



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED: YES/NO

DATE:

SIGNATURE:

**Case Number: 64007/21**

In the matter between:

**ALLEYROADS CONSTRUCTION (PTY) LTD**

First Applicant

**(Reg nr: 2013/097718/07)**

**BRIDGE CITY HOUSING CONSORTIUM (PTY) LTD**

Second Applicant

**(Reg nr: 2013/110305/07)**

V

**ESKOM HOLDINGS SOC LTD**

Respondent

**Coram:** Kooverjie J

**Heard on:** 23 May 2023

**Delivered:** 26 May 2023 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *Caselines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 17H00 on 26 May 2023.

**SUMMARY:** The prescribed internal adjudication processes have not been complied with in terms of the agreement between the parties.

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## ORDER

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It is ordered: -

1. This application is enrolled as an urgent application in terms of the provisions of Uniform Rule of Court 6(12), and the forms and service provided for in the Uniform Rules of Court are dispensed with;
2. The Court Order dated 18 December 2021 has effect and finds application;
3. All security and other personal and/or any 3<sup>rd</sup> parties deployed by the respondent are interdicted from halting / stopping the reconnection of the electricity supply to the Property situated at CHIAWELO EXT 2 7305, Johannesburg, 367, with ESKOM account number 6775114959 ("the Property"), in terms of clause 3 of the order dated 18 December 2021;

4. The respondent and/or its agents are interdicted and/or restrained from terminating the electricity supply to the Property;
5. The respondent is ordered to immediately restore the applicants' electricity supply, within 5 hours from receipt of this order;
6. The respondent is ordered to pay the costs of this application, on the party and party scale.

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## JUDGMENT

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### KOOVERJIE J

[1] In this urgent application the applicants seek an order, declaring that the “court order” dated 18 December 2021 granted by this court, have full force and effect and that the respondent be interdicted and restrained from disconnecting the electricity supply to the applicants' property. The applicants further seek the immediate reconnection of the electricity supply to its property.

[2] The relevant portions of the said “court order” reads:

- “2. *That the respondent is ordered to restore the applicants' electricity supply, within three hours from receipt and notice of this order;*
3. *The respondent is interdicted and/or restrained from placing any suspension, interference or hold on the applicant's electricity supply;*

4. ...
5. *The applicant is ordered to facilitate the independent verification of the meter displayed on the tax invoice that forms the basis of the dispute by no later than 15 January 2022. The cost of such independent verification is to be covered by the first applicant. The applicant is further ordered to provide adequate notice to the respondent's office of the date and time of such independent verification, alternatively supplying the report and findings of such independent verification to all the relevant departments of the respondent that will have a substantial interest in the matter.*
6. *That the relief interim interdict in paragraph 2, 3 and 4 above remain until such time as a resolution/adjudication of the dispute, which dispute was attempted and lodged from the 24<sup>th</sup> of November and formally lodged and received on the 15<sup>th</sup> of December 2021."*

[3] It is common cause that upon the 18 December 2021 order being granted, the respondent restored the electricity supply to the applicants. The respondent disconnected the electricity supply on two occasions, namely on 3 May 2023 and 10 May 2023.

### **URGENCY**

[4] Before proceeding with the merits of this matter, I am required to address the issue as to whether the urgency of this application was warranted.

[5] I have noted that the property of the applicants constitute household units where families have been deprived of electricity since 10 May 2023. This application was

instituted on 18 May 2023. In my view, the urgent hearing of this application is necessitated.

### **APPLICANTS' CASE**

[6] The applicants maintain that the disputes between the parties remain unresolved and that the prescribed adjudication processes have not been exhausted.

[7] In this regard, the applicants relied on prayer 6 of the order, where the respondent was interdicted from disconnecting the electricity supply until the outcome of the dispute/adjudication. The high water mark of the applicants' case is that such dispute has not been resolved and therefore the respondent is in breach of the said order. The applicants' contentions remain that the meter readings are not aligned to the applicants' actual usage. It was argued that excessive amounts have been charged by the respondent. The applicants disputed the mechanical integrity of the meter and/or doubted that it is in a proper working condition. The applicants further dispute whether the meter corresponded to the account number of the applicants.

