

# Case Study: Modimolle (Naboomspruit) Ratepayers Union Cases

## Magistrates Court and High Court Victories for Community Rights

### Overview

The Modimolle cases (formerly Naboomspruit) represent a series of landmark victories for ratepayers challenging unlawful municipal rate levying and service disconnections. These cases demonstrate the practical application of the legal principles established in Liebenberg, Rademan, and Koster at the community level, and show how residents can use the courts to protect themselves from arbitrary municipal action.

### Case Details

Aspect	Information
First Case	Annelise Dreyer & Hendrik Stephanus Dreyer v Modimolle Mookgophong Municipality
Case Number	CIV28/2021
Court	Magistrates Court for the District of Mookgopeng
Date of Judgment	29 June 2021
Judge	Mr Tayob
Outcome	Interim order confirmed; electricity supply restored; costs awarded
Second Case	Sydney Wells v Modimolle Mookgophong Municipality
Date	September 2024 (High Court)
Outcome	Spoilation order granted; maximum costs awarded against municipality

### Background and Context

#### The Naboomspruit/Modimolle Community

Naboomspruit, now officially known as Modimolle, is a town in the Limpopo Province of South Africa. Like many communities across the country, it has experienced challenges with municipal governance and service delivery. The Modimolle Mookgophong Municipality has been the respondent in multiple legal challenges brought by residents.

#### Formation of the Ratepayers Association

In February 2021, residents of Naboomspruit established a Ratepayers Association (BBV - Belastingbetalers Vereniging). The association conducted research to determine which years'

municipal rates and tariffs had not been properly promulgated in accordance with Section 14(2) of the Local Government: Municipal Property Rates Act, Act 6 of 2004.

Once the association identified the unpromulgated rates, residents began declaring disputes in accordance with the legal principles established in the landmark cases. These disputes were based on the solid legal foundation provided by *Liebenberg v Bergrivier Municipality*, which established that rates not properly promulgated in the Provincial Gazette are unlawful and not due and payable.

## **The First Case: Dreyer v Modimolle Mookgophong Municipality (CIV28/2021)**

### **Factual Background**

Annelise Dreyer and Hendrik Stephanus Deyer were residents of Modimolle who had fallen behind on their municipal account. Their electricity supply was disconnected in October 2020 at a time when their outstanding municipal debt was approximately R35,000.

However, when the residents conducted research into the municipality's rate-levying practices, they discovered that the municipality had not properly promulgated property rates for certain years. They calculated that the dispute regarding unpromulgated property tax amounted to R43,000. This meant that instead of owing the municipality R35,000, the municipality actually owed them R8,000.

### **The Legal Challenge**

In April 2021, the Dreyers approached the Magistrates Court seeking a spoliation order on the grounds that their electricity had been unlawfully disconnected. A spoliation order is a legal remedy that restores a person to possession of property or services that have been wrongfully taken away.

The application was brought on an urgent basis, arguing that the disconnection of electricity constituted a violation of their basic human rights and caused irreparable harm.

### **The Court's Decision**

The Magistrates Court, presided over by Mr Tayob, granted the application. The court made the following findings:

1. **Recognition of Urgency:** The court held that the supply of electricity to an individual is a basic human right. Where that right has been suspended or terminated unlawfully, irreparable harm can be anticipated. The court inferred from the facts set out in the applicants' affidavit that the matter was urgent because the electricity supply had been terminated or suspended.
2. **Procedural Compliance:** Although the respondent raised several procedural objections, the court found that the substance of the affidavit—not its form—is what weighs with the court. The court held that if an affidavit sets out facts upon which a court can decide that an applicant is entitled to relief, the application can proceed even if strict procedural requirements are not met.
3. **Prima Facie Right:** The court found that the applicants had established a prima facie right to the restoration of electricity supply. They had declared a dispute regarding unpromulgated rates, which placed them in a position where they were not legally obligated to pay the disputed amounts.

