IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**YES/NO**
Of Interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Case number: 1222/2018

In the matter between:

NKETOANA LOCAL MUNICIPALITY Applicant

and

ESKOM HOLDINGS (SOC) LIMITED Respondent

CORAM: **LOUBSER, J**

JUDGEMENT BY: **LOUBSER, J**

HEARD ON: **10 SEPTEMBER 2020**

DELIVERED ON: **7 JANUARY 2021**

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[1] In recent years our courts have constantly been confronted with the endemic problem of municipalities failing to pay Eskom for the bulk supply of electricity to their areas of jurisdiction, and of Eskom wanting to implement stringent measures against those municipalities in order to enforce immediate payment of what is due to it. This matter is no exception.

[2] Here the Applicant has filed an application seeking certain relief in circumstances where it is facing a massive bill of outstanding payments due to the Respondent for the supply of electricity. In its response, the Respondent has filed a counter application seeking certain relief designed to place the Applicant in a position where it simply has to pay without any further delay.

[3] In the main application, the following relief is sought by the Applicant:

1. That the application be heard as an urgent application in terms of the provisions of Rule 6 (12) and, if applicable, condonation for the non-compliance with the stipulations of Section 35 of the General Law Amendment Act 62 of 1955.
2. That a Rule nisi do hereby issue, returnable on a certain date and time, calling on the Respondent to show cause, if any, why the following orders should not be made final:

    2.1. that the Respondent be interdicted and restrained from implementing electricity restrictions in Nketoana Municipality including those which is advertised to commence on Tuesday, 13 March 2018, and that the aforementioned electricity restrictions be stayed, pending the initialization and finalization of a process for the debatement of the Applicant's account with the Respondent;

2.2. that the Respondent be ordered to render a complete reconciled account, fully motivated and supported by the underlying contracts, vouchers and meter readings, if applicable, on which the Respondent rely to hold the Applicant liable for electricity payments, such account to be delivered within 30 days from the date of order;

2.3. that the Respondent avail three days after the period of 30 days in terms of paragraph 2.2 above has lapsed, on which it will avail personnel to meet with the Applicant's representatives at the Respondent's offices in Bloemfontein to debate the account of the Applicant;

2.4. that the Respondent pays the costs of the application in the event of it opposing same.

3. That the relief in paragraph 2.1 above will apply with immediate effect as an interim interdict pending the finalization of the application.

[4] The Applicant is therefore seeking interim relief in the form of an interdict restraining the Respondent from implementing electricity restrictions, pending the outcome of a debatement of the Applicant's account with the Respondent. Now it is trite that where an interim interdict is sought, an Applicant has to satisfy the following requirements:

a) a *prima facie* right to the relief sought, even if it is open to some doubt;
b) a reasonable apprehension of irreparable and imminent harm to the right if an interdict is not granted;
c) the balance of convenience must favour the grant of the interdict, and
d) the Applicant must have no other remedy.

[5] The question whether the Applicant has satisfied these requirements in the present application, must be considered with reference to the factual matrix of the matter before the court. It appears from the founding affidavit of the Applicant, deposed to by its municipal manager, that the Respondent supplies electricity to the Applicant, whereupon the Applicant redistributes electricity to the following towns in its district: Reitz, Petrus Steyn, Ntha and Lindley.

[6] It is further stated in the founding affidavit that the Applicant was paid up with its electricity account with the Respondent up to about the year 2013, but then, during that year, the Applicant fell in arrears with payments due to the financial mismanagement caused by "unscrupulous or corrupt" municipal officials. According to the municipal manager, the Applicant has undertaken corrective measures to eradicate the corrupt practices and to deal with the delinquent officials.

> "*The Applicant is also committed to make good any debt it may have, but this will obviously take time to accomplish as the Applicant must obviously do so within its financial means*"

he says.

