

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2024-075944

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES/ NO
6 September 2024	
DATE	SIGNATURE

In the matter between:

ESKOM HOLDINGS SOC LTD

Applicant

AND

**THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

First Respondent

CITY POWER JOHANNESBURG SOC LTD

Second Respondent

**THE NATIONAL ENERGY REGULATOR
OF SOUTH AFRICA**

Third Respondent

NATIONAL TREASURY

Fourth Respondent

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on Case Lines. The date and time for hand-down is deemed to be 10H00 6 September 2024.

JUDGMENT

- [1] This matter came before me in the urgent court in the week of 6 August this year. I heard argument in relation to the issue of urgency and the merits, which included certain defences which were raised *in limine*. I will adumbrate at the appropriate juncture.
- [2] In short, the applicant, whom I will refer to simply as "Eskom" seeks, in the first instance, a money judgment and ancillary relief against the respondents, whom I will refer to collectively simply as "COJ". The amounts claimed are large – in total approximately four and half billion rand. They comprise three separate amounts which relate to Eskom's charges in respect of the bulk supply of electricity to COJ for the months of April, May and June of this year, which amounts are alleged to have fallen due for payment in May, June and July respectively. Somewhat curiously, the relief was sought pending the hearing of COJ's application for leave to appeal against a judgment which was granted against it in a case which was heard in this court earlier this year, which case had to do with other amounts which were alleged to have become payable to Eskom and, if leave be granted, pending the outcome of the appeal proceedings. On my understanding of the notice of motion, Eskom also sought what amounted to an interdict directing COJ to make payment of any further accounts which Eskom might render to COJ in the interim - i.e. pending those events.
- [3] The application was opposed by COJ both in respect of the alleged urgency and on the merits which, as I have indicated, included certain defences *in limine*.
- [4] I propose to deal first with the issue of urgency and thereafter to deal with the merits to the extent that that may seem appropriate.

Urgency

- [5] It is trite that a party who alleges that its matter is one which properly falls to be dealt with on an urgent basis must set out, in its founding affidavit, why that is so.¹ The test is that it will not be afforded substantial redress by a hearing in due course. Whether the test is satisfied will depend on the facts of each case.² Some types of cases are inherently urgent - by way of example, applications to grant permission to a medical practitioner to perform a lifesaving surgical procedure on a minor in circumstances where the parents refuse to give such consent. Other types of cases are generally regarded as not being urgent in nature – this notwithstanding that the party seeking relief may consider its claim to be pressingly urgent, or even where the applicant may stand to suffer some form of serious prejudice. Money claims, as a rule, fall into the latter category. This is not because of lack of potential prejudice to the applicant if the claim is not heard on an urgent basis or if relief is not granted urgently. On the contrary, the reality is that parties claiming payment of moneys routinely suffer prejudice as a result of delays in the legal system and their consequent inability to extract payment from their creditors on an expedited basis. Indeed, such parties may and quite often do find themselves unable to pay their own creditors and may well find themselves driven to insolvency. This has however never been regarded as a basis for an urgent hearing. The reason is obvious: the urgent rolls would be flooded, and the system would collapse. This is not to say that a case could never be made out for an urgent hearing in respect of a claim sounding in money (although I have some doubts). As I have already indicated, each case has to be assessed on its own facts.
- [6] *In casu* Eskom's case in respect of urgency was based on the fact that it has a constitutional mandate to supply bulk electricity – something which, as we all know, is crucial to the functioning of the economy. In addition, it alleged that it had exhausted its credit facilities and hence that its ability to perform its function would be compromised if it did not obtain payment from COJ³ on an urgent basis – for which purpose an urgent hearing and order would be required. Eskom also warned of other potential dire consequences, including potential

¹ Uniform Rule 6 (12) (b).

² By way of example see *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* 2011 JDR 1832 (GSJ).

negative impacts on its business, possibly very high interest rates, negative effects on its credit rating, potential disruptions to the electricity supply and the like – i.e. the sort of consequences which one might reasonably expect to follow if Eskom is generally unable to collect debts owed to it, and which have, until recently, been part and parcel of everyday in South Africa. Without wishing to put too fine an edge on it, the story of Eskom's operational and financial woes is so well known as not to require retelling. It is also well known that Eskom's problems have, to a significant extent, resulted from its inability (for whatever reason) to collect debts owed to it.

- [7] That having been said, I do not think that a case was made out as to why these claims in particular were of such special importance as to justify a wholesale departure from the rules. In this regard it bears mentioning that in its opening submissions on this issue Eskom referred to debts owed by its customers generally; however, the attention thereafter focussed on COJ and the claims under consideration. Why COJ stands on a different footing to other creditors or why these claims are to be regarded as more urgent than any of its other monetary claims was not explained. Indeed, if Eskom's submissions on this issue were to be accepted then all of its claims against the various local authorities which it supplies would fall to be dealt with on an urgent basis. By extension, the same would potentially apply in respect of debts owed to other state-owned entities and organs of state. The line would also not necessarily fall to be drawn there. On the contrary, similar considerations would potentially apply to mines and other large employers.
- [8] However, leaving the general aside, and returning to the facts of this matter, Eskom made no effort to distinguish these particular claims from claims for other amounts which are owed to it by bulk consumers. This is what it was required to do. It is of no assistance to an applicant which seeks a hearing on the urgent roll to say that all of the debts which are owed to it are urgent. On the contrary, while it is so that cash flow is the lifeblood of commerce, that does not, in and of itself, serve to render a claim in respect of a particular money claim urgent. As I have already said, the general rule is that claims for payment of money are not urgent (in the sense understood in motion proceedings).

Hence, a party who seeks an urgent hearing in respect of a money claim is required to show why that claim is so special as to justify a hearing on the urgent roll. As I have already indicated, I have some doubt as to whether that would ever be possible; however, that is not something which I am required to decide, so I will say no more in that regard.

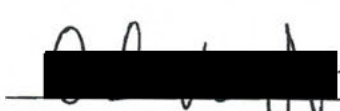
- [9] At the risk of saying more than is necessary, I also cannot see how the requirements in respect of urgency can possibly be satisfied in respect of a claim which has not even arisen. I would think this to be impossible given that the facts would not be known in advance; however, that is also not something which I have to decide. Suffice to say that Eskom's case in respect of the alleged urgency of its claims was even less convincing in respect of whatever claims may arise in future than they were in respect of the claims which were alleged to have already fallen due.

The Merits

- [10] As I indicated to Eskom's counsel in the course of argument, there are aspects of the matter which troubled me greatly and which I believe would have precluded a finding in favour of Eskom on the merits. The first and most obvious is that I do not think that the application can truly be described as interlocutory. There are also others. However, given the conclusion I have arrived at in respect of the alleged urgency of the matter I will say no more.

Order

- [11] I accordingly make the following order:
- a. The matter is struck from the roll with costs, such costs to include the costs attendant upon the employment of two counsel.
 - b. The costs and charges of counsel will be taxable according to scale C.


G S MYBURGH

ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

For the Applicant:

Adv PL Uys

Instructed by Gildenhuis
Malatji Attorneys

For the Respondents:

Adv CHJ Badenhorst SC, PJ
Kok & R Bvumbi

Instructed by Kunene
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Heard: 08 August 2024

Delivered: 06 September 2024