue of certification is arguably the most crucial requirement in a class action, since it involves the definition of the class, identification of a common claim or issue, evidence in existence of a valid cause of action, the

suitability of the applicant to represent the members of the class, and satisfying the court that a class action is the most appropriate procedure to adopt for the adjudication of the underlying claims. The applicants do not touch upon any of this. The applicants have not even bothered to apply to court to have the action (or application) certified as a class action. There is no attempt to define the specific class of people. There are no defined boundaries to identify them. The applicants have not established a *prima facie* case that there is an actionable issue. There is no class of people with claims against the first, second or third respondents. And so the list goes on.

17.10. This is only one example from which it can be seen that the application is misguided, ill-conceived and has not been properly researched. Litigation is a last resort for the resolution of disputes. Without any prior enquiries to establish the true facts, the applicants reach out to the courts on something that could have been resolved through the exchange of information.

17.11. I repeat, by way of example, that every customer has the right either to pay for services via the first respondent's bank account, or via the prepaid services of the third respondent. If any customer, such as the second and third applicants, or any member of the first applicant, is

concerned, it is and has always been entirely open to them to pay any and all amounts for these services into a municipal bank account of the first respondent. This fact in itself, I have been advised, is justification for the dismissal of the entire application. Instead the applicants have elected to throw statute after statute at the respondent to work through and identify which sections the applicants may rely upon. The sections listed in the papers simply do not support what the applicants contend. As a first example I again refer to the statement in paragraph 5.3 under reply that payment by customers of the first respondent into bank accounts held by the third respondent is in conflict with sections 7 and 8 of the MFMA. There is no prohibition against payment into the bank accounts of the third respondent in paragraph 7.

17.12. Paragraph 8(2)(d) expressly recognises:

> *"(2) The following monies must be paid in to a municipality's primary bank account:*
>
> (a) ...
>
> *(d) All money **collected** by a municipal entity **or other external mechanism on behalf of the municipality;** and"*

17.13. The section quoted above expressly refers to money collected by an external mechanism. There would be no collection of money by an external mechanism on behalf of

a municipality to be paid into a municipality's bank account, unless it was first collected by the external mechanism. Quite apart from contractual provisions, an external mechanism is an independent contractor. The third respondent has been collecting money for and on behalf of the first respondent with huge success, monies which have for the last three years (as at date of issue of this application, and for approximately six years as at date hereof) been diligently and with precision paid across to the first respondent. Every one of the applicants have benefitted from this. The main beneficiary was the first applicant, and secondary, all its customers.

17.14. This statute expressly recognises collection of funds on behalf of a municipality by an external mechanism. There are very many other examples through the Acts.

17.15. As another example I refer to section 64(2)(h) of the MFMA:

> *"64.* ***Revenue management***
>
> *(1)* ...
>
> *(2) The accounting officer must for the purposes of sub-section (1) take all reasonable steps to ensure –*
>
> *(a)* ...
>
> *(h) that all revenue received by the municipality,* ***including revenue received by any collecting agent on***

19

> ***its behalf**, is reconciled at least on a weekly basis."*

17.16. Section 64(2)(h) expressly refers to revenue received by any collecting agent. There is, with respect, no other construction than that this section explicitly refers to an instance where revenue has been received by a collection agent. It makes perfect sense and is in line with all statutory provisions that there be material and express control, reconciliation and other financial provisions in place to protect the interests of a municipality where a collecting agent received money on behalf of the municipality. That is the case in this matter, but equally important is the unblemished history of the arrangements between the parties. The third respondent, with the greatest of respect, is not a proverbial *"fly by night"*; it employs senior engineers, project managers and chartered accountants worldwide to ensure the proper and appropriate handling of funds. This is what the third respondent is exceptionally good at. Even if all else fails as far as the urgent application is concerned, the requirement of a *"well-grounded apprehension of irreparable harm"* cannot be sustained. There are no facts in place that could, in any way, support potential harm to the first respondent.

20

17.17. Regarding paragraph 5.5, it is noted that the second and third applicants are ratepayers and customers of the services of the first respondent *"and bring this application in their own interest"*. They have no right to litigate on behalf of the first respondent. The same applies to the first applicant. If the second and third applicants have their own interests in mind, they will soon see that the involvement of the third respondent is what keeps the first respondent on its feet and functioning at present. They more likely have an interest *"in the maintenance of the current situation"* where the third respondent is, and has been for three years, assisting the first respondent to get back on its feet and are collecting arrears due to it. The only arrears that have been collected are those collected by the third respondent in terms of the instruction referred to below.

RELEVANCE, STATUTORY AND CONSTITUTIONAL PROVISIONS

18. AD PARAGRAPH 6

18.1. The applicants have elected to list broad categories of statutes, lists of sections of statutes and references to regulations, none of which supports an interdict against any of the respondents, or a so-called *"review"* in terms of PAJA. The third respondent operates in terms of an instruction from the first respondent pursuant to an

existing, three-year old agreement, which has three years to run. That agreement is not the subject matter of this application.

18.2. In paragraph 6.1 the applicants remarkably record that the statutory and constitutional provisions are not exhaustive. Until such time as the applicant presents further statutes, sections of statutes and regulations the third respondent will only deal with what has been listed in the founding papers.

18.3. Should the matter proceed, the third respondent similarly will have the right to deliver a supplementary founding affidavit once the record and reasons have been produced in terms of rule 53 of the Uniform Rules of Court.

18.4. In paragraph 6.2 the applicants rely upon section 217 of the Constitution. This section requires, in the procurement of goods or services, a system *"which is fair and equitable, transparent, competitive and cost effective"*. In the subject matter of this application there was no procurement of goods or services as contemplated in section 217 of the Constitution. The third respondent merely adjusted the parameters of collection to meet the debt policies of the first respondent.

18.5. The allegations by the applicants in regard to non-compliance are replete with argumentative, hearsay

and repetitive matter. This has served to obfuscate the true issues between the parties and has compounded the difficulty in determining any real points the applicant may have. By way of example, the reference to a class action, sections 7 and 8 of the MFMA, section 38(a) of the Constitution and PAJA, none of which are relevant, all serve to cast a net of statutory provisions in the hope that the applicants may be good on one or more of them. This type of litigation, proverbially referred to as a "shotgun" approach, has been severely censored by our courts over the years.

18.6. It is trite that in motion proceedings an affidavit serves not only to place evidence before the court, but also to define the issues between the parties. Once the issues are identified the affidavit must set out the admissible evidence upon which the applicant will rely to discharge the onus resting on it. In the present application the argumentative matter overshadows the absence of evidential matter omitted by the applicant to support its case. The third respondent has merely embarked on additional collections in terms of an express request from the Municipality. The third respondent has no input nor any responsibility in regard to prices and fees, or interest in regard to arrears. All of these instructions for the collection by the third respondent come from the first respondent.

18.7. The allegations of non-compliance with statutory provisions are repeated so frequently in anticipation that it would eventually assume the nature of evidence. It remains however what it is – argumentative matter with no evidence at all.

18.8. The applicants are not impecunious unrepresented litigants who are about to suffer any loss or damages.

18.9. The third respondent admits the paraphrasing by the applicants of all the statutory provisions referred to insofar as the statutory provisions, read in context and properly interpreted, have been correctly articulated. Save as aforesaid all the paragraphs are denied.

18.10. The applicants quote selectively from the provisions of sections 76 to 81 of the Systems Act. Section 76(b) expressly provides for municipal services to be rendered through an external mechanism by entering into a service level agreement with an organisation, institution, entity or person legally competent to operate a business activity. In terms of the definitions of the Systems Act, an external mechanism equates to an external service provider. Section 76 provides for the occasions when municipalities are to review and make decisions on external mechanisms.

18.11. Section 78 specifies the criteria and the process for deciding on mechanisms to provide municipal services. This includes the assessment of costs and *"it may take into account any developing trends in the sustainable provision of municipal services generally"*. The fact that, at any time during or about September 2019, no decision or administrative action was entered into by the Municipality is fortified by the fact that no new, alternative or additional agreement for fees or compensation for the third respondent was entered into. The instructions pursuant to the existing framework which has been in place for three years were simply followed on the exact basis as set out in the 2015 agreement. In terms of section 78(2), after the assessment, the municipality is permitted *"before it takes a decision on an appropriate mechanism, to explore the possibility of providing the service through an external mechanism mentioned in section 76(b)"*. Section 78(3) provides for a process to be completed including notice to the local community, the assessment of different service delivery options and the commissioning of a feasibility study. Once the process has been completed, the municipality could decide either from an appropriate internal mechanism, or an external mechanism. None of this is of application.

18.12. It is not clear why the applicants refer to section 79 since it only deals with internal mechanisms. In this manner the applicants have repeatedly relied upon extensive statutory provisions which either do not support the submissions in the founding affidavit, or are entirely irrelevant. Section 80 deals specifically with external mechanisms.

18.13. Section 80(1)(b) specifically provides for service delivery agreements with external institutions, entities, persons and juristic or natural persons.

18.14. Section 81 provides for the responsibility of municipalities through service delivery agreements with external mechanisms. Section 81(2)(a)(vi) provides as follows:

> *"(2) A municipality, through a service delivery agreement –*
>
> ***(a) may assign to a service provider responsibility for ...***
>
> *(vi)* ***the collection of service fees for its own account from users of services in accordance with the municipal council's tariff policy*** *in accordance with the credit control measures established in terms of chapter 9;"*

18.15. This section fortifies "the collection of service fees for its own account" by external service providers from the

customers of a municipality. This is not new. Nor has any such decisions or a service provider been appointed in September 2019. I specifically emphasise the reference to *"the municipal council's tariff policy in accordance with the credit control measures"*. The third respondent merely received an instruction in regard to collections from the first respondent.

18.16. This section correlates with section 64 of the MFMA that provides as follows:

> *"(1) The accounting officer of a municipality is responsible for the management of the revenue of the municipality.*
>
> *(2) The accounting officer must for the purposes of sub-section (1) take all reasonable steps to ensure –*
>
> *(h) that all revenue received by the municipality, **including revenue received by any collecting agent on its behalf,** is reconciled at least on a weekly basis."*

18.17. In paragraph 6.9 the applicants, correctly, refer to, and seemingly accept, that external mechanisms can collect money on behalf of a municipality. This much is evident, not only from section 8(1), but from all the other sections quoted above.

18.18. Save as aforesaid, any other statements or submissions are denied.

27

THE FACTS

19. AD PARAGRAPH 7

19.1. Paragraph 7 is largely based upon speculation by the applicant. Facts are not presented with specific detail, and obfuscating terminology is employed. I only deal with those facts or submissions which are disputed.

19.2. It is disputed that the formulation was *"recently in the third week of September 2019"* brought to the attention of the first applicant. No details have been provided, ie whether it was through a telephone call, by fax or by email. What makes this more suspicious is that the notice relied upon is dated 11 September 2019. The application was launched more than three weeks later, on 2 October 2019, and served on the third respondent on 4th of October 2018. I can state with confidence that all three applicants have known of the third respondent's appointment as an external mechanism or external supervisor since at the very least 2016. Consequently, in view of a three-year lapse, and apart from anything else, they are years out of time for any review in terms of section 7 of PAJA. In fact, the applicants do not even seek condonation. From this it can with confidence be inferred that that which the applicants complain about, must have happened recently, and the only identifiable aspect from the founding affidavit

28

is an instruction from the first respondent in terms of the September 2015 agreement. That, as I have submitted, does not fall within the realm of PAJA. In addition, the response to the newspaper article was published in the local newspaper. Ms Thysse has personal knowledge from meetings in Koster that the Koster community has been aware for years of the efforts of the third respondent. In this regard I also refer to the confirmatory affidavit by the project manager, Ms Ann-Marie Thysse, who regularly drives to Koster and is fully familiar with the community, their views, their knowledge of the activities of the third respondent and her visits to the offices of the third respondent in Koster. The knowledge above of the involvement of the third respondent includes all three applicants. The application remarkably coincides with the collection of arrears by the first respondent.