[7] Currently the Respondent holds the Applicant liable for the payment of an amount of R 158 392 418-16. The Applicant disputes its liability to pay this amount on the basis that it is not factually or contractually justified. The reason for this is that the amount claimed must stem from various electricity supply agreements, which agreements are not available, the Applicant alleges. These agreements would clarify the provision and quantity of supply, the various remedial steps that the parties are allowed to take when there is a breach in some or all of the obligations by any of the parties, the powers that the Respondent has with regards to the limitation or

disconnection of electricity, the rates at which electricity is measured and quantified, and the possible dispute resolution prescripts for disputes.

[8] The agreements to which the Applicant refers in this respect, are the following: in certain areas in the Applicant municipality, the Respondent itself supplies and redistributes electricity to the towns of Petsana, Arlington, Mamafubedu and Leratswana. The Respondent provides electricity to Petsana in terms of a service delivery agreement between Petsana and the Respondent. This agreement is in the hands of the Applicant, and a copy thereof is attached to the founding affidavit. Despite a diligent search, however, the Applicant was unable to locate similar service delivery agreements for the towns of Arlington, Mamafubedu and Leratswana. According to the Applicant, the Respondent must be in possession of those agreements. To make things even worse for the Applicant, it was unable to find supply agreements with the Respondent for the supply of electricity to Reitz, Petrus Steyn, Ntha and Lindley.

[9] The Applicant contends that it is entitled to proof of its actual indebtedness with reference to the various clauses of the particular agreements that were concluded with the Respondent. In addition, the Applicant avers that the Respondent owes it money for arrear rentals pertaining to the service delivery agreement that was concluded for Petsana in 1992. The position may be the same as far as the agreements for the other towns that are mentioned above, are concerned. A debatement of the Applicant's account would have to be substantiated by such agreements, and hence the Applicant's request for a debatement is reasonable, fair and in the interest of all parties, as this would ensure legal certainty, it is alleged.

[10] Lastly, the Applicant states that it has been paying its current accounts with the Respondent diligently since November 2017, and that it intends to pay the arrears with the income of ring-fenced accounts. However, the Applicant has the right to obtain certainty of the arrear debts claimed, and for that purpose it needs to debate the account with reference to the supply agreements that have not been supplied. Meanwhile, the Respondent gave

notice on 28 February 2018 of its intention to implement electricity supply restrictions for the Applicant as from Tuesday, 30 March 2018. It is this notice that spurred the Applicant into action to approach this court, seeking an urgent interdict against the Respondent.

[11] Responding to the application, the Respondent immediately filed a counter application in which the following orders are sought:

1. Declaring that:

1.1. Nketoana Local Municipality was, at the end of October 2018, indebted to Eskom in the amount of R 209 322 105 - 59, being an amount due and payable in respect of the electricity supplied to it by Eskom;

1.2. the Municipality is liable for interest at the prime rate charged to Eskom by its bankers in respect of that part of the debt due for electricity supplied in Reitz from date of *mora* to date of payment;

1.3. the Municipality is liable for interest at the prime rate plus 5% as charged to Eskom by its bankers in respect of that part of the debt due for electricity supplied in Lindley and Petrus Steyn, from date of *mora* to date of payment;

1.4. the failure by the Municipality to pay the aforesaid amount within 10 days as envisaged in the Electricity Supply Agreements entered into between the Municipality and Eskom, would entitle Eskom to discontinue the supply of electricity to the Municipality after having given a further 14 days written notice of its intention to do so;

1.5. this right of discontinuation of the supply of electricity to the Municipality is subject to Eskom following a fair administrative process, especially with regard to parties

who may be affected by the discontinuation of electricity supply to the Municipality;

1.6. that the process initiated by Eskom on/or about 14 November 2016, which caused a notice of termination to be published in the public media circulating within the Municipality's area of jurisdiction in terms of which:

1.6.1. The public was requested to submit representations by no later than 15 December 2016 as to why Eskom should or should not give effect to the disconnection;

1.6.2. The public was informed that written representations would be considered and a final decision made and published on 22 December 2016; and

1.6.3. in the event that Eskom decided to continue with the disconnection, the disconnection would occur on/or about 5 January 2017,

was a fair process envisaged by the Promotion of Administrative Justice Act 3 of 2000 and Eskom, to the extent necessary, is entitled to enforce its rights to discontinue electricity supply to the Municipality.

