



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

**CASE NO: 013715/2022**

|                        |                                                                                                |
|------------------------|------------------------------------------------------------------------------------------------|
| (1)                    | REPORTABLE: NO                                                                                 |
| (2)                    | OF INTEREST TO OTHER JUDGES: NO                                                                |
| (3)                    | REVISED.                                                                                       |
| <u>28/8/24</u><br>Date | <br>ML TWALA |

**TOPIGS NORSVIN SA PROPRIETARY  
LIMITED**

**APPLICANT**

**And**

**ESKOM HOLDINGS SOC LTD  
ANDRE MARINUS de RUYTER  
CALIB CASSIM  
MALEGAPURU WILLIAM MAKGOBA  
BANOTHILE CHARITY MAKHUBELA  
PULANE ELSIE MOLOKWANE**

**FIRST RESPONDENT  
SECOND RESPONDENT  
THIRD RESPONDENT  
FOURTH RESPONDENT  
FIFTH RESPONDENT  
SIXTH RESPONDENT**

|                                        |                                  |
|----------------------------------------|----------------------------------|
| <b>BUSISIWE MAVUSO</b>                 | <b>SEVENTH RESPONDENT</b>        |
| <b>RODERICK de BRASSIC CROMPTON</b>    | <b>EIGHT RESPONDENT</b>          |
| <b>TSHEPO HERBERT TONG-MONGALO</b>     | <b>NINTH RESPONDENT</b>          |
| <b>MLAWULI MAYOR MAJINGOLO</b>         | <b>TENTH RESPONDENT</b>          |
| <b>DEIDRE HERBST</b>                   | <b>ELEVENTH RESPONDENT</b>       |
| <b>BONGUMUSA MASHAZI</b>               | <b>TWELFTH RESPONDENT</b>        |
| <b>LESIBA KGOBE</b>                    | <b>THIRTEENTH RESPONDENT</b>     |
| <b>MINSTER OF WATER AND SANITATION</b> | <b>FOURTEENTH RESPONDENT</b>     |
| <b>DIRECTOR-GENERAL: DEPARTMENT OF</b> |                                  |
| <b>WATER AND SANITATION</b>            | <b>FIFTEENTH RESPONDENT</b>      |
| <b>MINSTER OF FORESTRY, FISHERIES</b>  |                                  |
| <b>AND THE ENVIRONMENT</b>             | <b>SIXTEENTH RESPONDENT</b>      |
| <b>DIRECTOR-GENERAL: DEPARTMENT OF</b> |                                  |
| <b>FORESTRY, FISHERIES AND THE</b>     |                                  |
| <b>ENVIRONMENT</b>                     | <b>SEVENTEEN RESPONDENT</b>      |
| <b>MINISTER OF MINRAL RESOURCES</b>    |                                  |
| <b>AND ENERGY</b>                      | <b>EIGHTEENTH RESPONDENT</b>     |
| <b>NATIONAL ENERGY REGULATOR OF</b>    |                                  |
| <b>SOUTH AFRICA</b>                    | <b>NINETEENTH RESPONDENT</b>     |
| <b>CLIVE RAYMOND LE ROUX</b>           | <b>TWENTIETH RESPONDENT</b>      |
| <b>PAUL MPHOMAKHAWANA</b>              | <b>TWENTY- FIRST RESPONDENT</b>  |
| <b>AUSTIN LESLIE MKHABELA</b>          | <b>TWENTY-SECOND RESPONDENT</b>  |
| <b>BUSISIWE VILAKAZI</b>               | <b>TWENTY-THIRD RESPONDENT</b>   |
| <b>LWAZI LEON GOQWANA</b>              | <b>TWENTY-FOURTH RESPONDENT</b>  |
| <b>FATHIMA BEE BEE ABDUL GANY</b>      | <b>TWENTY-FIFTH RESPONDENT</b>   |
| <b>ANYANDA PEARL ZINHLE</b>            |                                  |
| <b>MAFULEKA</b>                        | <b>TWENTY-SIXTH RESPONDENT</b>   |
| <b>TSKANI LOTTEN MTHOMBENI</b>         | <b>TWENTY-SEVENTH RESPONDENT</b> |
| <b>BEKI ZACHARIA NTSHALINTSHALI</b>    | <b>TWENTY-EIGHT RESPONDENT</b>   |
| <b>NTETO NYATHI</b>                    | <b>TWENTY-NINETH RESPONDENT</b>  |
| <b>TRYPHOSA RAMANO</b>                 | <b>THIRTIETH RESPONDENT</b>      |