4. Apprehension of Irreparable Harm: The court found that there was a clear apprehension of irreparable harm. The disconnection of electricity in the absence of a legal right to disconnect constituted irreparable harm that could not be adequately remedied by damages.

5. Balance of Convenience: The court found that the balance of convenience favored granting an interim interdict. There was no other suitable remedy available to the applicants, and the municipality could not be prejudiced because the rules of court allowed for a 24-hour notice return date.

## **The Court Order**

The Magistrates Court issued the following order on 29 June 2021:

1. The interim order was confirmed with costs
2. The electricity supply was to be restored to the applicants' residence
3. The restoration was to be on a pre-paid basis until such time as the dispute was resolved

This was a significant victory for the Dreyers and for the broader community, as it established that residents who declare disputes over unpromulgated rates have a legal right to have their services restored.

## **The Second Case: Sydney Wells v Modimolle Mookgophong Municipality (September 2024)**

### **Factual Background**

Mr. Sydney Wells was the former chairperson of the Modimolle Ratepayers Association. Over many years, he had faithfully paid for municipal services every month. However, in accordance with the dispute strategy, he had withheld the property tax portion of his municipal account due to his dispute regarding unpromulgated rates.

On 28 August 2024, the municipality cut off the electricity supply to Mr. Wells' residence on the grounds that his municipal account was in arrears. The municipality claimed that he owed money for services, and therefore was entitled to disconnect his electricity.

Mr. Wells attempted to negotiate with the municipality for two days without success. He then contacted the National Taxpayers Union (NBU) on 2 September 2024.

### **Legal Action**

Advocate Hannes Greeff and local Pietersburg attorney Mr. Aakon Landsberg worked to get the matter enrolled for hearing on 5 September 2024—just three days after Mr. Wells' initial contact with the NBU. This demonstrates the power of organized community action and the availability of skilled legal counsel.

### **The High Court Decision**

The matter was heard in the Pietersburg High Court before the same judge who had heard the earlier case in April 2023. The judge was reportedly "so displeased with the municipality" that she immediately granted the application for a spoliation order.

### **The Court Order and Costs**

The High Court issued a spoliation order restoring Mr. Wells' electricity supply. More significantly, the court penalized the municipality with the maximum costs allowed by law. The costs were awarded on a scale that included the municipality's own attorney fees. The total cost to the municipality was approximately R140,000. This substantial financial penalty sends a powerful message to the municipality that it cannot continue to disconnect electricity in violation of residents' legal rights.

## **Significance of the High Court Judgment**

The legal team's notes emphasize that this High Court judgment is unique and significant because it represents the first time a High Court has confirmed the validity of disputes regarding unpromulgated property tax tariffs. This judgment provides reassurance to all Ratepayers Associations nationwide that dispute declarations are entirely lawful and will be upheld by the courts.

## **Key Legal Principles Established**

### **1. Electricity as a Basic Human Right**

The courts recognized that the supply of electricity is a basic human right. This principle is grounded in the South African Constitution, which recognizes the right to access to sufficient water, electricity, and other basic services.

### **2. Unlawful Disconnection Causes Irreparable Harm**

The courts held that where a municipality disconnects electricity in the absence of a legal right to do so, it causes irreparable harm that cannot be adequately remedied by damages. This justifies the granting of urgent relief in the form of a spoliation order.

### **3. Disputes Over Unpromulgated Rates are Lawful**

The courts confirmed that residents have the legal right to declare disputes over unpromulgated rates. Once a dispute is declared, the resident is no longer legally obligated to pay the disputed amount, and the municipality cannot use non-payment as grounds for service disconnection.

### **4. Substance Over Form in Urgent Applications**

The courts held that in urgent applications, the substance of the affidavit matters more than strict adherence to procedural form. If the affidavit sets out sufficient facts to enable the court to decide whether urgent relief should be granted, the application can proceed.

### **5. Financial Penalties for Unlawful Conduct**

The courts imposed substantial financial penalties on the municipality for its unlawful conduct. These penalties serve both as a deterrent and as compensation for the applicants' legal costs.