2. The Municipality is directed to deliver a written report to this Court within 7 calendar days after the expiry of a period of 90 calendar days after the granting of this order, accounting for the above-mentioned 90 calendar day period, the following;

2.1 the total amount received in respect of electricity sold to its end users; and

2.2 the amount of equitable share received from national treasury as well as the portion thereof allocated for the use of electricity by the indigent.

[12] Together with the Notice of Motion in the counter application, the Respondent filed an affidavit titled “Answering Affidavit and Founding Affidavit”. In this affidavit, deposed to by the Respondent’s senior manager of customer service for the Free State, the following is stated:

[13] The towns of Arlington, Leratswana, Mamafubedu and Petsana receive their electricity directly from Eskom. The residents of Lindley, Ntha, Petrus Steyn and Reitz, on the other hand, receive their electricity from the Municipality, which in turn receives its electricity in bulk from Eskom. This means that the Municipality is indebted to Eskom in respect of bulk electricity supplied to it for only the towns of Lindley, Ntha, Petrus Steyn and Reitz. As for the remaining towns mentioned above, the Applicant has no basis or claim for the rendering of any statements or the debatement thereof.

[14] It further appears from this affidavit that on 29 March 2018, that is 20 days after the filing of the main application, the Respondent provided the Applicant with a bundle of documents addressing the issues raised by the Applicant in its founding affidavit. These documents comprised of Electricity Supply Agreements for the relevant towns, as well as invoices, reconciliations and calculations. Copies thereof are attached to the affidavit under discussion.

[15] On 18 April 2018 the Applicant informed the Respondent that the said documentation were not sufficient. The Respondent then delivered further invoices, reconciliations and statements to the Applicant on 25 May 2018. At the same time the Respondent addressed all the issues raised by the applicant in its letter of 18 April 2018, and it confirmed that there was a credit due to the Applicant in the amount of R 374 413 - 32 in respect of so-called wheeling charges. This amount has been credited to the Applicant’s account.

[16] On 2 November 2018 the Applicant confirmed in a letter that it has considered all of the documentation and that it sought clarity on certain aspects. In response thereto the Respondent furnished the Applicant with reconciled accounts of amounts due to it by the Applicant, as well as accounts giving rise to the arrear electricity charges due and owing by the Applicant. According to the Respondent, the Applicant has never challenged any of the accounts rendered to date, nor has it challenged any of the responses provided by the Respondent to its queries.

[17] It is further pointed out in the affidavit of the Respondent that on 30 October 2018, the total amount of electricity charges due to the Respondent by the Applicant has risen to R 209 322 105 - 59. This is after an amount of R 1 735 175 - 34 for wheeling charges and commission payable in terms of takeover contracts has been credited to the Applicant's account.

[18] Meanwhile, the Respondent published various notices in the local media advising that it wanted to exercise its right to interrupt the electricity supply to the Municipality. In these notices persons who were likely to be affected by the Respondent's decision, were invited to make representations to the Respondent whether or not it should proceed with this action. No representations were received from the public.

[19] In addition, the Respondent delivered an audit by an expert to the Applicant on 19 January 2018, establishing that electricity sold by the Respondent to its top customers was appropriately metered and accounted for. The purpose of this audit was to optimize the Applicant's revenue collection to accommodate any revised repayment plan for the Applicant. In the end, however, the applicant persisted to default on its payment obligations, and the Respondent then decided to proceed with the implementation of the scheduled interruptions. On 28 February 2018 a notice was published to this effect by the Respondent in the local newspapers.