19.3. I enclose marked "**C**" a recent letter from the third respondent, and the Applicants reply marked "**D**". "**D**" is incorporated herein by reference and forms part of this affidavit. I specifically draw the above Honourable Court's attention to this annexure.

19.4. Towards the foot of paragraph 7.1 the applicants concede that ratepayers were advised *"that the*

29

municipality has subcontracted Ideal Prepaid (Pty) Ltd ... to handle all matters relating to your utility billing".

19.5. The legal framework of the transaction between the first respondent and the third respondent concluded in September 2015 is dealt with below under a separate heading called THE LEGAL FRAMEWORK FOR THE PUBLIC – PRIVATE PARTNERSHIP AGREEMENT. Neither the first respondent nor the third respondent has concluded any sub-contract relating to utility billing. There was no such a contract. It was an extension of services within an existing framework.

19.6. The applicants' have for three years known of the September 2015 agreement.

19.7. The five separate bank accounts are bank accounts in the name of the third respondent. The third respondent has been collecting fees into its own bank accounts on behalf of the first respondent for three years.

19.8. I deal with annexure "**E**" below. In the application in part A for urgent relief the only issue raised by the applicants is that funds are paid into bank accounts of the third respondent. The third respondent is, as referred to in the various statutes, a collecting agent, external mechanism or external service provider for the first respondent, who collects funds for the first respondent and has been doing

30

so since 2016. The third respondent has been doing so in terms of an agreement, the details whereof are set out below. The third respondent has never once defaulted on any payment to the Municipality. In generic terms, the third respondent collect fees for services from ratepayers and after deduction of its own fees and financing costs, the balance is paid at a periodic frequency to the first respondent and is often advanced prior to the due date to the first respondent to aid them in meeting their other financial obligations.

19.9. The third respondent is a subsidiary of Holistic Technologies (Pty) Ltd ("Holistic"). The substantial investments in technology, systems and the platform used for the prepaid metering type of operations are owned by Holistic. In terms of intercompany arrangements, the third respondent has a *"licence"* to use and employ these technologies in South Africa. Holistic makes this available to other subsidiaries across the world. The third respondent, as far as South Africa is concerned, can be considered as a *"special purpose vehicle"* for the utilisation of the investment in systems and technologies by the mother company, Holistic. The reason why I bring this to the attention of the above Honourable Court is that the third respondent is not, by any means, a *"once-off"* operation. It is a successful subsidiary of a large

international network of companies. By way of example, a sister company of the third respondent, IdealPrepaid Botswana (Pty) Ltd, has been successfully operating in Botswana for six years (as at date of issue of this application and ten years to date) and has just won a renewal tender for prepaid collection for BPC (Botswana Power Corporation), which the Botswana equivalent of Eskom. This company is processing over 50% of electricity operations in Botswana. The turnover is in excess of 80 million Pula per month. This is approximately R 110 million per month. The third respondent manages in excess of 100 000 prepaid meters in South Africa. It brings the ownership and reputation of the third respondent to the attention of the above Honourable Court (i) to demonstrate its extraordinarily successful record with no financial failure and, (ii) that it is a company in a group with a highly successful record in Southern Africa.

19.10. Again, the collections of fees for services and electricity referred to in this paragraph fall squarely within the transaction concluded between the first applicant and the third applicant during 2016. There is no new, other or different agreement. It is a further implementation of the exact same agreement that has been extremely successful and beneficial for the municipality. The consequences of any termination for whatever reason of the services of the

32

third respondent would cause the financial collapse of the first respondent with disastrous consequences to all its residents. It will, by way of example, from the very next month not be able to pay its employees' salaries, nor will it be able to maintain any other services.

19.11. There is, however, another agenda that may well be the motivation for this application. The third respondent is actively and with substantial success collecting arrears from ratepayers. In this regard the third respondent acts entirely within the framework of the transaction, on the instructions of the first respondent. Any interruption of the services of the third respondent will significantly interrupt the collection of arrears from ratepayers. In fact, it is only through the transaction of September 2015 with the third respondent and the efforts of the third respondent, who is a specialist in this, that the first respondent has been able, from September 2019 to collect arrear rates and taxes. The collection of funds complained of by the applicants are, in the bigger scheme of the overall transaction, minimal. In September 2019, within a single month, a total of approximately R86,000.00 was collected in due arrears from residents. These funds collected were punctually paid across to the municipality. The third respondent would have been able to collect R 3 million in due arrears from residents. There are no large or significant amounts of

33

money in a bank account of the third respondent that are due to the first respondent. I emphasise that at least on a monthly basis, but more commonly on a weekly basis the third respondent accounts to and pays to the first respondent the full amount that is collected. The third respondent, on a regular basis, assists the first respondent with advanced payments over and above the terms of the 2015 agreement. We have in the past also advanced payments in lieu of negotiated terms with Eskom so as to help the first respondent in maintaining its integrity and relationship with Eskom. An example of this was on Monday 21 October 2019, while we were busy preparing this affidavit. On this day, and at the request of the first respondent, the third respondent paid to the first respondent an amount of approximately R1,6 million in advance of 7 November 2019. The reason for this is that the first respondent requested an advance payment from the third respondent, who immediately obliged, failing which the Municipality would not have been able to pay its salaries at the end of October 2019. I enclose marked **"F"** the correspondence exchanged in this regard. This happens on many occasions, almost monthly, where the first respondent requests either advanced payments, or payments over and above that which would be due on the 7th of the next month. The third respondent has always

obliged. The third respondent has for the last three years (six years to date hereof) been collecting fees and other charges for and on behalf of the first respondent as an external mechanism through a service provider agreement. There has never been any complaint nor any risk.

19.12. The urgent application is, with the greatest of respect, entirely misconceived. Should the services of the third respondent be interrupted, the first respondent will lose all the arrears to be collected by the third respondent in terms of the transaction.

19.13. I reject the impression created that funds are unlawfully or illegally in bank accounts of the third respondent without monthly accounting and transfers to the municipality.

19.14. Up until August 2019 the third respondent has been collecting fees for electricity from ratepayers of the first respondent. Until July 2019, the first respondent has been collecting rates for other services, but this collection service was passed on, in terms of the instruction, to the third respondent in addition to the collection of fees for electricity. Even if the first respondent reverts to issuing invoices itself, it will, as history has demonstrated, not collect any arrears.

19.15. The applicant contends that *"the arrangement with the third respondent subverts [the provisions of section 102 of*

the Systems Act] regarding the rights of customers or ratepayers to raise disputes with regard to accounts". This is incorrect on any basis. Section 102 of the Systems Act specifically provides for the consolidation of separate accounts of persons liable for payments to the municipality. This includes all payments of any nature. The consolidation of accounts in terms of section 102(1)(a) is subject to section 102(2) namely that it does not apply where there is a dispute between a municipality and the person referred to in that subsection concerning any specific amount claimed by a municipality from that person. These provisions apply and any consolidation is and remains subject to any dispute raised by any taxpayer. This is, in any event, not the business of the third respondent. The third respondent merely collects fees. Any disputes between ratepayers and the first respondent do not involve the third respondent, save insofar as the third respondent collects at all times subject to instructions from the first respondent. The third respondent only becomes involved on terms given to it by the first respondent, namely to allocate 30% of any payments towards outstanding debts, and 70% towards electricity. The dispute remains between the customer and the first respondent. It is not a dispute in which the third respondent is involved as a party. The third respondent in

this regard merely, almost mechanically, follows the instructions of the first respondent. This includes any negotiations or agreements arrived at between the first respondent and the customer.

19.16. I dispute paragraph 7.10. The additional collection from September 2019 falls squarely within the provisions of the transaction between the first and third respondents. There was no need for any notification or negotiation or involvement of ratepayers and customers of the first respondent. It is a continuation of the same transaction that was concluded in 2016. The *"collection of all revenue derived from municipal services"* was three years prior to date of issue of this application (six years to date hereof) *"delegated"* or *"subcontracted"*, to the third respondent. It has for three years (six years to date hereof) been paid into the bank accounts of the third respondent and monthly paid to the bank accounts of the first respondent. The only conceivable objection to this manifestly successful arrangement could be that arrears are being collected from ratepayers and customers of municipal services.

19.17. I dispute paragraph 7.12. It is not true that the municipality *"has lost control over the management of its finances and its bank account"*. The third respondent, in terms of the 2015 transaction, accounts monthly to the first

respondent. The third respondent attends all Auditor-General meetings, provides requests for additional information to the Auditor-General team, attends NERSA (National Energy Regulator of South Africa) meetings and responds to any other request for information from the Municipality.

19.18. In addition, there is complete transparency in that the first respondent has total access to the collection transactions by the third respondent; in this regard the first respondent's employees can log onto the platform and monitor each and every collection by the third respondent. They can draw reports in this regard. In our experience this never happens, but I wish to emphasise that it is available, as we have agreed in 2015. The municipality has full control over the management of its finances and its bank accounts. It is false to suggest that it is *"unclear"* what fees are levied by the third respondent for purposes of this service delivery. It is all set out with complete particularity in annexure "K". The parameters of the financing are articulated in "K" to the last cent. This is in any event not the subject matter of the application, and an addition to create a negative atmosphere.

19.19. The main thrust of the applicant's complaint, as far as the urgent application is concerned, is articulated by the applicant itself as follows:

> *"Irrespective of any manner in which their services were procured, which procurement for reasons that will be elaborated later on, appears to be irregular itself,* ***it is highly irregular that such monies are to be paid into the bank accounts of the service provider directly."***

19.20. The latter statement (emphasised) is disingenuous. The collection of fees into its own bank accounts by external service providers are specifically provided for in the statutes. There is nothing irregular about this.

19.21. As far as the former statement regarding the alleged irregularity of the payments is concerned, any such irregularity is disputed.

19.22. The applicants do not demonstrate any of the requirements for an interim interdict, namely a *prima facie* right, a well-grounded apprehension of irreparable harm, the balance of convenience and no other satisfactory remedy.

19.23. In fact, apart from the merits, the first respondent will suffer irreparable harm if the service provided by the third respondent is interrupted in any way.

19.24. Secondly, on any basis, the balance of convenience favours the current arrangement. It will have serious

consequences for the first respondent if the services rendered by the third respondent is interrupted.

19.25. The first respondent is simply not at risk. The first respondent has been unsuccessful in collecting fees for services for years from ratepayers and other customers. It is because of the success of the third respondent over the past three years (six years to date hereof) that the first respondent requested the third respondent, within the express provisions of the framework of the 2015 transaction, to collect other service fees as well, and in particular the arrears.

19.26. In paragraph 7.13 the applicants referred to an investigation into the legalities of other *"interrelated agreements"*. The applicants have misconstrued the entire situation. The third respondent is currently acting in terms of the agreement of September 2015, which the applicants are *"investigating"*. There are no other agreements. Paragraphs 7.14 to 7.17 relate to the 2015 transaction between the first and third respondent. It is not limited to services and the collection of revenue for electricity. The applicants concede *"since the prepaid meter system has been rolled out to customers in the area of the first respondent during 2016, the third respondent has managed on behalf of the first respondent the prepaid*

payments ***and collection of revenue of electricity*** *at the charges and fees as set out in the agreement ...".*

19.27. The three applicants have for three years not had any difficulty with the collection by the third respondent of electricity fees into its own bank accounts, paid monthly to the first respondent, but now that arrears are being collected it suddenly has become urgent. There is no difference between this service, and the collection of fees for other services. The first respondent is performing the exact same service it has performed for the last three years (six years to date hereof) , and on the exact same basis. The successful history of the transaction over the last three years (six years to date hereof) is proof of the fact that there is no basis for any urgent or interim relief or interference with the transaction. The first respondent and the applicants only benefit from the services rendered by the third respondent.

