

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	NO
Of interest to other Judges:	NO
Circulate to Magistrates:	NO

Case no: **682/2025**

In the matter between:

ROELOF PETRUS LINDE NO

1st Applicant

PETRUS ALBERTUS LINDE NO

2nd Applicant

MARIUS JANSE VAN RENSBURG NO

3rd Applicant

(in their capacities as duly appointed Trustees of the

LINDE KUIKENS TRUST, IT 8[...])

and

ESKOM HOLDINGS SOC LTD

Respondent

(Registration number: 2002/015527/30)

Coram: JP DAFFUE J

Heard: 18 FEBRUARY 2025

Reasons Delivered: 21 FEBRUARY 2025

This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 12H00 on 21 FEBRUARY 2025.

Summary: Urgent application for an interim interdict – Eskom decided to disconnect electricity supply to a farming enterprise – 14 days' written notice was given – according to the undisputed facts, the farming enterprise raises 350 000 chicks on a regular basis and those in the present cycle will most probably not survive without electricity – the farming enterprise proved the four requisites for an interim interdict pending finalisation of its review application to set aside Eskom's decision.

ORDER

1. The matter is heard as one of urgency and in terms of the provisions of Rule 6(12) any non-compliance with the rules pertaining to service and time periods is condoned.
2. The respondent is interdicted and restrained from disconnecting or terminating the electricity supply to the applicants' property, to wit the farm Vlakfontein number 1[...], Brandfort district, Free State Province, based solely on the results of investigations and audits by respondent on applicants' electrical installation on 5 August 2021, which electricity is supplied under Eskom account number 9[...], pending the final determination of Part B of this application, including the final determination of any subsequent appeals.
3. The respondent shall pay the costs of this application, the costs of counsel to be taxed on scale B.
4. The reasons for this order shall be forwarded to the parties electronically before Friday, 21 February 2025 at 17h00.

REASONS

Daffue J

Introduction

[1] On 18 February 2025 I heard an urgent application. After oral argument by both parties I granted the orders herein above. These are the reasons I undertook to deliver within three days.

[2] This court was called upon to decide whether Eskom should be allowed to disconnect electricity supply to a farming enterprise. The written notice to the consumer was given on 5 February 2025, informing it that the electricity would be disconnected on Wednesday, 19 February 2025.

[3] It is common cause that 350 000 day-old chicks are being bred by the farming enterprise over a cycle until ready for slaughtering. If there is no electricity supply,

the chicks in the cycle will in all likelihood perish as the entire business and farming operations are dependent on steady and uninterrupted electricity supply.

[4] The farming enterprise has been receiving electricity from Eskom for many years and it is accepted that it has always been paying its monthly electricity bills on time. The latest two monthly bills, for November and December 2024, were for amounts of R64 316.13 and R77 630.82 respectively. A dispute has arisen in respect of an audit done pertaining to an alleged tampered electricity meter, causing Eskom to claim additional amounts totalling R1 076 666.90, which were added for the first time by Eskom on the consumer's account on 13 December 2024. This is allegedly in respect of loss in energy sales for the period June 2015 to August 2021. The audit was done on 25 August 2021, but the final calculations were only made in 2024.

The parties

[5] The three trustees of the Linde Kuikens Trust, IT 8[...] (the Trust) are cited as the first, second and third applicants in this application. The Trust is the consumer of electricity and its farming operations are conducted on the farm Vlakfontein number 1 [...], Brandfort district, Free State Province. I shall herein refer to the consumer as the Trust, although the three trustees in their representative capacities are cited as the applicants. The Trust was represented in the application before me by Adv MJ Merabe on instructions of Horn and Van Rensburg Attorneys.

[6] Eskom Holdings Soc Ltd, an organ of state and supplier of electricity to the consumer, is cited as the respondent. Adv C Snyman appeared for the respondent on instructions of Phatshoane Henney Attorneys.