[20] In the Respondent's affidavit reference is also made to an Acknowledgment of Debt signed on behalf of the Applicant on 13 January 2017. In this document,

the Applicant acknowledged its indebtedness to the Respondent in the amount of R 119 287 924 - 64 at the time, and it undertook to pay this debt in stipulated monthly instalments. In paragraph 4.1 of the document, the Applicant renounced the usual legal benefits, including the benefits of *non causa debiti, errori calculi* and the revisions of accounts. It is the case for the Respondent that the Applicant has breached its undertakings in terms of the repayment of its debts and on the payment of current charges.

[21] The Applicant subsequently filed an Answering and Replying Affidavit on 19 December 2019, and the Respondent a Replying Affidavit on 17 February 2020. In its affidavit, the Applicant states that it has been a mammoth task for its officials to grapple with agreements dating years back and accounts based on tariffs that have been amended from time to time through the years. The Applicant intends employing the services of an expert in the field to assist by doing a total audit or reconciliation of the account. Once that has been done, the Applicant intends referring a formal dispute for dispute resolution in terms of the Intergovernmental Relations Framework Act 13 of 2005 (IRFA). This will be done, it says, in the event that the informal debatement proves unsuccessful.

[22] The Applicant furthermore denies that the process initiated on 14 November 2016 by the Respondent was a fair process envisaged by the Promotion of Administrative Justice Act 3 of 2000. The Applicant accepts that it is indebted to the Respondent for amounts in respect of bulk electricity supply, but the amount which is owing is disputed, it says. Although it has not raised any dispute with the documentation and accounts that were rendered by the Respondent, it has also not confirmed that the documentation was in order and that it constituted a full exposition of the Respondent’s account.

[23] The Acknowledgment of Debt signed by the Applicant, to which the Respondent made reference in its Answering Affidavit, was signed under duress. The Respondent left it with no choice and unlawfully threatened to interrupt the electricity supply if it did not sign the document, the Applicant alleges.

[24] The Applicant also denies that the Respondent is entitled to judgment in the amount of R 209 322 105 - 59. It denies that it is owing such amount, since the process of debatement has not been finalized, and since the Applicant wants to refer the dispute to formal dispute resolution. It also states that the Respondent is not entitled to utilize electricity interruptions as a debt collection measure.

[25] According to the Applicant, the Respondent's accounts were incorrect from the beginning because it was indebted to the Applicant in various amounts. This is still the case, it alleges. It is further contended that the Respondent is obliged under the IRFA to make informal attempts to resolve disputes pertaining to its account, and whether the process be termed the debatement of account or otherwise, is irrelevant.

[26] In its Replying Affidavit, the Respondent mentions that the Applicant's debt has increased meanwhile to the sum of R 298 736 774 – 17 as at December 2019. The last payment made by the Applicant to the Respondent was an amount of R10 million during July 2019.

[27] Respondent does concede in this affidavit that the relief claimed by it to compel the Applicant to deliver ring fenced accounts, is not foreshadowed in the papers. Such relief can therefore not be considered.

[28] It is further pointed out by the Respondent that all of the documentation and information the Applicant sought in terms of prayer 2.2 of the Notice of Motion, have been provided by the Respondent during May 2019. On its own version, however, the Applicant is yet to establish, through the engagement of an expert, if it in fact has a claim against the Respondent. On the other hand, the Respondent has really shown its good faith by paying what it considered owing, and by providing the Applicant with all the relevant information necessary to enable it to establish any claim it may have against the Respondent, it states.

[29] By now it should be clear that this court is again confronted by the classic problem of a municipality that is unable to pay the spiralling debts it owes to Eskom, while Eskom finds itself in a position where it has to take extraordinary measures to ensure that payment of these debts will be forthcoming. In the present case, this problem is further complicated by the lapse of time since the municipality fell in arrears with the payment of its account in 2013, but more particularly, since the filing of the urgent application on 9 March 2018.