# **Advantages for the Community**

## **1. Restoration of Essential Services**

The most immediate advantage is the restoration of electricity supply to residents who have been unlawfully disconnected. This is a fundamental right that directly impacts the health, safety, and dignity of residents.

## **2. Financial Recovery**

By declaring disputes over unpromulgated rates, residents can reverse the financial burden. In the Dreyer case, the residents went from owing R35,000 to being owed R8,000 by the municipality. This represents a swing of R43,000 in their favor.

## **3. Legal Validation of the Dispute Strategy**

The High Court judgment in the Sydney Wells case provides legal validation for the dispute strategy used by Ratepayers Associations nationwide. This gives residents confidence that their actions are lawful and will be upheld by the courts.

## **4. Deterrent Effect on Municipal Misconduct**

The substantial financial penalties imposed on the municipality (R140,000 in the Sydney Wells case) serve as a powerful deterrent against future unlawful disconnections. Municipalities are now on notice that unlawful conduct will result in significant financial consequences.

## **5. Empowerment of Community Organizations**

The success of these cases demonstrates the power of organized community action. The Ratepayers Association was able to mobilize residents, conduct research, declare disputes, and support members through legal proceedings. This empowers communities to take control of their own governance.

## **6. Precedent for Other Communities**

These cases provide a precedent that other communities can follow. The legal strategy used in Modimolle—research, dispute declaration, legal action—can be replicated in other municipalities facing similar challenges.

## **7. Accountability for Municipal Officials**

The cases hold municipal officials accountable for their conduct. The substantial costs awarded against the municipality send a message that officials cannot act arbitrarily or in violation of the law without consequences.

## **8. Protection of Vulnerable Residents**

The Dreyer case is particularly significant because it involved residents who had fallen behind on payments due to financial difficulties. The court's decision protects vulnerable residents from being punished for non-payment of unlawfully levied rates.

## 9. Confirmation of Constitutional Principles

The cases confirm that the constitutional principles of legality, human dignity, and access to basic services apply with equal force to municipalities as they do to national and provincial governments.

## 10. Practical Application of Landmark Cases

The Modimolle cases demonstrate how the principles established in Liebenberg, Rademan, and Koster can be practically applied at the community level to achieve concrete results for residents.

# Connection to Broader Legal Framework

## Timeline of Related Cases

Case	Year	Court	Key Holding
Liebenberg v Bergrivier	2013	Constitutional Court	Strict promulgation required; no "substantial compliance"
Rademan v Moqhaka	2013	Constitutional Court	Right to withhold payment for unrendered services
Koster, Derby, Swartruggens	2018	High Court	Unpromulgated rates unlawful; disputes valid
Laingsburg Ratepayers	2024	High Court	Confirms Koster; rejects "substantial compliance"
Reddersburg Ratepayers Union	2024	High Court	Interdicts service disconnection during disputes
Modimolle (Dreyer)	2021	Magistrates Court	Spoilation order for unlawful disconnection
Modimolle (Wells)	2024	High Court	High Court confirms validity of disputes

## How Modimolle Fits Into the Broader Movement

The Modimolle cases represent the practical application of the legal principles established in the Constitutional Court and High Court cases. They show that:

1. The principles are not merely theoretical but can be applied in practice
2. Communities can use these principles to achieve concrete results
3. Courts at all levels (Magistrates, High, and Constitutional) are willing to enforce these principles
4. Residents have powerful legal tools available to challenge unlawful municipal conduct

## Challenges and Lessons

## **1. Persistence Required**

The Modimolle cases show that persistence is required. The Dreyer case was decided in June 2021, but the municipality appealed and the matter was not finally resolved until April 2023 in the High Court. Communities must be prepared for a lengthy legal process.

## **2. Need for Skilled Legal Counsel**

The success of these cases depended on the availability of skilled legal counsel. Advocate Hannes Greeff and attorney Aakon Landsberg were instrumental in achieving the victories. Communities need access to competent legal representation.