The relief sought

[7] The notice of motion provides for interim relief sought in Part A and a review of Eskom's decision in Part B. In Part A, the Trust sought leave for the application to be heard on an urgent basis and that Eskom be interdicted and restrained from disconnecting or terminating the electricity supply to the aforesaid property 'based solely on the results of investigations and audits by respondent on applicants' electrical installations on 5 August 2021 ..., pending the final determination of Part B of this application including the final determination of any subsequent appeals'. In Part B the Trust intends to apply in terms of the provisions of rule 53 of the Uniform

Rules of Court for an order that the aforesaid notice issued by Eskom on 5 February 2025 be 'reviewed, declared invalid and set aside'.

The ground of review

[8] Although not strictly necessary to mention the grounds of review in any detail, it is appropriate to refer to the following as alleged by the Trust:

- a. irrelevant considerations were taken into account, alternatively relevant considerations were not considered - such as the interests of the chicken farming enterprise and an aspect such as prescription - as referred to in s 6(2)(e)(iii) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) when the decision to disconnect was taken;
- b. the decision was taken in bad faith, *inter alia* bearing in mind the cruelty to animals, as referred to in s 6(2)(v) of PAJA;
- c. the exercise of the power or the performance of the function that may be authorized by any authorized authority in pursuance of which the administrative action was taken, is so unreasonable that no reasonable person could have exercised that power, as referred to in s 6(2)(h) of PAJA;
- d. the decision was taken unreasonably to such an extent that 'it boils down to bully-tactics'.

The defences

[9] I have referred to the common cause facts in the introductory paragraphs. It is also not in dispute that the Trust has always been paying its monthly bills timeously. Based on the history, it can never be deemed to be a recalcitrant consumer.

[10] Eskom raised two defences. Firstly, the application was not urgent, alternatively the urgency was self-created. Secondly, the Trust had alternative remedies available, but chose to ignore these. Thirdly, the application was still-born and the review application would eventually be dismissed as the Trust failed to exhaust its internal remedies. In this regard Mr Snyman vehemently argued, relying on s 7(2)(c) of PAJA, that the Trust had not made out a case that exceptional

circumstances existed why the review court should hear the review notwithstanding the fact that available internal remedies had not been exhausted. I shall revert to this when I discuss the requirements for interim interdicts.

[11] I accept that the Trust as consumer probably entered into a written agreement with Eskom at a stage. That contract is not before the court. The relationship between the parties have been in existence for many years. Eskom decided to attach annexure ESK1 to its answering affidavit, it being a document which according to its deponent was downloaded from Eskom's web portal. The so-called 'Standard Conditions of Supply for Small Supplies with Conventional Metering Supply Agreement' (ESK1) is *mutatis mutandis* applicable *in casu* according to Eskom. It provides for a dispute resolution process. Furthermore, s 30 of the Electricity Regulation Act 4 of 2006 (ERA) also provides for a dispute resolution process. ESK1 does not refer to s 30 and the process to resolve a dispute differs substantially from that in s 30. More about this later.

Lack of urgency

[12] Eskom wanted this court to dismiss the application and/or strike it from the roll due to lack of urgency, alternatively because the urgency was self-created. It relied on the fact that the Trust was aware of the extra amount due and payable to Eskom since receipt of its letter of 5 June 2024, but failed to do anything in this regard, notwithstanding communication from Eskom that the electricity supply may be disconnected. Fact of the matter is that the Trust was billed with the disputed amount in December 2024 for the first time and notwithstanding further email correspondence between the parties, Eskom served its notice on 5 February 2025, indicating its decision to terminate the electricity supply on 19 February 2025.

[13] The Trust acted in haste by drawing its founding affidavit and the notice of motion was issued on 10 February 2025. It could not be expected to file its papers earlier. The notice of motion provided for truncated time periods for filing of answering and replying affidavits and indicated that the application would be heard on an urgent basis on Tuesday, 18 February 2025 at 14h00, the day before the electricity was to be disconnected. Eskom filed a lengthy answering affidavit consisting of 25 pages. Its deponent complained therein that they did not have time to obtain the evidence of various people involved in the audit process and/or to

obtain the required documents to properly present its defence. Mr Snyman did not make anything of this during oral argument. Surely, Eskom should have ensured that its ducks were in a row by the time it decided to terminate the electricity supply. In any event, the extra evidence may well be presented during the review application. Consequently, I was satisfied that the application was urgent, accordingly heard argument, made my order and indicated that reasons would be given within three days.