[30] On that date, the matter was removed from the roll by agreement to provide for the exchange of further papers in the application. The costs of the day stood over for later adjudication. At the same time, it was agreed that Eskom would not interrupt the electricity supply to the municipality pending the finalization of the matter. After a long delay of almost two and a half years, the matter was eventually set down for hearing by Eskom on 4 August 2020, to be heard on 10 September 2020.

[31] The first question that arises, as indicated in paragraph 4 above, is whether the Municipality has satisfied the requirement of satisfying the court that it has a prima facie right to the relief sought, even if it is open to some doubt. In this respect it must be kept in mind that the relief sought is not aimed at eventually reviewing Eskom's decision to interrupt the supply of electricity, but to prevent the interruption pending a process of debatement of Eskom's account.

[32] Now it is so that Eskom is an organ of state. As an organ of state, it performs a public function as set out in the Electricity Regulation Act 4 of 2006 (ERA). Section 21 (5) of ERA provides that a licensee (Eskom in this case) may not reduce or terminate the supply of electricity to a consumer, unless the consumer (the Municipality) has contravened the payment conditions of the licensee. It is clear from the facts in the present case that the Municipality has indeed contravened the payment conditions as set out in the relevant supply agreements. Eskom therefore has a right to reduce or terminate the supply of electricity to the Municipality.

[33] However, in **Resilient Properties (Pty) Ltd v Eskom Holdings SOC Ltd and Others**[1] , it was held that Eskom's entitlement to reduce or terminate is subject to the constraints of just administrative action is envisaged in Section 33 of the Constitution. That implies at least a rationality threshold, but likely too a reasonableness threshold[2] .

[34] The next inquiry is then whether the Eskom decision complies with the requirement of rationality or even reasonableness. The decision was obviously taken to compel payment of the arrear amount, and to compel regular payment of the current account. Viewed objectively, the decision certainly cannot ensure payment of the arrear debt as it now stands, and perhaps not even payment of the current account. In this respect, the decision cannot pass the test of rationality, even if it encourages the Municipality to make every effort to pay the current account. This is so, because the municipality does not have the means to pay the arrears. On the other hand, if the interruption or termination is to be implemented, it would cause nothing but disaster to the residents of the municipal area. In this sense, the decision does not even pass the test of reasonableness.

[35] There is another reason why the decision under discussion is untenable. That reason is that the decision amounts to self-help, which is unconstitutional and therefore prohibited. In **Head of Department, Department of Education, Free State Province v Welkom High School and Others**[3] the Constitutional Court has expressed the principle as follows:[4]

> *"The rule of law does not permit an organ of state to reach what may turn out to be a correct outcome by any means. On the contrary, the rule of law obliges an organ of state to use the correct legal process. Accordingly, section 7(2) (of the Constitution) and the rule of law demand that where clear internal remedies are available, an organ of state is obliged to use them, and may not simply resort to self-help. I*

[1] **2019(2) SA 577 (GJ)**
[2] Section 6(2)(f)(ii) and Section 6(2)(h) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA)
[3] **2014(2) SA 228 (CC)**
[4] At par 86, page 255

pause to emphasize that this court has consistently and unanimously held that the rule of law does not authorize self-help."

[36] The Municipality has therefore established a clear right to an interim interdict. As for the remaining requirements for an interim interdict, the Municipality and its residents stand to face undeniable hardship and even disaster if Eskom's decision is implemented. Yet Eskom will not be destroyed if the interruption is not implemented. It is true that Eskom may have to wait until a recovery plan is devised to ensure payment to it, which is lamentable to say the least, but that is a far lesser fate than awaits the Municipality and its residents. It is certainly also true that the Municipality had no alternative remedy but to approach the court to seek a restraint on Eskom's rights to interrupt the supply of electricity.