19.28. It is incorrect for the applicants to contend that the September 2015 agreement has no relationship with the current services.

19.29. In paragraph 7.18 to 7.21 the applicants embark on a character assassination of the third respondent, and the transaction between the first and third respondents. It bears emphasis to consider the factual basis for these

contentions. It is pure speculation on the part of the applicants as is demonstrated by their own language ***"it does appear"***, ***"that in some manner, which remains a mystery"***, that the third respondent was appointed ***"probably as a result of its previous involvement"***, ***"most probably the provisions of section 76 to 80 of the Systems Act were not complied with"***, there was no bidding process ***"as far as can be ascertained"***. I dispute any allegation of illegality or unlawfulness in these paragraphs. The events and instruction of September 2019 was squarely in terms of the September 2015 agreement. The applicants, on their own version, do not seek to attack the transaction of September 2015 in terms whereof the third respondent currently renders the services:

> *"7.21 However, I do not wish to elaborate further on this aspect, as has already been mentioned as the investigation of the first applicant has not been completed."*

19.30. It is incorrect, as contended in paragraph 7.22, that the 2015 transaction does not cover the collection of other revenue in respect of which notices were now received by customers.

19.31. The first and third respondents have complied with all statutory obligations in 2015/2016, but that is not before

42

this Court. The founding papers expressly exclude this. Any suggestion to the contrary is disputed. The third respondent have also not had access to any first respondent documentation in this regard.

19.32. Paragraph 7.25 is hearsay in its entirety. The applicant relied upon what it has established ***"through its members in the area"*** and ***"the ratepayers association"***. This paragraph should be struck from the record, and is disputed.

19.33. Paragraph 7.26 is a further demonstration why the urgent application should fail. The sole contention by the applicant in support of the urgent application is the passage emphasised below:

> *"7.26 But even when one assumes for the moment that the conclusion of the agreement with the third respondent was regular for the purposes of the collection of also other revenue over and above the existing agreement pertaining to electricity and the prepaid meter system,* ***it is highly irregular and impermissible for the third respondent and second respondent to allow that revenue be paid into the bank accounts held by the third respondent instead of the bank account of the first respondent.***"

19.34. I again refer the above Honourable Court to the statutory provisions permitting the collection of fees and other revenue into the bank account of a third party service provider. I also, again, emphasise the strict oversight and

regulation of the activities of the third respondent by the first respondent. This includes the punctual transfer of funds on a regular basis to the first respondent.

19.35. The above Honourable Court is referred to the first respondent's CREDIT AND DEBT COLLECTION POLICY. In this document the instruction to the third respondent is expressly recorded, namely that the Municipality will apply the first 30% of every payment towards unpaid and overdue arrears. This policy may be adjusted at the discretion of the municipality. It bears emphasis that this is the policy adopted by the first respondent. It is pursuant to this policy that the third respondent has been requested to implement it. The application of 30% of all payments via the third respondent is not at the instance of the third respondent; it is pursuant to an instruction from the first respondent to implement its own policy. I again refer to the recent correspondence enclosed marked "**E**".

19.36. I admit paragraphs 7.31 to 7.44, insofar as the report of the Auditor-General (*"M"*) have been correctly paraphrased or quoted.

19.37. Save as aforesaid, these paragraphs are denied.

19.38. The applicants make an incredible conclusion in paragraph 7.45. The dismal track record of the first respondent is the very reason why it contracted the third

respondent in September 2015. There is no basis for any inferences regarding this transaction, from the general sad state of affairs of the first respondent. The suggestions by the applicants that *"this is hardly surprising"* and *"it appears"* that the third respondent's transaction falls into the same category as other unlawful transactions mentioned in the Auditor-General's report is rejected.

19.39. The applicants, again, squarely focus on the one and only issue in the urgent application, in paragraph 7.46:

> *"7.46 Over and above it is unlawful and irregular to permit any external service provider to receive monies into its own bank accounts instead of monies being paid by customers directly into the bank accounts of the municipality or into its primary bank account."*

19.40. I again refer to the many statutory provisions that permit payment of fees and levies into the third respondent's bank account, as a service provider. I have explained why the municipality is not at risk in this regard.

19.41. In any event, all the members of the first applicant and the second and third applicants can pay all their fees by choice into the first respondent's account.

THE FACTUAL BASIS AND LEGAL FRAMEWORK FOR THE TRANSACTION BETWEEN THE FIRST AND THIRD RESPONDENTS

20. It is almost impossible for a municipality in the position of the first respondent to raise finance through a bank or other financier for any project. This problem is not specific to South Africa; it is a worldwide phenomenon. This led to the development of a number of Project Finance structures, as an alternative to financing via loans, equity, bonds or syndicated lending. In a typical Project Finance transaction, such as the transaction between the first and third respondents, the contractor and financier, which in this case is the third respondent, cannot rely upon any undertaking from the municipality, for reasons set out in the report by the Auditor-General. No financial institution will lend money to the municipality. There is simply no security available from the municipality to provide financial backing for a project by the municipality. The form of Project Finance employed by the first and third respondents is a Public Private Partnership. It is the only way in which entities, who are in dire financial straits, such as the first respondent, can obtain finance. One definition of project finance is the following:

> *"... The raising of funds to finance an economically separable capital investment project* ***in which the providers of the funds look primarily to the cash flow from the project as the source of funds to service their loans ..."***

21. Project Financing in the form of a Public Private Partnership is not the granting of credit to a borrower with an established track record. It is to finance a specific commercial venture.

46

The project could be as simple as the purchase and operation of a ship or an aircraft. Or it can be a massive industrial and engineering undertaking.

22. The core element of Project Finance of this nature is to provide funding for a particular economic unit in which a lender is satisfied to look to the cash flows and earnings of that economic unit as the source of funds from which a loan would be repaid and additional services paid for.

23. Accordingly, lenders will not assess the risk that the borrower may fail to repay the loan on the primary basis of the financial stability and soundness of the borrower. Their lending decision will be primarily based on the ability of the project to generate sufficient revenues to repay the loan and yield adequate profits for the sponsors of the project.

24. In the financing of a long term infrastructure or public services project, there is either no recourse or limited recourse to the government or municipality, and the project debt used to finance the project is paid back from the cash flow generated by the project. The only basis upon which a financier or contractor will expose itself by the investment of substantial amounts of money is through a guaranteed collection of cash flow from the project. This guarantee could take many forms, such as licences to permit specific activities. In this matter the basis upon which the third respondent invested substantial

47

capital and financed the project for an extended period of six years. The duration was extended in favour of the Municipality so as to reduce any financial strain or burden. The third respondent had no security other than through the collection of the future cash flow of the contract.

25. Traditionally, a Public Private Partnership refers to any alliance between public bodies, local authorities or central governments, and private entities. It could take on many forms and shapes. In the current instance there is no partnership agreement. The first and third respondents concluded *an agreement* which forms the basis of the *"public private partnership"*. Typically, the public sector would specify a level of service in return for a unitary charge. Public Private Partnerships allow governments and municipal authorities to take advantage of public sector funding and expertise for investment programmes. Because the financier and the contractor, in this case the third respondent, has limited or no recourse for the repayment and servicing of the funding, it is entirely dependent upon the revenues generated by the project. The financing is not based upon any assessment of the creditworthiness of the other contracting party, i.e. the first respondent. The only *"guarantee"* and means of repayment to the third respondent is the collection of fee income from the project. This normally involves a concession by a public authority to a private contractor to operate a facility for the

benefit of the public. The private contractor collects fees from the customers of the service which are the fees due and payable to the public authority. In terms of the transaction the private contractor deducts his own financing and operational fees, and the balance, typically 75% to 85%, is paid to the public authority. This avoids any reliance upon the financial position of the public authority, the first respondent in this instance. The primary assessment by the private contractor, in this instance the third respondent, is the viability of the project to deliver cash flow returns, as opposed to the balance sheet of the first respondent.

26. The third respondent is an expert in electricity, water, and gas meters and any other type of prepaid meters. It is currently the leading sub-metering installation and revenue collector in South Africa. The applicant has installed meters including electricity and water sub-meters and other forms of prepaid meters in Johannesburg, Pretoria, Cape Town, Durban, Port Elizabeth, East London, Bloemfontein and elsewhere. The meters and collection of fees by the third respondent provides a solution to the rendering of these services, and the collection of fees, to local governments and private landlords. These types of services rendered by the third respondent are used by landlords, municipalities and property managers. The services rendered by the third respondent include the resolution of billing problems and auditing disputes. The system is

explained on "**E2**" of the founding papers. The customer buys services in a desired amount at a retailer point of sale, such as, by way of example, a Shell service station. Tenants can easily recharge their prepaid analogue or smart meter at thousands of locations such as Shell, Caltex, Pick 'n Pay, BP and Sasol petrol stations. From there, through the systems of the third respondent, a message is communicated to the third respondent to generate a token for the respective meter based on a given tariff. At the same time the third respondent collects the funds from the retailer after a small fee is charged by the retailer (*"the vending fee"*.). In return for his payment at the retailer point of sale, the customer gets a receipt with a numeric code on it. In older STS meters the customer punches the code into its meter and through the systems of the third respondent, the meter is instantaneously loaded with credit for whatever service such as gas, water or electricity. The specific utility could then be used until the credit is depleted. In the case of the first respondent all the meters are the latest state-of-the-art "smart meters" where the credit is instantaneously loaded once payment is made at a retailer. Fundamental to the transaction is the collection of the funds by the third respondent, as the contractor/financier, from the retailer point of sale, and, secondly, the prompt settlement to the municipality by the transfer of the funds. There are various other ways to implement the system set out on the remainder

of "**E**" to the founding papers. The primary basis is the collection of the fees by the third respondent from the retail outlet, and the payment of the funds by the third respondent across to the first respondent. The third respondent has *"partnered"* with many nationwide service providers.

27. The financial terms of the contract between the first and third respondents are set out on page 90. It is not an issue in this matter. Paragraph 2.1 on page 90 records that:

> *"The company is involved in procuring utility meters and providing **related revenue management services** in South Africa."*

28. In paragraph 2.3 the first respondent acknowledges the significant investment made by the third respondent. In paragraph 2.5:

> *"The parties acknowledge that the prime objective of the municipality is to become more effective in collecting its revenue and shall, as far as permitting in terms of the provisions herein, maintain their cooperation in the spirit of proficiency in revenue management as a prime objective".*

29. These provisions are not in any way limited to the collection of fees for electricity. It covers any form of revenue collection and revenue management service. In terms of clause 4.1.5.1 the duration of the contract is for a minimum of six years. It still had three years to run. The settlement terms for payment by the third respondent of fees to the third respondent is contained in clause 6. In terms of clause 6.8 the first

51

respondent is entitled to withhold credit due to the municipality should its account not be up to date. The third respondent is entitled to set off on all monies collected by it. This is the very basis upon which the third respondent was prepared to finance the project.

30. The conditions precedent in clause 9 at page 94 provides for the finance fees to be offset from the funds collected by the third respondent prior to the release of such funds to the first respondent. The third respondent has the express contractual right to collect fees, obtain payment through a deduction from such fees, and the obligation to pay the balance across to the first respondent. In terms of clause 9 the third respondent *"shall at all times remain the sole and exclusive payment gateway for the respective utility payments and prepaid provider as contemplated herein"*. Again, there is no limitation to the collection of fees to electricity, or for that matter any other service. Page 100 provides the term of the financing agreed to by the third respondent. The capital outlay was too much to be financed by the third respondent itself. In terms of the transaction the third respondent is obliged to provide the finance, and it was up to the third respondent to procure the finance itself or elsewhere. Page 106 provides for a contemplated financed amount of approximately R30 million over six years. The basic day to day role of the third respondent is summarised on page 113. It is not in any way

52

limited to the collection of fees for the supply of electricity. Page 118 is an example of an equipment rental agreement between the first and third respondents.