---

---

**RULE 42 JUDGMENT**

---

**TWALA J**

- [1] The applicant, discontent with the whole of the judgment and order of this Court handed down on the 19 June 2024 dismissing its application with no order as to costs, launched an application for leave to appeal.
- [2] On perusal and consideration of the papers filed for the application for leave to appeal, this Court realised that it made a patent error by not dealing and making a specific finding against the National Energy Regulator of South Africa (“*NERSA*”), the nineteenth respondent in this case. The court regrets the error and seeks to correct it in this judgment.
- [3] It is noteworthy that the Court, on realising the error, invited the parties to make any submissions as it intended to correct the error in terms of Rule 42 of the Uniform Rules of Court. All the parties recorded no objection to the Court effecting an amendment to deal with and make a finding regarding the NERSA, except for the applicant which reserved its rights to effect any amendment to its application and grounds for leave to appeal.
- [4] NERSA is an organ of State and has been referred to as such in paragraph [12] of the main judgment and as one of the State respondents. However, NERSA as a Regulator established in terms of section 3 of the National Energy Regulator Act, 4 of 2006 (“*The Act*”) has a completely different mandate. Its functions are concerned, amongst other things, with the issuing of licenses for the generation and transmission of electricity and compliance with the conditions of those licenses. There is nothing

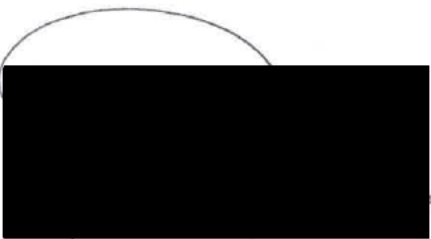
in the Act that suggests that NERSA has the power to force its licensee to desist from polluting and degrading the downstream resources at Kusile Power Station as sought by the applicant.

[5] I am unable to disagree with NERSA that the complaint by the applicant of non-compliance by Eskom with or breaches of its authorisations and or licence conditions is not related to any licence issued by NERSA. Therefore, so says NERSA, it is not authorised and empowered to enforce the compliance complained of in terms of the provisions of the National Energy Regulator Act and or the Electricity Regulator Act 40 of 2006 from which it receives its mandate.

[6] It is my respectful view that the applicant has failed to demonstrate to the Court that NERSA has a duty to protect against the pollution and degradation of the environment downstream at the Kusile Power Station. The inescapable conclusion is therefore that the application against NERSA falls to be dismissed.

[7] In the circumstances, I make the following order:

1. The application against NERSA, the nineteenth respondent is dismissed with no order as to costs.



TWALA M L

JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION

**For the Applicant:**

**Advocate MM Oosthuizen SC  
Advocate N Fourie**

**Instructed by:**

**Bishop Fraser Attorney  
Tel: 010 035 4944  
[davide@bishopfraser.co.za](mailto:davide@bishopfraser.co.za)**

**For the Eskom Respondents:  
(First to Tenth,  
Eleventh to Thirteenth and  
Twentieth to Thirty-First  
respondents)**

**Advocate P Lazarus SC  
Advocate B Dhladhla**

**Instructed by:**

**Edward Nathan Sonnenbergs Inc  
Tel: 011 269 7600  
[hhugo@ensafrica.com](mailto:hhugo@ensafrica.com)**

**For the State Respondents:  
(Fourteenth to Seventeenth  
Respondents)**

**Advocate A Liversage SC  
Advocate L Maite**

**Instructed by:**

**Office of the State Attorney, Pretoria  
Tel: 012 309 1500  
[sakhosa@justice.gov.za](mailto:sakhosa@justice.gov.za)**

**For the Nineteenth  
Respondent:**

**Advocate Mahlangu**

**Instructed by:**

**Mchunu Attorneys  
Tel: 011 778 4060  
[titus@mchunu.co.za](mailto:titus@mchunu.co.za)**

**Date of Hearing:**                      **RULE 42 ON PAPER**

**Date of Judgment:**                **28 August 2024**

**Delivered:** This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the order is deemed to be the 28 August 2024.