[37] When it comes to a restraint pending the initialization and finalization of a process for the debatement of the Municipality's account with Eskom, there is some doubt as to the practicality and the prospect of success in such a process for debatement. To put it differently, the question is whether the Municipality has made out a proper case for such a debatement, having regard to the history of the matter.

[38] The Municipality approached the Court on the basis that it did not have access to various electricity supply agreements that would clarify, inter alia, the rates at which electricity is measured and quantified. It is entitled to proof of its actual indebtedness with reference to the stipulations contained in the supply agreements. In addition, the Municipality alleged that Eskom is owing it for arrear rentals pertaining to the service delivery agreement that was concluded with Petsana in 1992. It is not disputed that only 20 days after the filing of the main application, Eskom did provide the Municipality with the supply agreements required, and with relevant invoices, reconciliations and calculations. However, the Municipality informed Eskom that the said documentation were not sufficient. In response thereto Eskom delivered further invoices, reconciliations and statements to the Municipality on 25 May

2018. At the same time, Eskom confirmed that there was indeed a credit owing to the Municipality.

[39] On 2 November 2018, more than five months later, the Municipality sought clarity on certain aspects of the documentation mentioned. Eskom then again furnished the Municipality with reconciled accounts of amounts due to it by the Municipality. By 30 October 2018 the total amount of electricity charges due by the Municipality had increased to more than R209 million. It is common cause that the Municipality never challenged any of the accounts furnished. It is also common cause that Eskom has credited the Municipality's account with a further R1.7 million for wheeling charges and commission before calculating the final amount owing.

[40] Now it can be argued that the Municipality has received everything it wanted in the form of documentation, and that there is nothing left to debate as far as the initial amount of R 158 392 418-16 is concerned. Meanwhile, at the time that the counter application was filed, the arrears amount had risen to more than R 209 million. In the process of calculating the arrears at the time, Eskom had credited the account of the Municipality with the R1.7 million alluded to above.

[41] As at December 2019, the outstanding amount has rocketed to almost R 300 million. The Municipality accepts that it is indebted to Eskom in respect of the bulk electricity supply, but it denies the amount of indebtedness. In particular, it denies the amount of R 209 million, saying that the accounts of Eskom were incorrect from the beginning because Eskom was indebted to the municipality in various amounts. This is still the case, it alleges, and it says that certainty regarding the quantum of Eskom's claim can only be achieved by a debatement of the account.

[42] It is clear, therefore, that the Municipality is relying on the fact that Eskom is owing it money, and that this indebtedness should be taken into account when final figures are calculated. In order to attain clarity, the Municipality wants to engage in an informal debatement process. If this process is unsuccessful, it

intends employing the services of an expert to obtain a total audit or reconciliation of the account. Once that has been done, the Municipality intends referring a formal dispute for dispute resolution in terms of the IRFA.

[43] I am not persuaded that a process of informal debatement would result in a successful resolution of the existing problems between Eskom and the Municipality, having regard to the history of those problems. In my view, such a process would only serve to delay a resolution even further, while the arrear debts of the Municipality are increasing by the day.

[44] In the premises, the result is that the Municipality has made out a proper case for an interdict as formulated in prayer 2.1 of its Notice of Motion, but not for an interdict pending a process of debatement.

[45] It is clear that there is a dispute between the parties. The dispute not only relates to the quantum of Eskom's claim, but also to the ability of the Municipality to pay the amounts demanded and the timing and the method of payment of the arrears. It follows that a "dispute" exists for the purposes of Section 41(3) of the Constitution. Section 41(3) provides that an organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.

[46] Section 41(4) of the Constitution provides that if a court is not satisfied that the requirements of subsection (3) have been met, it may refer a dispute back to the organs of state involved. This is what happened in the case of **Cape Gate (Pty) Ltd and Others *v* Eskom Holdings (SOC) and Others**[5] , where a full bench of the Johannesburg High Court has referred the dispute between the parties back to the organs of state involved, because it was of the view that the organs of state have not made every reasonable effort to settle the dispute by means of the mechanisms and procedures provided.