31. The above Honourable Court is referred to paragraph 7.1 at page 25 of the founding papers. In support of urgency the applicants refer to a Mr Carel van Heerden. According to the applicants the collection by the third respondent into its account became known to Van Heerden *"since approximately the second week of September 2019".* Van Heerden has known of the collection of funds by the third respondent for and on behalf of the first respondent for three years. During September 2019 an attorney named Peens, representing Van Heerden and other members of the Ratepayers Association addressed a letter to the third respondent. A copy of the letter is enclosed marked **"G"**. In this letter Peens, on behalf of Van Heerden and others, *requested that the third respondent, instead of paying fees collected into its own bank accounts on behalf of the Municipality paying those funds to the Municipality, make payment directly to Eskom.* Any suggestion on the part of the applicants including Van Heerden that it only recently came to their knowledge or attention that the third respondent is collecting monies on behalf of the first respondent into its own account, is patently false. In response the first respondent wrote a letter dated 4 October 2019. A

53

copy is enclosed marked **"G"**. A copy of the third respondent's reply is enclosed marked **"H"**.

GROUNDS OF REVIEW IN TERMS OF PAJA

32. AD PARAGRAPH 8

32.1. The relief sought in part B of the application is expressly brought on a PAJA basis. The administrative action sought to be reviewed is some undefined conduct during September 2019, not constituting administrative action. The third respondent disputes that any decision or conduct that could possibly constitute administrative action took place during or about September 2019.

32.2. The applicants approach the Court on a speculative basis: *"... The decisions to procure the services of the third respondent for purposes of the collection of revenue other than electricity* ***appears to be irregular and unlawful;"***. The decision to procure the services of the third respondent was taken four years ago in September 2015. The applicants are clear that this is still being investigated and does not form the subject matter of this application.

32.3. It is not clear from paragraph 8 what *"the decisions to procure the services of the third respondent"* are. Decisions were made to appoint the third respondent in September 2015 as an external agent for the collection of

54

revenue. Subsequent to that the first respondent, on numerous occasions, liaised and requested services from the third respondent within the ambit of the 2015 agreement.

32.4. It is submitted:

32.4.1. that the further implementation in 2019 of the 2015 agreement are not *"decisions"* as contemplated in PAJA;

32.4.2. such decisions do not constitute *"administrative action"* as contemplated in PAJA;

32.4.3. even if it constitutes *"administrative action"* as contemplated in section 33 of the Constitution, PAJA is not available to the applicants in that any such decisions constitute *"executive powers or functions of a municipal council"* as contemplated in section 1(cc) of PAJA;

32.4.4. do not adversely affect the rights of any person as contemplated in section 1 of PAJA;

32.4.5. the application should not be entertained in that no internal remedies as contemplated in section 7(2)(a) have been initiated nor exhausted;

55

32.4.6. the application should not be entertained insofar as any decision relating to the 2015 agreement is concerned, for non-compliance with and in the absence of an application for condonation should PAJA be of application.

32.5. The third respondent will, once the provisions of rule 53 have been complied with, have to supplement.

32.6. Paragraph 8.1.2 refers to (i) the appointment of the third respondent as an external service provider in the first instance and (ii) a decision to require customers/ratepayers to pay revenue collected from the rendering of municipal services into any other bank account other than the bank accounts of the municipality. The objections to the application of PAJA above apply to both *"sets of decisions"* save for the fact that if any reviewable *"decision"* was taken that falls within the ambit of PAJA, the procedural objection in section 7(1) would not apply to any such decisions taken in September 2019.

32.7. The submission in paragraph 8.1.3 is denied based upon the above. The applicants do not even attempt to make out a case for condonation in terms of section 7.

32.8. In paragraph 8.2 the applicants only rely upon sections 7 and 8 of the MFMA. It is submitted that sections 7 and 8 do not, on any basis or construction, prevent the collection

by an external agent of fees into its own bank account. The contrary is clear from the other provisions that expressly permit this, referred to above.

REQUIREMENTS FOR AN INTERIM INTERDICT

PRIMA FACIE RIGHT

33. AD PARAGRAPH 9

33.1. Paragraph 9.2 is disputed. The applicants, again, refer broadly to *"these financial prescripts and legislation"*. Only specific actions, decisions or conduct can be illegal or unlawful with reference to specific common law or statutory provisions. It is furthermore disputed that the *"financial mismanagement and irregularities"* which lies at the core of poor service delivery has anything to do with the third respondent's 2015 transaction.

33.2. To the contrary, the appointment by the first respondent of the third respondent lies at the core of remedies to prevent poor service delivery. Insofar as poor service delivery has become a hallmark of the first respondent, the appointment of the first respondent is a major step towards proper administrative and financial management by the third respondent. It is, with respect, irrational to visit the transaction between the first and third respondents with any adverse history on the part of the first respondent.

The transaction must be viewed in isolation and on its own merits. It is indeed remarkable for the applicants to attempt to *"infect the transaction with diseases of the past"*, in order to avoid a thorough consideration of the transaction itself.

33.3. The submissions in paragraph 9 are simply incorrect jurisprudential inferences without any factual basis. It is disputed that the transaction or relationship between the first and third respondents have any of the consequences alleged in paragraph 9.3, but that is in any event not what is being sought to be reviewed.

33.4. Paragraph 9.4, is, again, speculative hearsay. No facts underpinning the allegations have been provided. How the applicants purport to know what Eskom intends to do is not clear. The contrary is true from the facts in this matter: the only basis upon which the first respondent has been able to make payments to Eskom is as a direct result and consequence of the transaction with the third respondent. The remarkable progress the first respondent made in paying Eskom arrears as a consequence of the third respondent's involvement is dealt with elsewhere.

33.5. Similarly, paragraph 9.5 is disputed.

33.6. The allegations in paragraph 9.6 are disputed.

33.7. The first and third respondents are, of course, subject to all common law and statutory provisions.

IRREPARABLE HARM

34. AD PARAGRAPH 9.8

34.1. The unfounded submission of a *"well-grounded apprehension of irreparable harm"* is incorrect and not supported by any facts. The contrary is true. The third respondent's involvement has only had positive effects upon the financial management of the first respondent. There is, with respect, no basis nor any supporting facts to sustain any apprehension of harm to the first respondent, let alone irreparable harm. The only instance of harm will be any interruption or interference with the services rendered by the third respondent. The applicants' reliance upon the report of the Auditor-General to attack the transaction between the first and third respondents is disingenuous.

BALANCE OF CONVENIENCE

35. AD PARAGRAPH 9.9

35.1. The balance of convenience favours the *status quo*. There is, with respect, no basis for interim relief. The first respondent is not able to issue tax invoices pertaining to municipal services other than electricity and the receipt of

such payment into its bank account. The first respondent does not have the manpower nor the technology to do this on a monthly basis and collect arrears. It is for this reason that the first respondent, prudently and properly, extended the functions of the third respondent in terms of the 2015 agreement. The *status quo* cannot be restored immediately. As before, any interruption with, or interference with the transaction would cause considerable harm to the first respondent. There is no basis for interim relief and the transaction should, on its merits and with reference to all applicable legislation, be considered in due course. The applicant should never have launched the urgent application on this unfounded basis.

35.2. Paragraph 9.11 is disputed. The first respondent does not have the wherewithal to issue invoices and collect payments. Its financial position will further collapse, as has been the case before, without the assistance of the third respondent.

NO OTHER SATISFACTORY REMEDY

36. AD PARAGRAPH 9.12

36.1. No remedial action is necessary. The first respondent is not at risk. The urgent application should, with respect, be dismissed with costs on an appropriate punitive scale, and

60

the merits of the transaction can then be considered by the above Honourable Court in due course.

URGENCY

37. I enclose marked **"H"** a series of letters from the attorneys representing the third respondent. The third respondent has been severely hamstrung by circumstances beyond its control in the preparation of this answering affidavit. The events are recorded in the letters. It is evident from these letters that there were numerous time sensitive obstacles during the preparation of this answering affidavit. Several people had to be consulted from different geographical locations. The application papers present a wholly inaccurate picture of the events and relationship between the first and third respondents. This had to be corrected. The third respondent could have limited itself to the events of September 2019 but, for purposes of background, dealt with earlier events in so far as it is necessary for this part of the application, to demonstrate the untenable basis of the entire application. The facts are complex; the law is complex and the legal basis of the transaction, i.e. being akin to a Public Private Partnership, had to be dealt with in some detail. Subsequent to the preparation of a first draft, after consulting a number of people, the Group CEO, who is in Canada, only became available on Wednesday 23 October 2019, after the religious holidays of 21 and 22

October 2019, to assist with the revision of a final draft. It could simply not have been finalised prior to this. In this regard I also emphasise to the above Honourable Court that the applicants have taken a convenient *"umbrella approach"* to the matter, based on hearsay speculation, without any attempt at dealing with specifics, details and historic events. This has now been corrected by the first respondent.

38. AD PARAGRAPH 10

38.1. The allegation in paragraph 10.1 that the collection of monies by the third respondent *"poses an immediate threat pertaining to the proper financial management of the first respondent"* is blatantly false. The applicants have not presented one fact in support of this. I have already referred the above Honourable Court to the prompt and immediate payment of monies across to the first respondent on a monthly basis (without any default whatsoever over the last three years). The allegation of an immediate threat has been made recklessly. Similarly, the allegation that *"it has become urgent to curb further financial mismanagement of the bank accounts of the first respondent"* is rejected. There is no mismanagement of the bank accounts of the first respondent. The third respondent is collecting fees into its own bank accounts as expressly permitted by numerous statutory provisions.

38.2. The issues of legality and the rule of law, with all its concomitant issues, will no doubt be considered when the matter is heard in due course.

38.3. In paragraph 10.4 the applicants again, with no facts in support of the allegation, refers to *"envisaged harm"*. As before, this allegation has been made recklessly. The applicant is unable to refer to any loss of any nature whatsoever, in the past, current or in the future, by the first respondent. No form of harm has been identified.

CONCLUSION

39. This application has, with respect, been launched in a reckless manner by the applicants. They have not exhausted internal remedies. They have not made any enquiries with the first respondent or the third respondent, and, without facts in support of the relief sought, embarked upon unfounded litigation which the third respondent have to oppose.

40. The application is, with respect, ill-considered and the third respondent will at the hearing ask for the urgent application and the main application to be dismissed with costs on a punitive scale, such costs to include the employment of counsel, to be paid jointly and severally by the first, second and third applicants, the one paying the other to be absolved.

63

DEPONENT

THUS SIGNED AND SWORN TO at SANDTON on this 17 day of MARCH 2023 the deponent having acknowledged that the deponent knows and understands the contents of this affidavit, that the deponent has no objection to taking the prescribed oath, that the oath which the deponent has taken in respect thereof is binding on the deponent's conscience, and that the contents of this affidavit are both true and correct.

CLAUDIA DE COMBES
COMMISSIONER OF OATHS EX OFFICIO
ADMITTED ATTORNEY
First Floor, Block E
Upper Grayston Phase 2
150 Linden Street, Strathavon, Sandton
Tel: 011 784 4852

COMMISSIONER OF OATHS

(2)

"A"

(234)

64

IDEALPREPAID (PTY) LTD

[REG NR: 2011/000829/07]

RESOLUTION OF THE BOARD OF DIRECTORS

The board of directors of IDEALPREPAID hereby confirm that they have agreed to and passed the following resolutions set out in this notice, at the dates of their respective signatures:

1. Resolution 1:

    1.1. It is resolved that the directors of IDEALPREPAID (PTY) LTD have received notice of the meeting for the proposed resolutions and have elected to adopt the resolutions by electronic communication, in accordance with section74 of the Companies Act, 71 of 2008.

