

IN THE HIGH COURT OF LESOTHO

CIV/APN/230/2015

HELD AT MASERU

In The matter between:

MASHAMOLE LETOAO

APPLICANT

And

LESOTHO ELECTRICITY COMPANY (PTY) Ltd

RESPONDENT

JUDGMENT

CORAM: Justice S.N. Peete

Date of Hearing: 6th November, 2017

Date of Judgment: 23RD MARCH, 2020

SUMMARY

Electricity Act No.7 of 1969 – Public importance of Generation and supply of electricity – Disconnection of electricity supply – When justified – section 31(1)(a)(i) of the Act – Illegal by-pass connection by squatting tenants – Duty of landlord to guarantee lawful use of electricity by tenants – Application for a court interdict to compel re-connection - onus on the applicant to establish that he fulfilled his role to maintain lawful use of electricity.

Where the landlord fails to guarantee proper use of electricity on his rented premises and illegal squatters bypass and cheat the meters of electricity, and the Electricity Company disconnects the supply in terms of section 31 of the Electricity Act, the landlord ---- the

onus to establish that he fulfilled his supervisory sole to guarantee lawful use of electricity.

Peete J.:

- [1] Three years after the Kingdom of Lesotho attained its independence from **Great Britain** in 1966, the **Parliament of Lesotho** passed the **Lesotho Electricity Act No.7 of 1969**¹. In the Act “**Consumer**” means a person supplied or entitled to be supplied with electricity by the Corporation established under **Section 3** of the **1969 Act**
- [2] In today’s world electricity power runs every facets of life. It is a vital and essential service for the survival of the lives of the people. Recent Eskom crisis in the neighbouring South Africa demonstrates this. Unlawful use and consumption of electricity through illegal by-pass gadgetry is a punishable criminal offence and landlord have a vicarious duty/liability to ensure that their tenants do not sabotage use of electricity by interfering with the metering systems installed at the rented flats.
- [3] Whereas **Section 20(1)** of the **Electricity Act No.7 of 1969** casts a duty to supply electricity where the owner or occupier so requires. More importantly **Section 20(5)** reads:

“The Corporation may refuse to give a supply of electricity to any premises if it is reasonably satisfied that –

(a) the electrical fittings on those premises:

(i) are not in good order and condition; or

¹ Repealing the Electricity Supply Proclamation No. 26 of 1933.

(ii) *do not conform with the provisions of this Act; or*
(iii) *are likely to interfere with the efficient supply of electricity by the Corporation to other persons; or*
(b) *the consumer who is to be supplied has not paid all sums due from him to the Corporation for electricity supplied to him by it at those or any other premises or otherwise due from him to it under the provisions of this Act. Provided that nothing in this sub-section shall be construed as required the Corporation to satisfy itself of the matters mentioned in paragraph (a) of this sub-section in respect of any premises to which it is giving a supply of electricity.”*

[4] Section 26(1) reads:

Use of meters

“The value of the supply shall, except in cases use of meters where –

(a) *the tariff which applies is of a kind which renders the use of a meter inappropriate; or*

(b) *it is otherwise agreed between the consumer and the Corporation;*

*Be ascertained by means of an appropriate meter or meters fixed and connected with the service lines in such manner as may be prescribed, and the register of a meter shall be **prima facie** evidence in the absence of fraud of the value of the supply.*

(3) *Every meter shall be of such construction and pattern, and be capable of ascertaining the value of the supply within such limits of error, as may be prescribed.*

(4) *Every meter shall be sealed by the Corporation with a seal having its distinguishing brand or mark impressed thereon and the Corporation may, in*

order to protect any such meter, install suitable cut-outs or other protective devices on the consumer's premises on the supply side of any such meter, and may seal such cut-outs or other protective devices with a seal having its distinguishing brand or mark impressed thereon."

