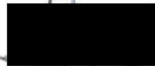


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 101726/2024

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
18/9/24	
DATE	SIGNATURE

In the matter between:

ESKOM HOLDING SOC LIMITED

Applicant

and

MPHO SOKWEBA AND

TWENTY-THREE OTHERS

Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 10: 00 am on 18 September 2024.

Summary:

An urgent interdict seeking to restrain the respondents from interfering with the legally protected rights of the applicant. Since August 2024, the applicant was faced with incidents that interfered with its business operations. The respondents who opposed the relief sought do not dispute the incidents. They simply dispute a link between them and the alleged incidents and more importantly the threat to injury to the business operations of the applicant. On the available evidence, the respondents are linked to the threat faced by the applicant. Accordingly, an interdict ought to be issued against them in order to protect the threatened legally protectable rights of the applicants. Held: (1) The draft order marked "X" is made an order of Court.

JUDGMENT

MOSHOANA, J

Introduction

- [1] In this urgent application, Eskom Holding SOC Limited (Eskom) a state entity responsible for the provision and distribution of electricity in South Africa, an essential service to the country as a whole is seeking the Court's intervention. Essentially, Eskom seeks an order interdicting and restraining the cited respondents from interfering or disrupting its operations at various places where it operates. The application is opposed by 22 respondents.

Background facts pertinent to the present application

- [2] To a large degree, the relevant facts are common cause. As indicated at the dawn of this judgment, Eskom provides an essential service to the country. This country is still reeling from the past experience where the supply of electricity was severely compromised. In an instance where Eskom does not function optimally, the consequences are dire to the country and its ailing economy. From 13 August

2024, Eskom was faced with undisputed incidents of blockading all its access gates at its head office. Similar incidents occurred on 26 August 2024. These spates of unlawful activities had spread to various power stations of Eskom. As far back as 24 July 2020 and 12 May 2021 respectively, Eskom was compelled to obtain Court orders in this Court and the Mpumalanga High Court division. All these orders were aimed at keeping at bay the unlawful interruptions of the business activities of Eskom.

- [3] In the midst of all these on-going interruptions, on 3 September 2024, the first respondent, one Ms Mpho Sokweba in an email intimated that on 4 September 2024, they will be at the head office of Eskom. I interpose that in early August 2024, there is evidence that indicates that Ms Mpho Sokweba and Mr Muzi Dube, made common cause with the demands of Gwanala group. The Gwanala group had been spearheading the interruptive protest action for a period of time. Knowing what a visit to the head office means, on 4 September 2024, Eskom addressed a written communication to Ms Sokweba and the respondents cited in this application. The communication indicated that Eskom was aware of the planned interruptive protest action and sought an undertaking to desist from acting in the interruptive manner as they did in the past as evidenced by two Court orders. Such an undertaking was not provided. Fearing the repeat of the incidents of 13 and 26 August respectively, Eskom launched the present application on 9 September 2024.

Analysis

- [4] Since the decision of *Setlogelo v Setlogelo*¹, the discretionary remedy of interdict existed to prevent any continuation of unlawfulness. More recently, the Constitutional Court in *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others*², felicitously stated the law as follows:

“An interdict is an order by a court prohibiting or compelling the doing of a particular act for the purposes of *protecting legally enforceable right*, which is threatened by continuing or anticipated harm...

¹ 1914 AD 221.

² 2023 (1) SA 353 (CC) at para 47-48

In *granting an interdict, the court must exercise its discretion* judicially upon consideration of all the facts and circumstances. An interdict is “not a remedy for the past invasion of rights: it is concerned with the present and the future”. The past invasion should be addressed by an action of damages. An interdict is appropriate only *when future injury is feared*.³

- [5] There is no doubt that having been faced with past interruptive actions, the email of 3 September 2024, ignited the fear of a future injury. The defence of the respondents is simply that they were not involved in the past invasions. However, on assessment of the objective evidence available to this Court, the preponderance of probabilities demonstrates a common cause with the Gwanala group. During argument, Ms Osman, who appeared on behalf of the 22 respondents, strenuously argued that Eskom has failed to establish the link between the cited respondents and the past invasions. On this point, she placed heavy reliance on the Constitutional decision of *Commercial Stevedoring Agricultural and Allied Workers’ Union and Others v Oak Valley Estates (Pty) Ltd and Another (Oak Valley)*³.
- [6] In *casu*, the documents of Gwanala group clearly link Ms Sokweba with the activities of Gwanala. It was Ms Sokweba who intimated a threat to visit the head office of Eskom. All the respondents failed to give an undertaking and or dispute any involvement in the planned interruptions that Eskom made them aware that it was aware of. Clearly, there is overwhelming evidence that the respondents are definitely part of the planned interruption. The interruptions are unlawful and Eskom is entitled to obtain an interdict for the demonstrated fear. The Court in *Oak Valley* concluded that our law requires that for interdictory relief to be competently granted, a factual link between an individual respondent and the actual or threatened unlawful conduct must be shown⁴. The learned Theron J went further to state that:

“[42] ... Where, for instance, unlawful conduct during protest action is ongoing, widespread, and manifest, individual protestors or strikers will usually

³ (CCT 301/20) [2022] ZACC 7 (1 March 2022)

⁴ *Oak Valley* para 39.

have to disassociate themselves from the conduct, to escape the inference that it is reasonably apprehended that they will cause injury to the applicant."

- [7] The respondents had an opportunity to disassociate themselves with the planned interruption when Eskom addressed them in a letter of 4 September 2024. As such, they cannot escape an inference that they will cause injury to Eskom on the planned interruption. Ms Omar argued that since nothing happened on 4 September 2024, then Eskom must fail. An interdict is concerned with fear and reasonable apprehension. Eskom had and continue to have a reasonable apprehension that the respondents would interrupt its business operations. Therefore, that argument is unhelpful to the respondents. On the day when the Court was preparing its judgment, some written submissions were availed seeking to argue that there was no urgency. This after the application was fully argued. Nevertheless, where unlawfulness is hovering, the rule of law enjoins a Court to interfere. Accordingly, the lack of urgency argument, belated as it is, must fail.

Conclusions

- [8] For all the above reasons, the application must be granted by adopting the draft order handed up by Eskom.

Order

- 1 The draft order annexed hereto and marked "X" is hereby made an order of Court.



GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

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Date of the hearing:

17 September 2024

Date of judgment:

18 September 2024