2. Resolution 2:

    2.1. It is resolved that IDEALPREPAID (PTY) LTD will oppose all matters and proceedings instituted by SAKELIGA NPC, JJ ROOTMAN and JP SNYMAN with regard to IDEALPREPAID (PTY) LTD and its relationship with KGETLENGRIVIER LOCAL MUNICIPALITY, specifically the urgent matter under the case number UM169/19.

3. Resolution 3:

    3.1. It is resolved that MEIR GONEN is hereby duly authorised to provide instructions to the attorneys for IDEALPREPAID, and to sign all documents, notices, affidavit etc that may be required to oppose all matters and proceedings instituted by SAKELIGA NPC, JJ ROOTMAN and JP SNYMAN with regard to IDEALPREPAID (PTY) LTD and its relationship with KGETLENGRIVIER LOCAL MUNICIPALITY, specifically the urgent matter under the case number UM169/19;

65 (235)

3.2. It is further resolved that all previous actions taken by MEIR GONEN in opposing matters and proceedings instituted by SAKELIGA NPC, JJ ROOTMAN and JP SNYMAN with regard to IDEALPREPAID (PTY) LTD and its relationship with KGETLENGRIVIER LOCAL MUNICIPALITY, specifically the urgent matter under the case number UM169/19, is hereby ratified.

By order of the board

Signed at RIVONIA on 25 October 2019

MISAVENI LIEBENBERG

Signed at SANDTON on 25 October 2019

ALON SHIMON GREENBERG

Signed at SANDTON on 25 October 2019

MEIR GONEN

(3)

66 'B'

IN THE HIGH COURT OF SOUTH AFRICA
NORTHWEST DIVISION, MAHIKENG

CASE NUMBER: UM169/19

In the matter between

SAKELIGA NPC	First Applicant
JACOBUS JOHANNES ROOTMAN	Second Applicant
JACOBUS PHILIPPUS SNYMAN	Third Applicant

and

KGETLENGRIVIER LOCAL MUNICIPALITY	First Respondent
THE MUNICIPAL MANAGER, KGETLENGRIVIER LOCAL MUNICIPALITY	Second Respondent
IDEAL PREPAID (PTY) LTD	Third Respondent
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Fourth Respondent
THE MINISTER OF FINANCE	Fifth Respondent
THE MEMBER OF THE EXECUTIVE COMMITTEE FOR LOCAL GOVERNMENT, NORTHWEST PROVINCE	Sixth Respondent
THE MEMBER OF THE EXECUTIVE COMMITTEE FOR FINANCE IN THE NORTHWEST PROVINCE	Seventh Respondent

---

CONFIRMATORY AFFIDAVIT

67

I the undersigned,

ANNA-MARIE THYSSE

do hereby state under oath and state that:

1. I am an adult female Commercial Development Manager, employed as such by the Third Respondent.

2. My principal place of employment is at the Third Respondent's principal place of business at Sandhavon Office Park, 16 Pongola Crescent, Sandton, Johannesburg, Gauteng, 2196.

3. The contents of this affidavit falls within my personal knowledge, unless clearly indicated otherwise, and are to the best of my belief true and correct.

4. I have read the Thirs Respondents Answering Affidavit of MEIR GONEN in this matter, and confirm the content thereof in as far as it relates to me.

A THYSSE

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED THAT SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT WHICH WAS SIGNED AND SWORN TO BEFORE ME AT SANDTON ON THIS THE 17TH DAY OF MARCH 2023, THE REGULATIONS CONTAINED IN GOVERNMENT NOTICE NO R1258 OF 21 JULY 1972, AS AMENDED AND GOVERNMENT NOTICE NO R1648 OF 19 AUGUST 1977, AS AMENDED, HAVING BEEN COMPLIED WITH.

COMMISSIONER OF OATHS

CLAUDIA DE COMBES
COMMISSIONER OF OATHS EX OFFICIO
ADMITTED ATTORNEY
First Floor, Block E
Upper Grayston Phase 2
150 Linden Street, Strathavon, Sandton
Tel: 011 784 4852

"C"

MG ATTORNEYS

MG Attorneys Inc - South Africa
Vunani Office Park, 151 Katherine St, Sandown, Sandton, 2196
The Point Tower, Suite 502, 76 Regent Rd, Sea Point, Cape Town, 8005
Postnet Suite 79, Private Bag 9, Benmore 2010
010 312 6732 | info@MGLaw.co.za | MGLaw.co.za
LPC Membership Number: 69447

68

Your Ref: R Eloff/QB0393

Date: 09 February 2023

Our Ref: S Hirschowitz / 231C

To: **Kriek Wassenaar & Venter Ing.**
Attention: Rohann Eloff

Email: rohann@kriekprok.co.za

VIA ELECTRONIC MAIL

Dear Sir,

...VAN MBEKI MUNICIPALITY // IDEALPREPAID SOLUTIONS
(CASE NO: 3810/2022)

1. The above matter and your letter dated 2 February 2023 refers. As you are aware we act for the First Respondent herein (hereinafter "our client").

2. Kindly be advised that the affidavit of Meir Gonen referenced in your letter under reply is still to be filed and will form part of our client's Supplementary Answering Affidavit.

3. Our counsel and the writer hereof is in the process, as a first priority, to finalise our client's Supplementary Answering affidavit in this matter. The process has, however, been hamstrung due to the following:

   3.1. After service of your client's Amended Notice of Motion, the festive period followed and the previous attorney who dealt with this matter, Mr Jonathan White, a former employee of MG Attorneys Inc, was on holiday. Mr White was, in terms of his contract of employment with the firm, supposed to return to our offices on 4 January 2023. Regrettably he never returned to our offices. We are severely prejudiced

MG ATTORNEYS

MG Attorneys Inc - South Africa

Vunani Office Park, 151 Katherine St, Sandown, Sandton, 2196
The Point Tower, Suite 502, 76 Regent Rd, Sea Point, Cape Town, 8005
Postnet Suite 79, Private Bag 9, Benmore 2010
010 312 6732 | info@MGLaw.co.za | MGLaw.co.za
LPC Membership Number: 69447

69

thereby in that he was the only attorney who dealt with the matters against your client, Sakeliga NPC .

3.2. Upon realising that Mr White would not be returning the firm immediately appointed the writer hereof to familiarise himself with the matter and instruct the counsel on brief. Due to the voluminous nature of the matter it has taken the writer, who is still busy with this task, a considerable amount of time to familiarise himself with the matter absent any handover by Mr White.

3.3. The writer could only towards the latter part of January commence with meaningful instructions to counsel. In this regard, the first time we could consult with some of the directors of IdealPrepaid (Pty) Ltd (one who has flown in from Canada) was on 18 January 2023.

3.4. Thereafter the directors and senior management of IdealPrepaid (Pty) Ltd departed for India, where our client has a substantial business. This has impacted our ability to consult and take instructions.

3.5. Our counsel further left overseas on 1 February 2023.

4. In the premises every endeavour is being made by us to deliver our Supplementary Answering Affidavit before the end of February 2023. We may have to deliver an unsigned, but final, affidavit if we cannot have the final affidavit signed by then.

5. We place on record that your client has caused extensive delays in the finalisation of the matter previously which has resulted in prejudice to our client. Accordingly, a further minor delay on our client's part will not unduly prejudice your client when the progression of the matter as a whole is considered.

6. You are hereby notified that the matter remains opposed.

7. We once again reiterate that Mr Jonathan White is no longer with the firm and all future correspondence and process should be directed to the writer, at shimon@mglaw.co.za. In addition all notices and pleadings are to be served on notices@mglaw.co.za

MG ATTORNEYS

MG Attorneys Inc - South Africa

Vunani Office Park, 151 Katherine St, Sandown, Sandton, 2196
The Point Tower, Suite 502, 76 Regent Rd, Sea Point, Cape Town, 8005
Postnet Suite 79, Private Bag 9, Benmore 2010
010 312 6732 | info@MGLaw.co.za | MGLaw.co.za
LPC Membership Number: 69447

70

8. We trust you find the above in order and await your response.

Yours faithfully,

(electronically transmitted thus unsigned)

Shimon Hirschowitz
Associate Attorney
MG Attorneys Inc

"D"

71

KRIEK WASSENAAR & VENTER ING
Prokureurs • Aktevervaardigers • Attorneys • Conveyancers

Our ref: R Eloff/QB0393
Your ref: 231C

17 February 2023

MG LAW
GROUND FLOOR, BLOCK E
UPPER GRAYSTON OFFICE PARK
150 LINDEN ROAD
SANDTON

By e-mail: notices@mglaw.co.za
shimon@mglaw.co.za

Sir/Madam

SAKELIGA NPC / KGETLENGRIVIER PLAASLIKE MUNISIPALITEIT – IDEAL PREPAID (PTY) LTD

CASE NUMBER: UM169/19

1. We refer to the above matter and your letter dated 9 February 2023.

2. In the letter you indicate that your offices act for the first respondent in the matter but then make reference to IdealPrepaid (Pty) Ltd ("IdealPrepaid") who is cited as the third respondent. We however accept that this was a typographical error and that your offices act on behalf of IdealPrepaid.

3. We place on record that our client takes exception to the content of and allegations made in paragraph 5 of your letter.

4. To the extent that you are requesting an extension for the filing of your client's supplementary answering affidavit we confirm that our client does not object to providing this indulgence to your client. In future we would, however, appreciate it if such a request is made in a collegial manner.

5. We look forward to receiving your client's supplementary answering affidavit.

72

Yours faithfully,

KRIEK WASSENAAR & VENTER ING
ROHANN ELOFF – ATTORNEY
(t) 012 803 4719
(e) rohann@kriekprok.co.za

6

'E'

73

0078 E1

repaid Electricity & Water Meters | IdealPrepaid

Change Country

0860 11 43326
till 10pm

FAQ Get a Quote Login

Africa's Leading Prepaid Meter Provider

HOME HOW IT WORKS PLANS METER TYPES METER READINGS RECHARGE CONTACT US

Stations Open around SA

ity ▸ Water ▸ Gas

[redacted]

old is SA's leading sub-metering solution-provider [redacted] electric prepaid meters to water submeters, we install prepaid-meters in Johannesburg, Pretoria, Cape Town, Durban, Port East London, Bloemfontein and other areas within South Africa. Tenants can easily recharge their pre-paid analogue or smart meter at thousands of locations such as: Shell, Caltex, Pick'n Pay, BP, and Sasol petrol stations throughout SA. Get a prepaid electricity meter box and avoid landlord-tenant issues. Our energy meters (electricity) or water meters are available in single-phase (1 phase) ase (3 phase) from a variety of manufacturers such as: Landis+ Gyr, Elster, Hexing, Genus & Utility Systems.

[redacted]

WHO USES OUR SERVICES?

- Landlords
- Body Corporates
- Municipalities
- Property Managers

RECHARGE NOW

- Direct Deposit or EFT
- Credit Card
- Zapper
- UniversalPin / FlexiPin
- SnapScan

[redacted]

INSTALL IN...

Houses, Apartments, Cottages
Stores & Factories
Commercial & Industrial Units
Vacation Rentals

FREE METER

[redacted]

More than R3000 value get it free! T's & C's apply

[redacted]

OPPORTUNITIES...