## **3. Importance of Community Organization**

The Ratepayers Association was crucial to the success of these cases. By organizing residents, conducting research, and supporting members through legal proceedings, the association was able to achieve results that individual residents could not have achieved alone.

## **4. Financial Barriers**

While the courts awarded costs against the municipality, individual residents may still face financial barriers to bringing legal action. The Sydney Wells case involved a resident who was willing to take on personal financial risk by pursuing the matter to the High Court.

## **5. Municipal Resistance**

The municipality's appeals and continued unlawful conduct (as evidenced by the Sydney Wells case in 2024, three years after the Dreyer case) show that municipalities may resist these legal principles. Continued vigilance and legal action are necessary.

## **Conclusion**

The Modimolle cases represent significant victories for residents challenging unlawful municipal rate levying and service disconnections. The Magistrates Court decision in the Dreyer case established that residents have the right to have their electricity restored when disconnected in violation of their legal rights. The High Court decision in the Sydney Wells case confirmed the validity of disputes regarding unpromulgated rates and imposed substantial financial penalties on the municipality for its unlawful conduct.

These cases demonstrate that the legal principles established in Liebenberg, Rademan, and Koster can be practically applied to achieve concrete results for communities. They show that residents, when organized and supported by skilled legal counsel, can hold municipalities accountable for unlawful conduct.

The advantages for the community are substantial: restoration of essential services, financial recovery, legal validation of the dispute strategy, deterrent effect on municipal misconduct, empowerment of community organizations, and precedent for other communities.

As more communities become aware of these legal principles and organize to enforce them, South Africa is witnessing a fundamental shift in the relationship between municipalities and

their residents. The Modimolle cases are part of this broader movement toward municipal accountability and community empowerment.

## Key Takeaways

Principle	Significance
Electricity as Basic Right	Courts recognize electricity as a basic human right that cannot be unlawfully disconnected
Disputes are Lawful	High Court confirms that disputes over unpromulgated rates are entirely lawful
Irreparable Harm	Unlawful disconnection causes irreparable harm justifying urgent relief
Substance Over Form	In urgent applications, substance of affidavit matters more than strict procedural compliance
Financial Penalties	Courts impose substantial costs against municipalities for unlawful conduct
Community Empowerment	Organized community action, supported by skilled counsel, achieves concrete results
Practical Application	Cases demonstrate how Constitutional Court principles can be applied at community level
Precedent Value	Cases provide precedent and encouragement for other communities

## References

1. Annelise Dreyer & Hendrik Stephanus Dreyer v Modimolle Mookgophong Municipality (CIV28/2021) (Magistrates Court for the District of Mookgopeng) (29 June 2021)
2. Sydney Wells v Modimolle Mookgophong Municipality (High Court, Pietersburg) (September 2024)
3. Liebenberg NO and Others v Bergrivier Municipality (CCT 104/12) [2013] ZACC 16; 2013 (6) SA 549 (CC) (25 October 2013)
4. Rademan v Mqohaka Local Municipality and Others (CCT 41/12) [2013] ZACC 11; 2013 (4) SA 225 (CC) (26 April 2013)
5. Koster, Derby, Swartruggens Taxpayers' Association v Kgetleng River Local Municipality (M152/2014) [2018] ZANWHC 77 (8 February 2018)
6. Local Government: Municipal Property Rates Act, Act 6 of 2004
7. Constitution of the Republic of South Africa, Act 108 of 1996
8. National Taxpayers Union (NBU) - <https://nat-tax-union.co.za/>

## Author's Note

This case study is based on the Magistrates Court judgment in CIV28/2021, the High Court judgment from September 2024, and the legal team's notes provided by the National Taxpayers Union. The cases demonstrate the power of organized community action grounded in solid legal principles. They provide hope and encouragement to communities across South Africa facing similar challenges with municipal governance and service delivery.