### **RESPONDENT'S CASE**

[8] The respondent's case is essentially premised on the contention that the applicants have failed to comply with prayer 5 of the said order. The applicants were required to specifically facilitate the independent verification of the meter reading, to provide adequate notice to the respondent's office of the date and time of such independent verification, alternatively, supply the report and findings of such independent verification to all the relevant sections of the respondent.

[9] Moreover the respondent argued that due to the non-compliance of prayer 5, it was justified in declaring the dispute resolution process was finalised. It was pointed out, firstly that the time period within which prayer 5 had to be complied with was 15 January 2022. Secondly the applicants failed to take the necessary steps in the dispute resolution process.

[10] The applicants contended that it had taken the necessary steps to furnish an independent expert report. However, due to the respondent's failure to come to the table, they were unable to finalize the report. I was referred to various correspondence that illustrated the respondent's tardiness namely:

- 10.1 on 5 January 2022 an email was sent from the applicants' agent to the respondent requesting a site meeting;
- 10.2 an attempted site meeting was scheduled for 10 January 2022. However, the representative of the respondent failed to attend the site meeting. Moreover the applicants did not have access to the meter box as it was secured;
- 10.3 when a further meeting was arranged, the applicants could not take a meter reading as the respondent's representative did not have the key to the locks that secured the meter;
- 10.4 on 13 January 2022 the applicants managed to file an interim report of the expert agent where it illustrated a discrepancy for the month of January 2022. At this point the applicants requested the meter readings to finalize their reconciliation;
- 10.5 the expert agent requested a meeting with the engineer of the respondent, however she was not successful.

- [11] The applicants thereafter sought meter readings with photos of the said readings from the respondent. The respondent was only able to furnish remote electronic data.
- [12] It is the applicants' version remains that the respondent failed to co-operate. They persist with their view that the amount charged on the respondent's statements is incorrect. The charged amount is not in line with the actual consumption of the applicants and is not aligned to the prepaid electricity meters. The applicants alleged that they continue to monthly pay for the current electricity to the meter agent in terms of the prepaid electricity meters.
- [13] From the chronology, I have noted that since February 2022, the parties resumed discussions again in August 2022. Notably in correspondence dated 4 August 2022 the respondent advised the applicants that it was in arrears and that the prepaid collections have not been paid over. The applicants disputed this by sending proof of its payments together with the relevant statements to the respondent.
- [14] In November 2022, the Respondent advised the applicants that its arrears have escalated and that the applicants' dispute have been closed at stage one. The applicants disputed this and sought the adjudication of the dispute to continue.
- [15] In March 2023 the respondent advises the applicants that they remain in arrears and, once again, advised that the disputes have been closed at stage one.
- [16] On 3 May 2023 then the respondent disconnected the applicants' electricity supply. Immediately thereto the applicants took it upon themselves to reconnect to the

electricity supply. On 10 May 2023 the respondent, once again, disconnected the electricity supply and further had armed security guards present at the meter box.

[17] In summary, the respondent maintains that it was justified to have terminated the electricity supply for various reasons. Firstly, the applicants have failed to comply with prayer 5 of the court order. It was also argued that the employee of the applicants does not qualify as an independent verification expert.

[18] Secondly, the respondent had co-operated with the applicants so as to ensure that the court order was complied with. It was pointed out that the applicants were furnished with the actual meter readings for the relevant periods. It was also explained that the meter readings were recorded remotely.

[19] Thirdly, the applicants were invited to proceed with the dispute resolution process, more particularly up to stage four. They failed to participate in the further processes. I was referred to Annexure 'ESK13', which illustrated that the applicants were advised to escalate the dispute to stage two of the process. Since they failed to do so, the matter was deemed to be resolved and the respondent was justified in accepting that the dispute resolution process came to an end.