- Become a Registered Installer
- Become a Distributor

Talk to us for the Best Deals on Prepaid Products

Home
Contact us
Login

Recharge Online
Plans

Get a Meter
Meter Types
Meter Readings

Become a Contractor
Disclaimer
Privacy

About us
News & Articles

Live Chat

Copyright © 2009 All Rights Reserved

ttp://www.idealprepaid.co.za/[2015/09/13 11:04:31]

3

4

4

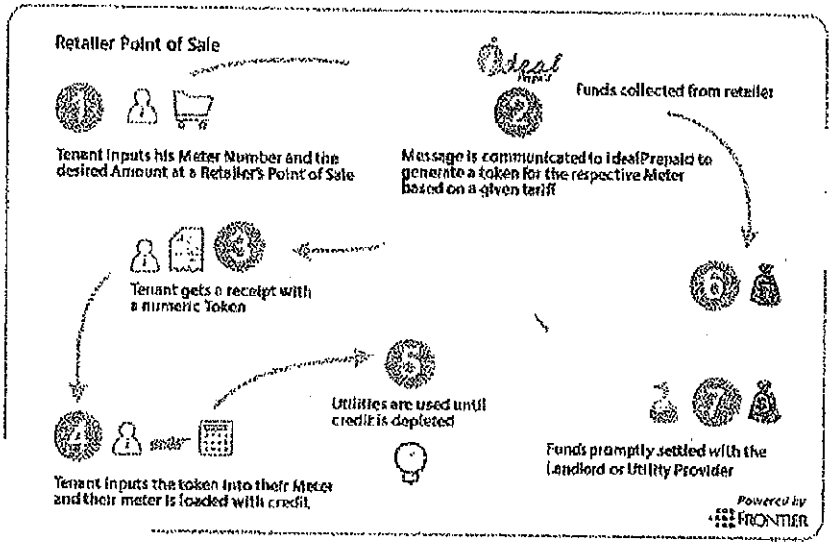
74

E2 0079

How it works, prepayment for Electricity, Water & Gas

We provide a variety of options for recharging a meter. There is flexibility in purchasing recharge tokens instore, online or using a mobile phone. Click below to to view some common examples illustrating how meters get recharged.

Recharging at Point of Sale



Copyright © 2009 All Rights Reserved

75

9080 E3

low it works, prepayment for Electricity, Water and Gas.

Change Country

0860 11 43326
till 10pm

Africa's Leading Prepaid Meter Provider

HOME HOW IT WORKS PLANS [illegible] CONTACT US

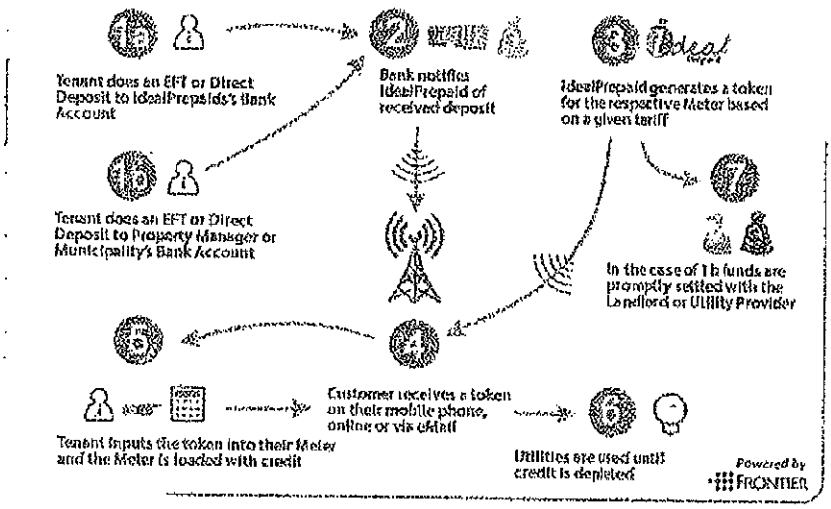
[illegible] for prepayment of Electricity / Water / Gas

HOW IT WORKS

We provide a variety of options for recharging a meter. There is flexibility in purchasing recharge tokens instore, online or using a mobile phone.Click below to to view some common examples illustrating how meters get recharged.

[illegible] [illegible] By Direct Deposit

Recharging by Direct Deposit EFT



Talk to us for the Best Deals on Prepaid Products

Home
Contact us
Legal

Recharge Online
Plans

Get a Meter
Meter Types
Meter Readings

Become a Customer
Conditions
Policies

Maintain
Move & [illegible]

Live Chat

Copyright © 2003 All Rights Reserved

76

E4 0081 E4

Ideal Electricity, Water and Gas | Ideal Prepaid

Orange County

0 86 11 43326
till 10pm

Africa's Leading Prepaid Meter Provider

HOME HOW IT WORKS PLANS METERS WATER & GAS CONTACT US

Residential solutions for prepayment of Electricity, Water & Gas

COMPARE PLANS & PRICING

Prepaid Electricity Features & Services	Competition	IDEAL PREPAID PLANS		
		Standard	Benchmark	Managed
Latest Technology		✓	✓	✓
Rechargeable Online		✓	✓	✓
Rechargeable with any Mobile Phone		✓	✓	✓
Rechargeable with FlexiPin & UniversalPin		✓	✓	✓
Rechargeable with Direct Deposit or EFT		✓	✓	✓
Online Reporting		✓	✓	✓
Customer Service & Support 365 Days/Year		✓	✓	✓
Prompt settlement of tenant fees with Owner		✓	✓	✓
Owner Tariff Control options		✓	✓	Settled with Provider directly
No Upfront Meter Costs			✓	✓
No Upfront Installation Costs			✓	✓
Lightning Damage Free Replacement			✓	✓
Warranty		1 Year	Life Time	Life Time
Auto Debit Order Recharge	X	✓	✓	✓
iPhone & Android Recharge	X	✓	✓	✓
Rechargeable at the largest network of Retailers	X	✓	✓	✓
Arrears Collection	X	✓	✓	✓
Free Basic Electricity	X	✓	✓	✓
Settlement of Bills directly with Utility Provider	X			✓
Active Tamper Watch	X			✓
Protection Against Unpaid Bills	X			✓
METER COST *(Free Shipping)*		R549	Free	Free
INSTALLATION		Your Electrician	Free	Free
PRICE		~~R999.00~~ R549.00 Once Off	~~R490.00~~ R49.00 Monthly	~~R300.00~~ R149.00 Monthly

Talk to us for the Best Deals on Prepaid Products

Home
Certificates
Legal

Recharge Online
Plans

Call a Tech
Meter Types
Meter Readings

Become a Contractor
Disclaimer
Privacy

About us
News & Articles

Live Chat

Copyright © 2006 All Rights Reserved

77

0082
E5 E5

Orange Country

0 86 11 43325
08 10pm

Africa's Leading Prepaid Meter Provider

The Ideal Solution for Prepayment of Electricity, Water & Gas

CONTACT US

Title

* Required Fields
First Name *

Last Name *

e-Mail *

Phone

Country

Company

Message

Promotional Code *Ts & Cs Apply

Call

South Africa	086 11 IDEAL 086 11 43325 Emergency Tel: 061 630 4861 Use only in case of vending failure
Botswana	714-694-28 269- 800 3000 -223 (Toll Free Fixed Landline)
India	0347 000 2185 (Toll Free)
North America	1 877 333 2271

Mail

South Africa	Sandgate Park 10 Desmond Street Krugersdorp Gauteng, 2146
Botswana	Architects Corporate Park Legolo Road Gaborone
India	Unit No. 606-A, 6th Floor, Spaze I-Tech Park, Tower B-2 Sohna Road, Sector 49, Gurgaon, Haryana-122018

Talk to us for the Best Deals on Prepaid Products

Live Chat

Copyright © 2009 All Rights Reserved

4

4

78

Ideal Prepaid Business Partners

E6 0083 E6

Change Country

0860 11 43326
till 10pm

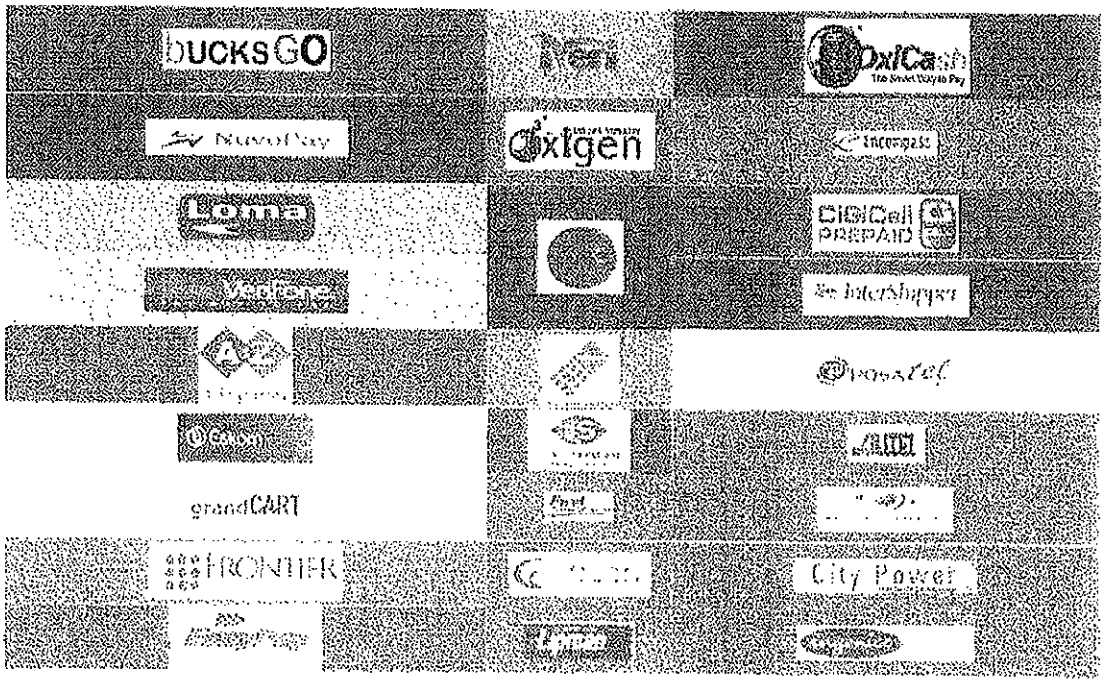
Africa's Leading Prepaid Meter Provider

HOME HOW IT WORKS PLANS [illegible] CONTACT US

The latest technology for pre-payment of Electricity, Water & Gas

[illegible] & OUR PARTNERS

IdealPrepaid Pty (Ltd) is a provider of prepaid metering solutions for landlords, property managers and municipalities. With thousands of meter installations we are a global leader in prepaid utilities, energy management and fund collection.



Talk to us for the Best Deals on Prepaid Products

Live Chat

Copyright © 2003. All Rights Reserved

79

E7 0084 E7

egin EFT

Direct Deposit or EFT

ESKOM bucksGO CELL©

it's simple...

step 1 - Select Product

step 2 - Choose Reference

step 3 - Do a Transfer & Recharge

Register for Automated Recharge Now

Send Deposits or EFTs to any of the following accounts

CAPITEC

Account Name	[illegible]
Account Number	[illegible]
Branch Name	[illegible]
Branch Code	450105

Deposit at least R100 for faster processing

ABSA

Account Name	[illegible]
Account Number	[illegible]
Branch Name	[illegible]
Branch Code	632005

FNB

Account Name	[illegible]
Account Number	[illegible]
Branch Name	[illegible]
Branch Code	210715

Deposit at least R101 for faster processing

STANDARD BANK

Account Name	[illegible]
Account Number	[illegible]
Branch Name	[illegible]
Branch Code	025455

NEDBANK

Account Name	[illegible]
Account Number	[illegible]
Branch Name	[illegible]
Branch Code	198126

Close Window

https://www.bucksgo.net/RePrepaid/beginEFT.asp?identifier=HOP_001_EFT&Configuration=CR_11&Providername=Ideal%20Prepaid[20/09/13 11:08:07]

4

4

" F "

HEAD OFFICE: KOSTER
P.O. Box 66, Koster, 0348
Tel/ Fax: (014) 543 2004/5/6

KGETLENGRIVIER LOCAL MUNICIPALITY

All corespondents must be addressed to:
"The Municipal Manager"

Our Ref:

80

247

OFFICE OF THE MUNICIPAL MANAGER

18 June 2019

TEL : (086) 114 3325

The Group Chief Financial Officer
Ideal Prepaid (Pty) Ltd
Sandgate Office Park
16 Desmond Street
Sandton
0001

Attention: Mr Meir Gonen

REQUEST FOR IMMEDIATE RELEASE OF ELECTRICITY VENDING FUNDS

We acknowledge your assistance in February 2019 regarding early release of vending funds.

