

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 2025-096450

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 2/7/2025

SIGNATURE:

In the matter between:

ST BENEDICT'S ABBEY NPO

APPLICANT

And

ESKOM HOLDINGS SOC LIMITED

RESPONDENT

JUDGMENT

KGANYAGO J

- [1] The applicant is a non-profit organization (church) established during 1904 as a monastery where monks and nuns live. Currently the applicant's property is a host (landlord) to two section 14 public schools on private land schools which

are Subiaco Primary and St Bede's High School. There are also live-in boarders (learners) at the property who are attending at the section 14 schools.

- [2] The applicant for many years has been the consumer of the electricity supplied by the respondent. The respondent had terminated the electricity supply to the applicant's property on 17th June 2025 after issuing a 14 days' notice which was served electronically on the applicant's attorneys of record on 30th May 2025. The termination was precipitated by a dispute regarding the billing of the applicant's account in which the respondent alleges that the applicant owes it an amount of R3 467 372-17 being outstanding arrears and current outstanding bills. The applicant disputes the correctness of the alleged outstanding amount.
- [3] According to the applicant, the main thrust of the dispute between it and the respondent emanates from the billing cycle of 9th March 2022 in which the respondent without any prior notice or explanation levied an amount of R952 540-12 on the applicant's account. Currently the outstanding amount had risen to R2 264 298-94. The applicant avers that from inception, it has always admitted to owing the respondent the amount which represent the current bills to the exclusion of the amount levied on 9th March 2022 billing cycle together with all interest and charges that had accumulated to the amount.
- [4] The applicant disputes the correctness of the alleged outstanding amount on two grounds. The first ground is that the alleged corrections are factually incorrect as they are not supported by any evidence that at any given period from 2018 to March 2022 there was actual incorrect meter readings taken by the respondent that justified the corrections. Secondly, notwithstanding the foregoing, the corrected or reconciled amount of R952 540-12 together with the interest and charges levied, had prescribed in terms of the Prescription Act 68 of 1969.

- [5] The applicant's current attorneys of record have from 8th November 2023 been engaging the respondent in trying to resolve the matter amicably but without success. Throughout the engagement the respondent had maintained that the amount was due without providing any factual information on how the said corrections were computed, but rather demanded payment and threatened to terminate the electricity supply. Seeing that a dispute was looming over the account, the applicant took a decision to withhold payments to the respondent over its current bills. On 23rd December 2023 the applicant through its attorneys of record notified the respondent that all payments to all its current bills will be stopped until the issue was resolved.
- [6] For the duration of 2024 the respondent did not communicate with the applicant despite repeated request by the applicant for further engagement. The parties held a meeting on 17th and 24th March 2025 where again the respondent was unable to provide a plausible explanation for the imposition of the 9th March 2022 bill, except to say that the corrections were as a result of the respondent taking incorrect meter readings. On 31st March 2025 the applicant notified the respondent that it was lodging a formal complaint with NERSA for mediation or arbitration as the applicant was of the view that the dispute could no longer be resolved amongst the parties.
- [7] As the applicant was not disputing its current bills, it requested a written undertaking from the respondent that should the applicant enter into a payment arrangement or make payments towards the current billed amounts, same act shall not disentitle the applicant from relying on a plea that the large portion of the debt of R2 264 298-94 has prescribed. The applicant submits that the respondent through their internal communication which was mistakenly sent to it (applicant) shows that the respondent concede that the debt had prescribed. Despite that concession, the respondent had failed to give the applicant an undertaking, but instead issued the applicant with a 24 hours' notice of termination of the electricity supply if an amount of R1 203 073-26 was not paid.