[20] The final contention raised by the respondent is that in terms of Section 21(5) of the Electricity Regulation Act ("ERA"), it was entitled to terminate the supply of electricity to the applicants, particularly as no payment had been received.

[21] Section 21(5) of the ERA (Act 4 of 2006) provides that Eskom may not reduce or terminate the supply of electricity to a customer unless the customer is insolvent, or



has failed to honour or refuses to enter into an agreement for the supply of electricity or the customer has contravened the payment conditions of that licensee. In this instance, it is not in dispute that Eskom is the licensee while the applicants and the tenants are the end-users.

[22] The respondent further justified its conduct in terms of the agreement between the parties (the Electricity Supply Agreement). It was pointed out that the agreement echoed the provisions of the ERA and reinforced its obligations in terms of the PFMA. It was on these grounds that the supply of electricity was terminated.

[23] Presently, it is not in dispute that the consumption of electricity is made available through prepaid electricity meters. However sight must not be lost that the registered dispute between the parties pertained to the bulk electricity supply together with the respective ancillary costs. Currently the alleged debt is over R1 million and remains the subject matter of the dispute between the parties. It was this very dispute that caused the parties to initially engage in the adjudication proceedings, which were declared to have been closed.

[24] It is common cause that the ongoing dispute emanate from the Electricity Supply Agreement entered into way back in 2018, whereby Eskom was to provide the applicants with bulk electricity. This was recorded in Annexure 'ESK15.3' whereby the applicants were informed that they were in contravention of the Electricity Supply Agreement. They were advised that as at March 2023 they were indebted to Eskom in an amount of R1,040,250.58.

[25] In my view, having read the papers and having heard submissions from both parties, it has become evident that the parties are laying the blame at each other's door. As alluded to above, the respondent persisted it closed the dispute at stage one since the applicants have not bothered to escalate the dispute and showed its lack of interest in bringing the matter to finality. The applicants' conduct therefore caused the dispute to lapse. The applicants have failed to heed to the time limits of the court order.

[26] Irrespective of who is to blame, I am of the view that the parties have not exhausted the prescribed dispute resolution processes. This failure is clearly not in accordance with prayer 6 of the court order.

[27] Clause 31 of the Electricity Supply Agreement makes provision for a dispute resolution process whereby a dispute is initiated following with negotiations and then mediation. In the event that mediation is not successful, the matter is then referred to arbitration. I particularly emphasize clause 31.24 that stipulates:

*“Any complaint or dispute about the tariff, billing and quality of service arising from a customer's resale of electricity must first be addressed by the customer and if the customer fails to resolve such complaint or dispute, it shall be referred to Eskom for resolution and if Eskom also fails to resolve such complaint or dispute it shall be then referred to NERSA for final resolution.”*

[28] On these papers the parties relied on the “Complaint Handling Process” (attached as ‘ESK4’) which identified the various stages and processes to resolve the dispute between the parties.

[29] Even if I am to accept the respondent's version, namely that the applicants demonstrated no interest and failed to pursue the prescribed resolution process, it was still incumbent for the respondent to follow through. It was evident that the parties were conducting their investigations in silo and that no resolution was arrived at. Prayer 5 stipulated that the interim order set out in prayers 2, 3 and 4, which includes the restoration of the electricity and which restrains the respondent from interfering with the applicants' electricity supply remains in place until the resolution or adjudication of the dispute.

[30] In the premises I also find that prayer 6 of the court order have not been complied with. Hence the termination of the electricity supply to the premises of the applicants was not justified. This application therefore succeeds.

### **COSTS**

[31] In exercising my discretion, I am not inclined to grant punitive costs against the respondent. Costs follows the result on a party and party scale.

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**H KOOVERJIE  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA**

Appearances:

*Counsel for the applicants:*

*Adv J Schoeman*

*Instructed by:*

*Van der Walt Attorneys*

*c/o*

*Counsel for the respondent:*

*Adv HN Moloto*

*Instructed by:*

*Phatshoane Henney Attorneys*

*Date heard:*

*23 May 2023*

*Date of Judgment:*

*26 May 2023*