Requirements for interim interdict

[14] Four requirements have to be met in order to obtain an interim interdict, to wit (a) an applicant must at least prove a *prima facie* right; (b) a reasonable apprehension of irreparable harm must be shown; (c) that the balance of convenience favours the granting of interim relief; and (d), the absence of a satisfactory alternative remedy. In adjudicating the application, I exercised my discretion resting on substantive considerations of justice, ensuring that the objects, spirit and purport of the Constitution were promoted.

[15] As mentioned, ESK1 provides for dispute resolution in clause 24 thereof. I noticed at least two mistakes in clause 24. The references to clause 0 and clause 244 are nonsensical. In any event, although this is an aspect to be dealt with by the review court, there is no indication which of the parties should declare a dispute. Also, the Eskom employee who gave the written notice of the audit findings apparently had a different agreement in mind. He referred to paragraph 11.1 of the 'standard conditions' whilst ESK1 does not contain such a paragraph. Furthermore, the person who signed the notice of 5 February 2025 referred to a 'supply agreement' stipulating that if payment is not made within 45 days from billing, Eskom may discontinue electricity supply. ESK1 refers in paragraph 14 to 23 days. There is no reference in ESK1 to s 30 of the ERA. In a judgment by Smith J in the Eastern Cape,¹ relied upon by Mr Snyman, the learned judge dismissed a review application insofar as the applicants had failed to comply with s 30 of the ERA. I am not so certain that Eskom is a licensee as defined in the ERA. Due to this being an urgent application, I did not have time to consider this in more detail. However, I do not have to adjudicate the issue. It is appropriate and also convenient to leave that for

¹ *Stander and Others v Eskom Holdings* 2022 JDR 3728 (ECMA).

the review court to adjudicate. Ironically, Smith J granted an interim interdict in the *Stander* matter pending review which order was confirmed by one of his colleagues.

[16] I do not agree with Mr Snyman that the Trust should have been non-suited at this stage of the proceedings for not exhausting internal remedies. The Trust has a right to access to the courts, guaranteed in s 34 of the Constitution. Whether or not internal remedies exist in this case, and if so, whether or not the Trust's failure to exhaust same should be fatal for its case in the review, is for that court to decide. I agree with the reasoning of the majority judgment penned by Madlanga J in *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and Others*² and do not intend to say more at this stage. I accept that although Madlanga J explained the legal principles in clear and unambiguous language, he left open the question³ what role, if any, ss 7(2)(a) and (c) should play in proceedings as *in casu*. In my view, unlike as Mr Snyman submitted, nothing prevents the Trust to seek leave to file a supplementary founding affidavit and/or to deal with the issue at the opportune time as provided for in rule 53. In any event, the Trust made it clear that it was prepared to enter into a mediation process before the notice to disconnect was received and thus before it approached the court.⁴ The parties could not agree on the terms of mediation. Furthermore, the Trust may always amend its papers to seek exemption for non-compliance in terms of s 7(2)(c) of PAJA. It was not for this court to pre-judge the review court's adjudication and I was not prepared to find, as Mr Snyman submitted, that the application (particularly Part A thereof) was still-born.

[17] The Trust is entitled to rely on s 7(2) of the Constitution. Eskom is an organ of State and it 'must respect, protect, promote and fulfil the rights in the Bill of Rights.' This is not what Eskom did here. I do not want to usurp the functions of the review court and merely mention some aspects. It took Eskom three years to do its investigations in secret. The Trust was not allowed an opportunity to do its own investigations. I have my reservations as to whether a fair process was followed. It is not even mentioned who on behalf of Eskom decided to disconnect the electricity supply and the authority of this unidentified person or body of persons is unknown. In view of the undisputed facts the Trust, including its trustees and the trust

² 2023 (4) SA 325 (CC) para 215 and further, especially paras 220, 223 – 225.

