THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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Malakite Body Corporate and Another v City of Johannesburg Metropolitan Municipality and Another (832/2024) [2025] ZASCA 192 (15 December 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment, wherein the appeal was upheld with costs, including the cost of two counsel, against an order of the Gauteng Division of the High Court, Johannesburg (the Full Court).

This appeal concerns the first appellant, Malakite Body Corporate (Malakite) who holds 290 units and the second appellant, Greenstone Crest Body Corporate (Greenstone) who has 620 units in sectional title estates. The appellants' estates are zoned 'Residential 3' and each contains a lifestyle centre with a privately operated restaurant and gym. When Malakite and Greenstone assumed ownership from their developer, separate agreements were concluded with the municipality for the supply of electricity. The respondents, referred to as 'the municipality for convenience, are the City of Johannesburg Metropolitan Municipality (the City) and City Power Johannesburg SOC Ltd. The municipality billed each estate on a business tariff because the restaurant's electricity consumption could not be metered separately from residential consumption. The municipality advised both estates to install split (separate) meters to differentiate domestic and business use. From 2018 to 2019, both appellants submitted applications for split meters but did not proceed due to cost. Service interruptions and threats of service and disconnection followed. The appellants initially launched an application seeking an interdict to prevent disconnections in the High Court. Later the appellants amended their notice of motion to seek orders compelling the municipality to bill the estates at domestic tariffs and 'rectify' the billing records. The appellants relied on internal municipal emails suggesting the lifestyle centres be treated as 'residential' for electricity billing purposes, as they are treated for valuation purposes.

The High Court dismissed the application, holding that that the explanation of the emails was not opposed, rather, the official stated that he was merely making a suggestion to his colleagues and did not make or convey a decision. The High Court granted the appellants leave to appeal to the Full Court. The Full Court also dismissed the appeal, holding inter alia, that the load was indisputably mixed and, because it could not be separated, s 5(10) of the Standardisation of

Electricity By-Law 1999 (the by-laws), which regulates how mixed domestic and non-domestic communal loads must be billed, required the municipality to charge a non-domestic tariff. The appellants obtained special leave to appeal to the SCA.

The central issue before the SCA was whether the municipality was entitled to charge the respondents a business or commercial electricity tariff because of the lifestyle centres (in particular, restaurants) on their estates.

The SCA held that the appellants' interpretation of s 5(10) that the phrase 'mixed domestic and non-domestic loads' applied only to developments where business and residential uses are significant and cannot be classified as predominantly one or the other, could not be sustained. The Court found that the wording of the by-law is clear and unambiguous: where communal loads include domestic and non-domestic consumption and cannot be separately metered, the municipality must apply the non-domestic tariff. The Court found that the restaurants are unquestionably businesses, and their electricity consumption forms part of the estates' communal load. The Court reasoned that the tariff categories flow from actual use, not zoning or valuation classifications. The Court further held that introducing a threshold to test whether non-domestic consumption is significant would create uncertainty and arbitrariness. Split metering is the practical solution envisaged by the by-law to allow separate tariff classification; and reliance on internal emails was misplaced as the official lacked authority to bind the municipality. The Court concluded that the Full Court's reasoning was correct, and that the appellants' hypothetical scenarios did not supply a basis for departing from the plain meaning of the by-law.

As a result, the SCA dismissed the appeal with costs, including the costs of two counsel where so employed.

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