[5] **Section 31** deals with "**Discontinuance of supply.**" It reads:

(1) The Corporation may discontinue the supply of electricity –

(a) to a consumer who –

(i) fails to pay any sum due from him for electricity supplied to him by the Corporation under the provisions of this Act; or

(iv) makes any alteration or addition to his electrical fittings without notifying the Corporation; or

(vii) interferes or attempts to interfere with the Corporation's main fuses, apparatus or seals; or uses electricity supplied to him by the Corporation so as to interfere with the efficient supply of electricity to any other person; or in case the seal on any meter or cut-out is broken, fails to give notice of such fact to the Corporation; or

(x) fraudulently abstracts, causes to be wasted or diverted, consumes or uses electricity of the Corporation; or

(b)(i) where a leakage of electricity is discovered; or

(ii) if it is reasonably satisfied that the electricity fittings on such premises are not in good order and condition, or do not conform with the provisions of this Act, or interfere or are likely to interfere with the efficient supply of electricity by the Corporation to other persons.

(2) Where the Corporation is by virtue of this section authorised to discontinue a supply of electricity it may cut or disconnect any electric line through which such supply is provided and may refuse to reconnect such supply until.

[6] Indeed many other sections² give special powers to the Corporation for the supply of electricity in Lesotho, powers to discontinue supply electricity gadgetry at the electricity meters and at other cables

² Section 33 – Search of inspection by Corporation officials

[7] **Section 42 of the Act** reads:

(1) If any person without lawful excuse (the proof whereof shall lie on

Him)-

(a) interferes with any electrical plant used for or in connection with the generation, transmission, distribution or supply of electricity by the Corporation; or

(b) does or cause to be done anything which is calculated to interfere with or damage any such electrical plant;

he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

(2) If any person without the authority of the Corporation wilfully breaks or detaches any seal or locking device attached by the Corporation to any meter or cut-out under the provisions of this Act or does anything likely to enable a consumer to obtain a supply of electricity without due payment to the Corporation, he shall be liable on conviction to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.”

Liability (Criminal and civil)

[8] **Section 50** finally reads:

“The Corporation shall not be liable for any loss, damage or injury resulting from any cause sustained through the use or attempted use of electricity or electrical fittings, plant or lines or through the discontinuation or failure of the supply of electricity.

Electricity Regulation:

[9] Under Electricity **Regulations** (Legal Notice 16 of 1970). “Owner” means

And shall include any person receiving the rent or profits of any land or premises from any tenant or occupier thereof, or who would receive such rents or profits if such land or premises were let, whether on his own account or as agent for any person entitled thereto or interested therein;

- [10] In my view, where the LEC supplies individual tenants some of whom delinquently interfere with meters for any interior motive under Regulation 11, the Corporation Engineer shall **“have the right to disconnect at any time without notice, any installation on premises for which charges for electricity due to the Corporation are in arrears, or where any of these regulations are being violated or where conditions are found which, in the opinion of the Engineer, are dangerous,”** and under Regulation 12 **no person other than the Engineer shall directly or indirectly connect or re-connect or attempt to connect or re-connect any installation or part thereof with the supply mains or service.**

13. No person shall connect or allow to be connected any electricity consuming device to any installation or part of an installation supplied with electricity at a lower rate than that which would ordinarily be charged by the Corporation in terms of the electricity tariff for the supply of electricity to such electricity consuming device unless specifically authorized by the Engineer in writing.

15. No person shall tap or attempt to tap or allow or procure to be tapped any main or service wire in such a way that a supply of electric energy or current can or might be obtained other than or in excess of that contracted for.

17. No person shall in any manner or for any reason whatsoever tamper or interfere with any meter or service fuse or service mains or supply mains belonging to the Corporation.

18. (a) *The consumer shall be responsible for and liable to make good to the Corporation any damage that may occur to any meter, service fuses, service mains or other apparatus on the premises and belonging to the Corporation, unless caused by an Act of God, or by the Corporation or its duly authorized officers, whether or not it arises out of the supply of electricity.*

(b) *The amount payable by the consumer under the provisions of sub-clause (a) hereof shall be ascertained and advised to him by the Engineer.”*

[11] Regulation 19 in turn reads:

(a) *“The Corporation’s responsibility ceases at the consumer’s meter terminals. The Corporation is not responsible for any work done on the consumer’s premises except such work as may be actually carried out by the Corporation, nor for any loss or damage which may be occasioned by fire or by an accident arising from the state of the wires or fittings in any installation.*