[5] **2019 (4) SA 14 (G J)**

[47] The mechanisms and procedures are, *inter alia*, the following: Section 139(1) of the Constitution provides that when a municipality cannot fulfil an executive obligation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of their obligation. Section 44 of the Municipal Finance Management Act 56 of 2003 demands that whenever a dispute of a financial nature arises between organs of state, the parties concerned must as promptly as possible take all reasonable steps that may be necessary to resolve the matter out of court. If the National Treasury is not a party to the dispute, the parties must report the matter to the National Treasury, and may request it to mediate between the parties or to designate a person to mediate between them. Section 139 of the same Act provides that where a municipality is in serious or persistent material breach of its obligations to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the provincial executive must promptly request the Municipal Financial Recovery Service, amongst others, to determine the reasons for the crisis and to prepare an appropriate recovery plan for the municipality.

[48] Furthermore, Section 30 of the ERA provides that if there is a dispute between licensees, the National Energy Regulator must act as a mediator if so requested by both parties to the dispute. Section 45 of the IRFA provides that no organ of state may institute judicial proceedings in order to settle an intergovernmental dispute unless the dispute has been declared a formal intergovernmental dispute in terms of Section 41 of the Act, and all efforts to settle the dispute were unsuccessful. Once a formal intergovernmental dispute has been declared, the parties must promptly convene a meeting between themselves in terms of Section 42 of the Act, and if they fail to do so, the Minister or the MEC may convene such a meeting or may designate a facilitator on behalf of the parties. The facilitator must, *inter alia* assist the parties to settle the dispute in any manner necessary.

[49] In this matter, I am not satisfied that the parties have made every reasonable effort to settle the dispute by means of the mechanisms and procedures

referred to above. In terms of Section 41(4) of the Constitution, I may therefore refer the dispute back to the parties involved. In any event, there is no evidence that a formal dispute was ever declared in terms of Section 41 of the IRFA by any of the parties.

[50] If Eskom is then to be interdicted on a temporary basis from interrupting the bulk supply of electricity to the municipality, that interdict should pend the resolution of the dispute by the state organs, but within a limited timeframe. I am of the view that six months is a reasonable time, given the background of the matter.

[51] As for the costs, Eskom caused the urgent passage to court on 9 March 2018, and it should pay those costs on the party and party scale. In the main application, the municipality is for all intents and purposes the successful party, and Eskom must pay the costs of the main application. Although Eskom is the unsuccessful party in the counter application because the prayers it seek cannot stand alongside the referral of the dispute back to the parties, it has already been found that both parties are to be blamed for the failure to invoke the applicable mechanisms and procedures in order to settle the dispute. Therefore each party is to pay its own costs in the counter application.

[16] In the premises, the following order issues:

1. Eskom is interdicted from implementing interruptions in electricity supply to the Nketoana Local Municipality pending resolution of the disputes between them within six months of the date of this order.

2. The disputes between the parties and the manner and timing of its resolution, are referred back to the parties in terms of Section 41(3) of the Constitution.

3. The parties are ordered to make every reasonable effort to resolve the disputes by means of the mechanisms and procedures provided by statute.

4. Should the parties fail to resolve the disputes in the manner aforesaid within the period of six months, they are each granted leave to approach the court again for appropriate relief.

5. Eskom is ordered to pay the costs of 9 March 2018 and the costs of the main application on the party and party scale.

6. The counter application is dismissed, with no order of costs.

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P.J. LOUBSER, J

For the Applicant:	Adv. M.C. Louw
Instructed By:	Lessing Attorneys, Bethlehem per Honey Attorneys, Bloemfontein
For the Respondent:	Adv. L.T. Sibeko SC, with him Adv. N.H. Moloto
Instructed By:	Phatshoane Henney Inc Bloemfontein