As you are aware that the municipality is in a dire financial situation and must pay Eskom and its employees. The municipality hereby request that you release all prepaid electricity vending funds in your account immediately so that we can pay Eskom and Employees on 21 June 2019. The municipality is expected to pay R2.7 million to both parties. We will appreciate if Ideal Prepaid can assist the municipality with the said amount to avert more crisis.

We know and understand that this put pressure on you, but we are in a dire situation and ideal Prepaid as our partner is expected to assist the municipality in this regard in order to avoid the catastrophic consequences of not paying Eskom as agreed with them and failing to pay employees on time.

Upon a written request made within seven days after date appearing on this letter, a similar letter will be forwarded in the other official language, if so desired.

248

Kindly deposit the funds into municipality primary bank details as follows:

81

Account Name : Kgetlengrivier Local Municipality
Account No : 17 000 000 32
Branch : Public Sector North West
Branch Code : 632005

Please feel free to contact Municipal Manager or the CFO in the event of any clarity to be sought

Municipal Manager : Mr R. J Mogale
Cell No : 082 723 8951
: 014 543 2004
Email address : mogalej@kgetlenarivier.gov.za

Chief Finance Officer : Mr S Ngwenya
Cell No : 073 286 1662
: 014 543 2005
Email address : ngwenya1@msn.com

Hoping you will find the above in order.

Regards

Mr R. J Mogale
Municipal Manager
Date: 18/06/19

Mr S. Ngwenya
Chief Finance Officer
Date: 18/06/2019

Ms M.D Sejosingoe
Administrator
Date: 19/06/2019

Cc
: Operations Manager – Anna-Marie Thyse

2017-04-20 Municipality Request to Divert Funds to Traffic Account

248.1

82

HEAD OFFICE: KOSTER
P.O. Box 66, Koster, 0348
Tel/ Fax: (014) 543 2004/5/6

Our Ref:

All correspondents must be addressed to: "The Municipal Manager"

KGETLENGRIVIER LOCAL MUNICIPALITY

OFFICE OF THE MUNICIPAL MANAGER

20 April 2017

THE GROUP CHIEF FINANCIAL OFFICER
IDEAL PREPAID (PTY) LTD
UNIT 102 BLOCK C
SANDGATE OFFICE PARK
16 DESMOND STREET
SANDTON

Attention: Mr Meir Gonen

REQUEST FOR IMMEDIATE RELEASE OF ELECTRICITY VENDING FUNDS

The municipality is in a dire financial situation and must pay its employees on 24 April 2017.

The municipality hereby request that you release ALL prepaid electricity vending funds in your account IMMEDIATELY so that we can pay our employees on 24 April 2017.

We know and understand that this put pressure on you but we are in a dire situation and Ideal Prepaid as our partner is expected to step up and assist the municipality in this regard in order to avoid the catastrophic consequences of not paying employees on time.

Kindly deposit the funds into the banking details as follows:

ACCOUNT NAME: **KGETLENGRIVIER MUNICIPALITY TRAFFIC ACCOUNT**
ACCOUNT NO: **4074059151**
BRANCH: **PUBLIC SECTOR NORTH WEST**
BRANCH CODE: **632005**

We have also attached confirmation from ABSA as proof of banking details.

Please feel free to contact me or the CFO in the event of any clarity to be sought.

Acting Municipal Manager: Thabo Ben Mothogoane
bonmothogoane@gmail.com mothogoaneb@kgetlengrivier.gov.za
0828259212
0145432004

Acting Chief Financial Officer
Ngwenya1@msn.com ngwenyas@kgetlengrivier.gov.za
0732861662
0145432004

Regards

THABO BEN MOTHOGOANE
ACTING MUNICIPAL MANAGER
CC – Operations Manager
Anna-Marie Thyse

ANDREAS PEENS ATTORNEYS AND PROPERTIES

2 JAMESON STREET, P.O BOX 125, KOSTER 0348
TEL: 014 000 0200 / FAX: 086 575 4122

83 G

"G1"

(8)

ANDREAS PEENS ATTORNEYS
2 JAMESON STREET
KOSTER
P.O BOX 125
0348
EMAIL: apeens.law@gmail.com
OUR REF: AP477
DATE: 8TH OCTOBER 2019

TO: KGETLENGRIVIER MUNCIPALITY
CORNER SMUTS AND DE WET STREETS
KOSTER
PO Box 66
0348
TEL: 014 543 2004
FAX: 014 543 2480

"BY EMAIL"

IDEAL PREPAID
4 DUITSER ELOFF STREET
KOSTER

"BY EMAIL"

Dear Sir/Madam

RE: KGETLENGRIVER LOCAL MUNICIPALITY // Mr GH OERTEL

The abovementioned matter, as well as our letter dated 30 September 2019, refers.

Our offices have not yet had the courtesy of a reply to our records and that your offices are blatantly ignoring our clients request for answers. Our client place on record that your offices are unlawfully collecting rates on a prepaid electricity meter, our client deem the account as two separate accounts as your offices failed to inform our client timeously of the changes or that any public participation was held with regards to your plan/action to collect rates via the prepaid meters. Our offices further place on record that there is a High Court order against the

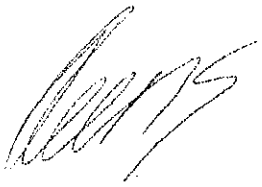
municipality for collecting rates and that your offices are in contempt of a High Court order. This matter will be referred to Cooperative Governance and Traditional Affairs COGTA.

84

We trust you find the above mentioned in order.

Yours faithfully

Andreas Peens



ANDREAS PEENS, BCOM LLB (NWU)

85 (267.1)

ANDREAS PEENS ATTORNEY AND PROPERTY

2 JAMESON ROAD , P.O BOX 125, KOSTER 0348

CELL: 063 603 6948 / FACSIMILE: 086 575 4122

IdealPrepaid (Pty) Ltd
Sandgate Park
16 Desmond Street, Kramerville
Sandton
Email: annamariet@idealprepaid.com

Email: apeens.law@gmail.com
Our Ref: Mr. A Peens/ AP136
Your Ref:
Date: 19 September 2018

By Email

Dear Me Anna-Marie Thysse

In re: Contract with Kgetlengrivier Local Municipality – Debt to Eskom

We are instructed by our clients, the Concerned Citizens of Kgetlengrivier Local Municipality ("the citizens").

We are in possession of a written agreement between IdealPrepaid (Pty) Ltd ("IdealPrepaid") and the Kgetlengrivier Local Municipality ("the Municipality") which was concluded on 18 September 2015 at Koster ("the agreement"). Without prejudice to any of the citizens' rights regarding the legality or validity of the agreement, it does however seem that the agreement provides for a solution to the municipality's failure to honour its account(s) with Eskom.

At clause 9 (under the heading: *Conditions Precedent*) provision is made for a condition styled as "Direct Funnel", which reads as follows:

Direct Funnel: In the event of non-reduction in Eskom debt or if requested by Eskom, the company (read IdealPrepaid) *shall have the right to pay some or all collected revenue directly to Eskom.* ("the direct payment term")

It is common cause that the Municipality fails to honour its account with Eskom. This fact is confirmed, inter alia by the following:

a. The debt of the Municipality increasing from R 25 272 407.45 on 2 February 2016 to the current outstanding debt in excess of R50 177 378.02.

b. Eskom notifying the Municipality of its intention to interrupt bulk electricity supply to the Municipality.

c. The citizens instituting urgent proceedings under case number 33447/2018 in the Gauteng Division, Pretoria of the High Court to interdict Eskom from implementing interruptions to the bulk supply.

d. A meeting held in Koster and in Swartruggens during late 2015 / January 2016 wherein IdealPrepaid confirmed its knowledge of the municipality's Eskom account being in arrears and confirming IdealPrepaid's willingness to pay Eskom directly.

The citizens are concerned that the monies collected on prepaid electricity is misappropriated and that the Municipality will, as a result eventually be hopelessly unable to service any accounts and/or deliver any services to the citizens. The citizens therefore have a material interest in the fact that the municipality fails to service its account with Eskom (being the historic arrears and/or the monthly current account).

The citizens therefore call on you to give the following undertaking, namely that

a. IdealPrepaid will pay over to Eskom directly at least 80% of the income received from the prepaid electricity meters in Koster, Derby and Swartruggens and its surrounds forming part of the area of the Municipality where the agreement finds application ("the area");

b. The aforesaid payments to commence in respect of the income collected by IdealPrepaid for electricity sales in the area for the month of September 2018;

c. To record to Andreas Peens Attorneys (on behalf of the citizens) and to the municipality of the amount(s) per month that IdealPrepaid pays directly to Eskom, as soon as a payment is made;

d. IdealPrepaid will continue to pay Eskom as aforesaid on a monthly basis until the debt of Eskom is settled or the contract between the municipality and IdealPrepaid is terminated.

The citizens therefore call on IdealPrepaid to give effect to the term styled as Direct Funnel.

In the event that you, with knowledge of the aforesaid fact that the Municipality fails to honour its obligations to Eskom, refuse to give effect to the direct payment term, you are aiding in the misappropriation of funds. Such reckless conduct may have serious consequences.

We call on you to provide us with your written undertaking by not later than 27 September 2018 before close of business.

We do not consider it necessary to approach the Northwest High Court for an order forcing IdealPrepaid to pay Eskom directly in an instance where the contract incorporates a direct payment term. Should IdealPrepaid however refuse to give effect to the reasonable request and

undertaking recorded herein, and it be necessary to call on the Court, that a punitive costs order will be sought.

Please also, acknowledge receipt of this letter.

Yours faithfully

Andreas Peens

Cc: Kgetlengrivier Local Municipality

Per the Municipal Manager : mogaleramokatane71@gmail.com

jdubruyn@kgetlengrivier.gov.za

Cc: ESKOM

Per Lona Manzana : ManzanL@eskom.co.za

"GL"

89

89

HEAD OFFICE: KOSTER
P.O. Box 66, Koster, 0348
Tel/ Fax: (014) 543 2004/5/6

KGETLENGRIVIER LOCAL MUNICIPALITY

All corespondents must be addressed to:
"The Municipal Manager"

Our Ref:

OFFICE OF THE MUNICIPAL MANAGER

04 October 2019

IdealPrepaid Pty (Ltd)
P.O Box 46441
Orange Groove
Koster
2119

BANKING OF COLLECTED REVENUE FROM SERVICE CHARGES/OLD DEBT

We refer to the above matter.

Kgetlengrivier Local Municipality hereby acknowledges that the debtor's book has been increasing dramatically over years with little effort to collect 100% of the debt due to lack of proper infrastructure enabling the municipality to enforce credit control on service charged. It must be considered that artificial intelligence does play a major role in enhancing the revenue of the municipality and therefore installation of prepaid metering as recommended was identified as a mechanism to eradicate inaccurate billing and better manage the provision of electricity to consumers.

