



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

CASE NO: 2024-146054

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
	
DATE 03/02/2025	LENYAI J

In the matter of:

**KAREL BALT
AFRIFORUM NPC**

**First Applicant
Second Applicant**

And

**MOGALE CITY LOCAL MUNICIPALITY
THE MUNICIPAL COUNCIL OF THE MOGALE CITY
LOCAL MUNICIPALITY
THE EXECUTIVE MAYOR OF THE MOGALE CITY
LOCAL MUNICIPALITY**

**First Respondent
Second Respondent

Third Respondent**

Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 14:00 on 03 February 2025.

JUDGMENT

LENYAI J

- [1] This is an application brought on an urgent basis wherein the applicants seek an order declaring certain resolutions of the first respondent in respect of the increase of electricity tariffs for the 2024/2025 municipal financial year as approved by the National Energy Regulator of South Africa (NERSA) to be unlawful, invalid and of no force and effect;
- [2] The applicants further seek that all resolutions passed which increased electricity tariffs except any tariff increase as provided for in the Medium -Term Revenue & Expenditure Framework (MTREF) 2024/2025 – 2026/2027 as found in schedule 3(a) – proposed rates, service charges tariffs and user charges, bulk contribution and way-leaves, be set aside.;
- [3] The applicants further seek to interdict and restrain the respondents from levying electricity tariffs on any basis other than to the extent that it is provided for in schedule 3(a) of the MTREF;
- [4] The applicants in the alternative, seek an order compelling the respondents to:
- 4.1 Calculate the excessive tariffs charged to every user of electricity, such excessive tariffs being the difference between the tariffs on the basis that it is provided for in schedule 3(a) of the MTREF and any other higher tariffs charged to users of electricity;

- 4.2 Credit the accounts of those electricity users for excessive charges; and
- 4.3 Repay or issue vouchers to those electricity users who use prepaid electricity meters for any excessive charges paid by them.
- [5] The respondents raise a point *in limine* of non-joinder of the National Energy Regulator of South Africa (NERSA) to the matter as it has a direct and substantial interest in the matter.
- [6] The respondents aver that the legal principles for non-joinder are trite. They rely on the matters of **Amalgamated Engineering Union v Minister of Labour 1949 (3) SA 637 (A)** and **Myeni v Organisation Undoing Tax Abuse NPC 2019 JDR 2599 (GP)** at para 64 where the court held that *“non-joinder arises where another party has a direct and substantial interest in the matter, which is determined by the relief that is sought. A party can only be said to have a direct and substantial interest in the matter if the relief cannot be sustained and carried into effect without prejudicing their interests.”*
- [7] The respondents further submit that in the **Myeni** matter referred to above, the court stated at paras [65] and [66] that *“In the Amalgamated Engineering Union, the Appellate Division explained further that “the question of joinder should ... not depend on the nature of the subject-matter of the suit ... but ... on the manner in which, and the extent to which, the Court’s order may affect the interests of third parties.”*
- [8] The respondents aver that in the matter of **Nelson Mandela Bay Business Chambers NPC and Another v National Energy Regulator and Others (63393/2021) [2021] ZAGPPHC 778 (20 October 2022)** at paras [17] and [18],

“All the municipalities that reticulate electricity have to apply annually to NERSA for its approval, to charge electricity tariffs. In order to facilitate the application process, NERSA has developed a method, the Guideline and Benchmarking Method, which it applies when considering the applications. It is this Method that the applicants are

challenging in these proceedings, contending that the Method violates the provisions of section 15(1) of the ERA. The applicants allege in their papers that section 15(1) of the ERA requires NERSA to use a method that is cost effective which they refer to as a cost of supply method ("COS").

In accordance with section 15(2) of the ERA, licensees are only permitted to charge their customers the tariffs which NERSA has approved as part of their licensing conditions. So, municipalities are limited when it comes to tariffs, to charging the ones that NERSA has approved. NERSA approved tariffs are then taken to Council so that they may be imposed."

- [9] The respondents further submit that the Electricity Regulation Act 4 of 2006 (ERA) regulates the functions of NERSA in relation to the approval of electricity tariffs, including but not limited to municipal electricity tariffs. In terms of section 4(1)(ii) of ERA, NERSA is the only institution which has the authority to determine the pricing and tariffs of electricity.
- [10] The applicants on the other hand contend that the municipality has not shown that NERSA has a direct and substantial interest in the matter and has gone no further than to state that NERSA may have an interest. They rely on the matter of *Gordon v Department of Health, Kwazulu-Natal* 2008 (6) 522 (SCA) at para [9], where the court reaffirmed the principle that a third party must be joined in the proceedings if he is shown to have a direct and substantial interest in the matter.
- [11] The applicants submit that if the court were to grant the relief sought, NERSA would not be prejudiced in any way.
- [12] Turning to the matter before me, it is clear that the applicants seek to declare the resolutions by the respondents to increase the electricity tariffs unlawful, invalid and of no force and effect and that such resolutions should be set aside by the court. The respondents submitted in their papers as well in court that the tariffs they implemented

were approved by NERSA and therefore NERSA has to be joined in the matter as it has a direct and substantial interest.

- [13] Having considered the submissions of the parties and also having regard to the case law referred to above, I am of the view that NERSA has a direct and substantial interest in the matter. The relief sought by the applicants is to the effect that the tariffs approved by NERSA should not be implemented by the municipality. NERSA as the only institution which is legislated to determine the pricing and tariffs of electricity, which must then be implemented by the municipalities has to be joined to these proceedings.
- [14] The applicants despite being advised by the respondents insisted on pursuing this matter without joining NERSA, and the non-joinder of NERSA renders their entire application fatally flawed.
- [15] The applicants argued that in the event the application is unsuccessful, there should be no order as to costs as the application is based on the principle of legality and there is no reason to depart from the general rule in cases of this sort. The applicants rely on the case of **Biowatch Trust v Registrar, Genetic Resources and Others 2009 (6) SA 232 CC**.
- [16] The respondents submitted that with regard to the issue of costs, they are in the court's hands.
- [17] In the premises, the following order is made:

The application is dismissed and there is no order as to costs.


LENYAI J

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

Counsel for Applicants : Adv E Botha

Instructed by : Hurter Spies Incorporated

Counsel for the Respondents : Adv F.J Nalane SC and
Adv SZ Mamoepa

Instructed by : Madhlopa & Thenga Inc

Date of hearing : 29 January 2025

Date of Judgement : 03 February 2025