

**IN THE HIGH COURT OF
GAUTENG DIVISION,**



**SOUTH AFRICA
JOHANNESBURG**

CASE NO: 2022-15013

1. Reportable: No
2. Of interest to other judges: No
3. Revised

Wright J
18 October 2023

In the matter between:

PARAMOUNT PROPERTY FUND LIMITED

Applicant

and

ESKOM HOLDINGS SOC LTD

Respondent

JUDGMENT

WRIGHT J

1. The applicant company owns a piece of immovable commercial property which it lets to tenants. The tenants demand a supply of electricity. The respondent, Eskom supplies the electricity.
2. The applicant seeks a declarator that Eskom's invoices for the three year period before October 2018 have prescribed and it sought, in the original notice of motion, payment from Eskom of R380 000, which it says it paid under protest to avoid a cut off. This sum increased to R407 000 in the replying affidavit. Counsel for the applicant in argument said that he did not proceed with the R407 000 claim but limited the claim to R380 000. In my view, the applicant could not have calculated a figure of R407 000 unless it had a meter or meters on its property which it read when it wanted to.
3. Eskom seeks dismissal of the application and raises a conditional counterclaim for R223 000.
4. The applicant says that Eskom's billing and administration is chaotic and that Eskom never billed the applicant for the period May 2003 to October 2018. The applicant is vague as to why it did not query the non-receipt of invoices for fifteen years. A simple "*verbal*" agreement with Eskom is alleged. In effect, the applicant pleads prescription for twelve years from 2003 to 2015. Whether or not the Eskom employee who concluded the alleged "*verbal*" agreement, if such agreement was concluded, had authority is a matter which should be decided in a trial.
5. The answering affidavit raises huge disputes of fact. The deponent says that the applicant knows how much power it used over the years but kept quiet. Multiple accounts were opened covering the property in question. Meetings

were held in 2003 to 2004 to resolve disputes. Two new large delivery points were constructed by Eskom. Eskom was unaware for some time that power was being taken by the applicant from 2003 to 2020.

6. The replying affidavit does nothing to lessen the wide area of dispute of fact.
7. There is no replying affidavit in the counter-application.
8. This case needs full pleadings, including on the question of prescription, full discovery, possibly expert notices and then a trial.

ORDER

1. The notice of motion stands as a simple summons.
2. The notice to oppose stands as a notice of intention to defend.
3. The applicant is to deliver a declaration by 30 November 2023.
4. Thereafter, the matter proceeds as a trial action.
5. Costs reserved.

GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 18 October 2023

DELIVERED : 18 October 2023

APPEARANCES :

APPLICANT Adv J C Viljoen

jcv.law@mweb.com

083 289 5120

Instructed by Liebenberg Malan Liezel Attorneys

litigation3@liebenrgmalam.co.za

012 460 4149

RESPONDENT Adv P L Uys

083 388 4679

lafras@lulaw.co.za

Instructed by Devachander Attorneys

011 894 4400

shevira@devainc.co.za / admin@devainc.co.za