(b) *The Corporation will not be responsible for any cessation or deficiency in supply of electricity nor liable for any loss or damage direct or consequential due to or arising from such cessation or deficiency of supply of electricity resulting from any cause within the consumer’s premises or from strikes, lock-outs, wars, Acts of Act, legislative action or embargo or from breakdown or stoppage of machinery or from accidental interruption of supply form whatever cause and whether or not such cause be attributable to the act or omission of any employee or agent of the Corporation.*

(c) *The Corporation does not undertake to attend to failure of lights or any other electrical devices expect when due to the operation of the Corporation’s protective devices through no fault of the consumer.”*

- [12] On liability of owner landlord Regulation 20 reads “The occupier of any premises on which a breach of these regulations shall be committed during his occupancy shall be deemed to be guilty of such breach just as though he had been the person actually committing such breach unless it shall be proved that he was not cognisant of such breach.
- [13] This in fact establishes the vicarious liability of the landlord and in my view the principle of vicarious responsibility and liability which rests on the landlord for damage to the LEC meters in their individual flats is clearly established.
- [14] It would go against that of gram of good sense and legality to let the delinquent squatters to use the premises of a cavallies landlord to bypass LEC meter and to get away with it. The landlord must be ultimate liability for his carelessness in handling and controlling his property and squatting tenants consuming electricity fee and with impunity.
- [15] Under the Electricity Act the LEC is also empowered to discontinue the supply of electricity to a consumer who fails to pay for electricity supplied to him.

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- [16] It is a worse scenario if a consumer unlawfully disconnects electricity equipment to avoid the meterage. Indeed, if found he can be criminally changed and his electricity supply disconnected. It was in my view cavalier and negligent for the applicant to abandon responsibility over his rented flats from which he received monthly rentals.
- [17] A vicariously liable applicant bears the ones to establish that the fiddling was against his express instruction, nor would he have known and prevented the same.

En passant, it is a notorious fact that this despicable practice is common in squatter premises in South African cities where electricity is consumed freely by corruptly by-passing electricity meters. This despicable conduct will not as a matter of public policy be condoned whenever or by whosoever is committed.

[18] The fact that each tenant has his or her own meter hence contractual obligations for electricity consumed does not relieve the landlord of his overall responsibility, even in cases where a squatter delinquent tenant who fiddles with the meter cables thus consuming electricity illegally. Fiddled property belonged to LEC. The applicant having applied for electricity connection was under a duty to take due care that LEC proper on his property was not misused – either through regular cheque or auditing monthly payment. Obviously some delinquent tenants continued receiving and using electricity when they were paying nothing or did so irregularly.

[20] Where the applicant is a landlord fails to evict delinquent tenants to occupy his flats and such delinquent tenants unlawfully disconnect electric supply to applicant's flats the LEC is entitled to disconnect.

The landlord cannot raise defence ignorance of unlawful squatting upon his own flats. He has himself to blame for careless management and control of occupancy of his flats.

[21] In my view, the Applicant is in law vicarious liability for damage the delinquent tenants would have done to the cables of LEC – despite the fact applicant did not know or condoned such criminality. That some tenants even squatted in his flats without his knowledge demonstrates a cavalier mismanagement the applicant over his flats which he seemingly left unmanaged, with no proper security or inspection camp indeed.

[22] In this case statutory liability under the 1969 Act should be separated from contractual liability. Applicant – as a reasonable landlord should have

mounted regular inspection over the usage and consumption of electricity by his tenants. The landlord bore primary responsibility. Worse, he did not care about squatters at his flats after Water Supply bad Authority (WASA) no wonder he knew nothing about illegal squatters who consumed electricity illicitly.

[23] Landlord's absolute liability is seated – Rule 50 mainly to protect public from illicit exploitation of essential services caused by illegal disconnections. His liability is vicarious under the 1969 Act and absolute. The interference to the cables was done by those unknown squatters with outside assistance. It was illegal and criminal through and through and the landlord cannot escape liability under section 31 and Regulation 11(a) of Electricity Regulations of the Act.

[24] As the owner and landlord of flats he had a duty to guard against unlawful squatting and to guard against interfering with electricity cables or other equipment. Illegal interference with the cables and other gadgetry somehow can be described as electricity theft or damage. There are cited about provisions under the Act which criminalise this despicable conduct.

Conclusion

[25] For above mentioned reasons, this application is dismissed with costs.

Justice S. Peete

For Applicant: Advocate Molise

For Respondent: Advocate Pheko