

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

Case NO: A258/2023

(1) REPORTABLE: No

(2) OF INTEREST TO OTHER JUDGES: No

(3) REVISED

28 MAY 2025

WRIGHT J

In the matter between:

MINERALS COUNCIL OF SOUTH AFRICA

APPELLANT

ENERGY INTENSIVE USERS GROUP

APPELLANT

and

SALGA

FIRST RESPONDENT

ESKOM HOLDING SOC LTD

SECOND RESPONDENT

OTHER RESPONDENTS

JUDGMENT - APPEAL

WRIGHT J

1. The South African Local Government Association represents some 257 municipalities in South Africa. On 13 September 2021, SALGA launched an application under case number 46214/21, citing Eskom as first respondent and twelve other parties as further respondents.

2. The relief sought in that main application are orders that:

- 2.1 municipalities have exclusive authority to reticulate electricity within their jurisdictions,
- 2.2 the distribution and supply of electricity by Eskom in municipal jurisdictions amounts to reticulation of electricity and the provision of a municipal service which requires a Service Delivery Agreement to be entered into between Eskom and the respective municipalities in terms of section 76 of the Local Government: Municipal Systems Act 2 of 2000,
- 2.3 on account of their executive authority to reticulate electricity and their right to govern the affairs of their communities, municipalities have the power to request Eskom to enter into Service Delivery Agreements with the municipalities “ *for the former to reticulate electricity within the latter’s jurisdictions.* “

3. The main application is pending. Some of the respondents have filed answering affidavits.

4. The Minerals Council of South Africa represents large mining consumers of electricity. It is not cited as a respondent in the main application. It sought to join the main application as a respondent. It says that mines are often located away from urban areas and with contracts with Eskom directly for the supply of electricity. It says that the effect of the relief being granted in the main application will be to increase the price of electricity to mines. It says that municipalities are badly run and have inaccurate billing and that because municipalities don’t always pay Eskom for electricity, Eskom cuts the supply, leaving those consumers who have paid for electricity, without power. It says that granting the relief sought will compromise the ability of mines to survive. It alleges that existing agreements between its members and Eskom will be at risk if the relief sought is granted.

5. In answer, SALGA says that the relief sought by it in the main application has nothing to do with the Mineral Council’s members. The statement is also

made that the relief sought in the main application has nothing to do with an increase in the price of electricity.

6. The Energy Intensive Users Group is a voluntary association, not for profit, of large scale users of electricity. It was not cited as a respondent in the main application. It sought to be joined as a respondent. It says that SALGA seeks to interpose itself as a “ *rent seeking middleman* “ between Eskom and bulk consumers and that the effect of SALGA obtaining the orders sought would be to change Eskom’s bulk pricing structure to a retail structure. This is alleged to mean that not only will prices be too high for commercial viability but that the existing agreements between Eskom and its bulk consumers who are members of EIUG will be rendered invalid.
7. In answer, SALGA says that the members of EIUG, while they have agreements directly with Eskom and have a right to be supplied with electricity, have no direct and substantial interest in the main relief sought because EIUG’s members do not reticulate electricity. It is stated that, at best for EIUG’s members, they have an indirect commercial interest in the outcome of the main litigation.
8. Motha J dismissed both applications for joinder. He dismissed their applications for leave to appeal but both obtained leave to appeal from the SCA.
9. The appeals by both the Minerals Council and EIUG are now before us.
10. In my view, the appeals should be allowed.
11. In *SA Riding for the Disabled Association v The Regional Land Claims Commissioner* [2017] ZACC 4 the Constitutional Court held at paragraph 9 that “ *It is now settled that an applicant for intervention must meet the direct and substantial interest test in order to succeed. What constitutes a direct and substantial interest is the legal interest in the subject-matter of the case which could be prejudicially affected by the order of the Court. This means*

that the applicant must show that it has a right adversely affected or likely to be affected by the order sought. But the applicant does not have to satisfy the court at the stage of intervention that it will succeed. It is sufficient for such applicant to make allegations which, if proved, would entitle it to relief. “

12. In my view, and on the allegations made by the Minerals Council and EIUG, the existing rights of the Minerals Council's members and the members of the EIUG as encapsulated in current agreements with Eskom and their future rights to contract with Eskom are likely to be directly and adversely affected by SALGA obtaining the orders sought. This gives the Minerals Council and EIUG a direct and substantial legal interest in the outcome of the main application.

13. As is clear from the last two sentences of the passage quoted from SA Riding, it is not necessary for this court to rule on the correctness or otherwise of the factual allegations made by the Minerals Council or EIUG and we refrain from doing so.

ORDER

1. The appeals by both the Minerals Council and EIUG are upheld.
2. SALGA is to pay the costs of the appeal of both appellants (after 12 April 2024 on scale C), such costs to include those of two counsel where so employed.
3. The orders of the court below are set aside.
4. The Minerals Council is joined in the main application as respondent 14.
5. EIUG is joined in the main application as respondent 15.
6. SALGA is to pay the costs of the Minerals Council and EIUG in their applications to join on the party and party scale, (scale C, after 12 April 2024) such costs to include those of two counsel where so employed.

GC Wright
Judge of the High Court

Gauteng Division, Pretoria

Hassim J

I agree

Ledwaba AJ

I agree

HEARD : 28 May 2025

DELIVERED : 28 May 2025

APPEARANCES :

Minerals Council

Adv CDA Loxton SC

Adv Z Bhero-Manentsa

Instructed by

Bowman Gilfillan Inc

claire.tucker@bowmanslaw.com

wandisile.mandlana@bowmanslaw.com

aliyah.ince@bowmanslaw.com

EIUG

Adv A Subel SC

Adv M Nguta

Instructed by

White and Case Inc

Darryl.Bernstein@whitecase.com

Viren.Raja@whitecase.com

Cameron.Jeffrey@whitecase.com

Bonga.Sekani@whitecase.com

SALGA

Adv JA Mothepe SC

Instructed by

Adv V Mabuza

Lawtons Africa

Yagashen.Pillay@lawtonsafrica.com