³ *Ibid* para 227.

⁴ Paragraph 7 of annexure RPL8 to the founding affidavit dated 13 January 2025 and the email correspondence thereafter.

beneficiaries, will in all probability be deprived of property: thousands of chickens that are being raised. Their right to property as guaranteed in s 25 of the Constitution would be trampled upon if Eskom was allowed to proceed with its intended disconnection of electricity. Bearing in mind the undisputed facts and the grounds of review, I was satisfied that at least a very strong *prima facie* case had been made out to be successful in the review application. The first requirement for an interim interdict has been met.

[18] Disconnection of the electricity supply would have caused a huge economic calamity for the Trust, its trust beneficiaries, as well as employees and their families. Thousands of chickens would probably die which might well cause the Trust to discontinue its business operations. I seriously considered all relevant factors and also the *OUTA*⁵ *dicta* insofar as it is applicable to the second requirement, to wit reasonable apprehension of irreparable harm, although I must emphasise that the facts *in casu* are clearly distinguishable. I was and is satisfied that the Trust had shown a reasonable apprehension of irreparable harm.

[19] The third requirement is the balance of convenience. I considered the harm to be endured by the Trust if interim relief was not granted, but it eventually succeeds in obtaining final relief on review on the one hand and the lack of harm to Eskom if the interim relief was granted, but the Trust eventually failed to obtain final relief. The undisputed facts speak for themselves. There is just no reasonable comparison. Eskom will not collapse in the mean due to not receiving the approximately R1m. Also, disconnection will not lead to it receiving payment; apparently quite the opposite. The outcome of the review application may not have any effect on Eskom's alleged claim. The decision under attack may be set aside, but that may not necessarily have consequences pertaining to the alleged debt. Clearly, if the Trust fails in the review application, Eskom's claim would not have vanished in thin air.

[20] Nothing really has to be said about the fourth requirement, to wit the absence of a satisfactory remedy. Once the Trust has shown irreparable harm, then there is no alternative remedy and *vice versa*.

⁵ *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC).

[21] The Trust filed the obligatory notice in terms of rule 41A with the filing of the notice of motion, indicating that it was prepared to consider mediation. Eskom failed to file its notice in terms of rule 41A with its answering affidavit. It was obliged to do so. In its notice, the Trust invited mediation and in failing to respond, I could only assume that Eskom was not prepared to consider this. During oral argument I requested Mr Snyman to obtain instructions as to whether his client would be prepared to consider mediation on condition that the electricity supply was not to be disconnected pending finalisation of the mediation. Both parties were asked to negotiate in order to try and solve the dispute amicably. I adjourned for 20 minutes, but was informed thereafter that no agreement could be reached. Eskom was apparently prepared, as advised, to consider 'contract-based' mediation, but not 'court-based' mediation.

Order

[22] The following order was made:

1. The matter is heard as one of urgency and in terms of the provisions of Rule 6(12) any non-compliance with the rules pertaining to service and time periods is condoned.
2. The respondent is interdicted and restrained from disconnecting or terminating the electricity supply to the applicants' property, to wit the farm Vlakfontein no. 1[...], Brandfort district, Free State Province, based solely on the results of investigations and audits by respondent on applicants' electrical installation on 5 August 2021, which electricity is supplied under Eskom account number 9[...], pending the final determination of Part B of this application, including the final determination of any subsequent appeals.
3. The respondent shall pay the costs of this application, the costs of counsel to be taxed on scale B.
4. The reasons for this order shall be forwarded to the parties electronically before Friday, 21 February 2025 at 17h00.

JP DAFFUE J

Appearances

For applicant:	Adv MJ Merabe
Instructed by:	Horn & Van Rensburg Attorneys Bloemfontein
For respondent:	Adv C Snyman
Instructed by:	Phatshoane Henney Attorneys Bloemfontein