With the above been highlighted management and proper controls should be in place with regard to the provision and collection of monies in relation to such services. Regrettably, the municipality amongst other things is currently experiencing a number of queries on the following matters:

- Consumers restricted to purchase prepaid electricity in ignorance of 70% / 30% old debt arrangement.
- Current or 30 days outstanding debt loaded on the prepaid meter.
- Consumer EFT or CASH payments directly transferred to IdealPrepaid's bank accounts.
- Long turnaround time taken by ideal prepaid in clearing the debt loaded after payment is done by consumers in exchange of access to electricity.

It must be stressed that if the above is not attended to as a matter of urgency such is tempted to result in litigations against the municipality at a later stage.

Upon a written request made within seven days after date appearing on this letter, a similar letter will be forwarded in the other official language, if so desired.

It is the endeavour of the municipality to ensure that the outstanding consumer amounts are paid as soon as practicable and therefore municipality further commits itself to continuously update consumer accounts daily.

The municipality pleads with IdealPrepaid to take note of **section 7 & 8 of the MFMA** which encourages the following:

The primary bank account

- The municipality must open and maintain at least one bank account in its name where all monies received by the municipality must promptly be paid into its bank account or accounts

Permissible Methods of Payment

- A debtor may settle his/her debt with the municipality by:

  i. Cash payment or payment by cheque at a pay point of the municipality;
  ii. Stop-order in favour of the municipality against his/her bank account; or
  iii. Direct deposit or EFT into the municipality's bank account

In conclusion, the municipality wishes to extend a gesture of gratitude to IdealPrepaid for the continued support which requires a healthy working professional relationship as we deliver services to the community at large.

In light of the above and its strength of the submissions, section 7 & 8 of MFMA must be adhered to with immediate effect as we continuously find a way in a manner that will best suit all related parties.

If there is a need for further clarity, please feel free to contact the Chief financial Officer, Mr. S Ngwenya on the following contacts;

Cell : 073 286 1662
Tel : 014 543 2004 ext. 149
Email : ngwenyas@kgetlengrivier.gov.za / ngweya1@msn.com

We hope for your prompt response of this correspondence.

Kind regards

Mr R.J Mogale
Municipal Manager
Date: 08/10/2019

(10)

91 "H"

Sandgate Park, 16 Desmond Street, Kramerville, Sandton 2148
www.idealrepaid.co.za

086 11 ideal
086 11 43325

A Member of the Holistic Technologies Group

22 October 2019

The Municipal Manager
Kgetlengrivier Local Municipality

By email: ngwenyas@kgetlengrivier.gov.za
ngweya1@msn.com

Dear Sirs/Mesdames

BANKING OF COLLECTED REVENUE FROM SERVICE CHARGES/OLD DEBT

1. We acknowledge receipt of your letter of 4 October 2019. We are pleased that you have raised issues that may lead to confusion. We clarify our position as follows:

   1.1. The debtors' book of the Municipality has indeed increased dramatically over the years. This is the responsibility of the Municipality. We were contracted in September 2015 due to inadequate or non-existent efforts to collect the debts due to a lack of proper infrastructure on the part of the Municipality. Through the implementation of our system from 2016 you have made significant inroads into the reduction of the Eskom debt. Your exemplary efforts in reducing your Eskom debts *with payments collected by our company* resulted in **you being listed as one of "The Municipalities that are the Most Financially Independent from the National Government"** early in 2019 by Business Insider. This achievement was a consequence of payments collected by us from the completion of our installation in November 2016, to date. The accolades were based on historic data.

   1.2. However, since September 2018, notwithstanding the exact same collection (and more) by our company, the Municipality simply stopped paying Eskom. Until September 2018 you have, as a result of our collection system, managed to repay interest of R6m and capital of R6m to Eskom. We are not sure if there is any Government interference in your dealings or if payments were made to Eskom other then the amounts reflected in your Eskom bills and if so please let us know any such details.

   1.3. We are currently following your CREDIT CONTROL AND DEBT COLLECTION POLICY ("the policy") to the letter:

      1.3.1. You produce consolidated monthly bills to customers in terms of Part 10 of the policy. Section 102 of the Systems Act provides for this, and the crediting of any payment by a customer against any account.

      1.3.2. The [illegible] are set out in Part 17, Part 18 [illegible]

charges". This we have implemented on our system based upon an express instruction from you. As an aside, customers are up in arms about having to pay arrears since a culture of non-paying (except for electricity, as a result of our involvement) prevailed until recently. We commend your prudent steps notwithstanding the opposition thereto.

1.3.3. Part 23 deals with the prepaid metering system:

"The Council will use its prepaid system to:

(1) Link the provision of electricity ... to a 'prepayment system ...'

(2) Liaise and recover payments in respect of arrear municipal taxes and other municipal levies, tariffs and duties in respect of services such as water, refuse removal, sanitation and sewage.

(3) To enforce satisfactory recovery of arrears by implementing a percentage payment ration: which will mean that a 30% percentage of a payment will be allocated towards arrears and a 70% will be allowed for electricity."

1.4. We have been following these policies to the last letter. At the same time consumers have the opportunity to make payment for arrears to the Municipality directly.

1.5. We acknowledge your recognition of the systems, collection and metering infrastructure provided by our company. Our project team will continue to devote all their efforts towards the running of the revenue collection system currently in place. We share your devotion to management and proper controls to be in place with regard to the collection of monies relating to services.

2. Regarding the matters raised by you (bullets one to four), the following:

2.1. Our initial instruction was that 100% of payments received via the prepaid metering should be applied towards outstanding debts (permitted by section 102), unless the customer approached IdealPrepaid or the Municipality to make an arrangement to pay arrears (on pre-determined terms). We understand that this raised a number of queries from consumers.

2.2. Subsequent to this we received an additional instruction from the Municipality, namely that in respect of all customers approaching us (or for that matter the Municipality) an arrangement be implemented that 70% of all fees paid via prepaid metering be applied towards new electricity for the customer, and that the balance of 30% be applied towards unpaid and overdue debts. We instantly implemented this.

2.3. We are simply implementing Municipal policy and we are not involved in the policy making decisions. We have implemented this strictly in accordance with your instructions, from inception. This new arrangement was communicated in writing to all consumers.

2.4. Consumers have since 2016 been making EFT or cash payments which are directly transferred from paypoints such as Shell, Checkers, etc. into the bank accounts of IdealPrepaid, the balance after fees, cost and financing, being paid monthly to the Municipality. The Municipality and IdealPrepaid have been cooperating for the last three years within the framework of this agreement, and the details thereof are known to all of us. We have strictly adhered to this

2.5. What you are referring to in the fourth bullet is the turnaround time from the moment a customer has paid arrear services at the Municipality. We must emphasise that in respect of customers who pay via IdealPrepaid *there is no turnaround time* in that any payment in respect of arrears is recorded instantly. *The turnaround time concern is a consequence of time taken by the Municipality to inform IdealPrepaid of the crediting or clearing of a debt on the Muncipality's internal computer system.* Our Ms Thysse, the Project Manager, has extensively liaised with the Municipality in this regard in order to shorten this turnaround time. This concern raised by you is an issue squarely within the realm of the Municipality. You have our commitment to participate with the Municipality to shorten this, even though we cannot interfere with the systems of the Municipality. I wish to emphasise that. In practice, we receive lists of debts from the Municipality, which are updated from time to time by the Municipality. There is no way in which we have access to this, or in which we can expedite the updating of the list. Once received, the balances are instantly updated into our systems upon receipt from the Municipality.

2.6. To summarise: The loading of outstanding debt on the prepaid meter is entirely a function of us *being informed by the Municipality* of outstanding debts. Once we get the list of debtors from the Municipality, we almost instantaneously record it on all prepaid meters.

2.7. We assisted the Municipality by delivering notices to the approximately 108 consumers in issue. We cannot address letters to your consumers consequently and it is the duty and obligation of the Municipality to advise each consumer with regards to updates in this regard.

3. We note the threat of litigation at the foot of the first page of your letter with considerable disquiet; our company does not operate on this basis. Our directors, including the writer and the entire project management team, are immediately available to address any concerns raised by the Municipality. We will, however, as a last resort, vigorously protect the large investment by our company in systems, hardware infrastructure, prepaid meters, management services, debt collecting and all the related efforts, should it become necessary, but every conceivable effort will be made to avoid litigation. We trust you share our view in this regard.

4. We are conversant with the provisions of sections 7 and 8 of the MFMA. Pursuant to the provisions of sections 7 and 8 we continue to pay all money collected on behalf of the Municipality into the Municipal designated bank account. It has been, and will continue to be done, promptly. Under the caption *"Permissible Methods of Payment"* you record three *"permissible"* methods of payments, being cash or cheque payments to the Municipality, stop orders in favour of the Municipality and direct deposit or EFT's into the Municipality's bank account. The Municipality has, jointly with us, for the last three years implemented the agreement in terms whereof fees collected by us are paid into our bank accounts. This was the very basis of the agreement. We have sought advice on this from our legal representatives and the construction of sections 7 and 8 does not render these three options as the only permissible methods of payment.

5. On the contrary, section 8(2)(d) provides for alternate payments of accounts. Not only does section 8 expressly provide for external collection mechanisms, but a significant number of related statutory provisions provide for revenue collection by a collecting agent on behalf of the Municipality.

6. By way of another example, section 81(2)(a)(vi) of the Systems Act provides as follows:

(a) may assign to a service provider responsibility for ...

(vi) ***the collection of service fees for its own account from users of services in accordance with the municipal council's tariff policy*** *in accordance with the credit control measures established in terms of chapter 9;*

7. The agreement between the Municipality and IdealPrepaid constitutes a substantial investment in the Municipality including financing, in return for the collection of service fees by IdealPrepaid into its own bank accounts and the balance, after deduction of its own agreed fees, to be paid to the Municipality on a monthly basis. This structure was the very basis upon which IdealPrepaid was prepared to make the investment of millions of rands into the Municipality in that IdealPrepaid could not and would never have been prepared to rely upon payment by the Municipality. As you are well aware, and notwithstanding your best efforts, the Municipality is in dire financial straits, hopelessly insolvent and received severe criticism from the audit by the Auditor-General. The basis of the investment was the collection of fees by IdealPrepaid unto its bank accounts and from there to be paid to the Municipality. IdealPrepaid has never defaulted. No service provider or financing institution would be prepared to advance funds to the Municipality and rely upon payment from the Municipality as the source of return; the Municipality is simply not in a position to service its debts.

   Consequently, we do not view sections 7 and 8 of the MFMA to exclude or in any way prohibit the collection by IdealPrepaid of funds into its own bank account. As an aside, IdealPrepaid, on a regular basis, make *"advance payments"* to the Municipality to enable it meet its obligations. We will continue to assist you whenever we can.

8. We have already set in motion an urgent request to meet with the Municipality as soon as possible to discuss the above, including the application launched by Sakeliga against the Municipality and ourselves. We trust that your concerns will be adequately dealt with at such a meeting.

9. Lastly, you are reminded that upon the expiry of the agreement term, all the supplied equipment reverts to the Municipality at its option. Until the expiry of the agreement, ownership in and to all the systems and equipment vests in IdealPrepaid and should there be an interference, for whatever reason, with the *status quo* over established over the last three years, IdealPrepaid will not hesitate to enforce its rights in this regard. We trust, and have every reason to believe, that we will not get to this stage.

10. Lastly, we wish to express our sincere appreciation for the extension by the Municipality of a gesture of gratitude to IdealPrepaid for their continued support. It is in the interests of the Municipality and IdealPrepaid to maintain what you have eloquently articulated as *"a healthy working professional relationship"*. Be assured of our endeavours in this regard.

Yours faithfully

Meir Sonen