- [8] Two days later the respondent sent its technician to the applicant's property to disconnect the electricity supply, but the applicant's attorney was able to stop them. Further attempts were made to resolve the matter which proved to be a futile exercise. The Department of Education as a tenant was also involved as it is also liable to the admitted debt owed to the respondent. On 30th May 2025 the respondent issued another notice giving the applicant 14 days to make payment failing which the electricity supply was going to be terminated. On 17th June 2025 the respondent disconnected the electricity supply on the applicant's property without further communication.
- [9] That led to the applicant instituting an urgent application in which it is seeking orders that (i) the respondent be interdicted and restrained from disconnecting or terminating the electricity supply to the applicant's property pending the processing, investigation and finalization of the complaint referred to the National Energy Regulator of South Africa (NERSA) in terms of section 30 (1) (b) of the Electricity Regulation Act, 4 of 2006 by the applicant; (ii) and that the respondent be directed to reconnect the electricity supply to the applicant's property within 24 hours of service of the court order.
- [10] The applicant submit that it has lodged a complaint with NERSA on 17th June 2025. The respondent had rushed to terminate the electricity supply on its property in the midst of the interdepartmental talks to resolve the dispute as well as on the processing and investigation of the applicant's complaint by NERSA. Further that the respondent had failed to notify the Department of Education of its intent to terminate the electricity supply to the applicant's property, and therefore, the decision to terminate was taken prematurely. That if the respondent acts reasonably and prudently, the debt admitted in the amount of R1 203 073.26 may be recovered from the applicant and the Department of Education through following the proper procedures set out in the Intergovernmental Relations Framework Act 13 of 2005.
- [11] The respondent is opposing the applicant's application. In its answering affidavit the respondent had submitted that the applicant has been getting free electricity supply since December 2023 after it stopped paying the accounts.

The respondent has been demanding and threatening for months to cut the supply of electricity to the applicant's property because of its failure to pay the respondent, and the applicant did nothing about the situation. On 13th and 19th May 2025 the applicant was served with termination notices. In those notices the applicant was advised to make arrangement to pay the respondent, failing which the supply of electricity would be terminated. The applicant did nothing and the electricity supply on the applicant's property was terminated on 17th June 2025.

- [12] On 23rd February 2023 the applicant had signed an acknowledgement of debt in terms of which it acknowledged being indebted to the respondent in the sum of R1 413 105.89. Included in the amount of the acknowledgement of debt was the amount of R952 540.12 which was billed to the applicant's account on 9th March 2022. The applicant has failed to disclose the contents of this acknowledgement of debt in its founding affidavit despite having knowledge of it. The applicant had no excuse for not paying its current account which it incurred from February 2023 to May 2025 of which the outstanding amount is R1 203 073.26. The applicant has admitted that it had to pay its current account.
- [13] The applicant's late attempt to refer the dispute to NERSA does not help it as there is no dispute about the rebilled amount. After the error which caused the respondent to incorrectly charge the applicant for its electricity supply was discovered back in 2022, the error was explained and accepted by the applicant. That led to the parties concluding an acknowledgement of debt and the payment agreement to settle the dispute which allowed the applicant to settle the debt in instalments over a period of 36 months. The applicant had failed to honour its obligations in terms of the acknowledgement of debt agreement and, at the same time, stopped paying its current account. The complaint which the applicant had lodged with NERSA after the electricity was terminated relates to the rebilled account and not the current account.
- [14] The respondent has submitted that on 31st March 2025 the applicant through its attorneys wrote a letter notifying the respondent that it was referring a

complaint against the respondent to NERSA as it disputes allegations against corrections/reconciliation of its billing account undertaken unilaterally by the respondent. In that letter the applicant stated that it remains committed to paying all its current utility bills presented to it whilst the matter is pending before NERSA and was requesting an undertaking from the respondent that any payment made by the applicant towards its current account should not be construed as a waiver to the validity of the historic debt, i.e precluding the applicant to later raise a plea of prescription.

[15] The respondent per its letter dated 30th May 2025 notified the applicant that it had held discussion with the Department of Education regarding payment of the outstanding debt within 14 days. Further that whilst waiting for the dispute to be resolved, the applicant is required to service its monthly consumption emanating from the bills that were issued after the capital amount in dispute, which amounted to R1 203 073.26. The applicant was warned that should it fail to make payment, the electricity supply will be disconnected after 14 days, and the account may be terminated. The applicant was already given the spreadsheet of the total outstanding amount per the respondent's letter dated 19th May 2025. The respondent avers that the applicant did not attempt to pay the current account and that is what led to it lawfully terminating the electricity supply to the applicant's property on 17th June 2025.

[16] The applicant did not file a replying affidavit despite been warned of the consequences of its failure to do so taking into consideration what the respondent has raised in its answering affidavit. Counsel for the respondent was also willing to give the applicant an opportunity to file a replying affidavit for fairness purposes, but counsel for the applicant insisted that it was not necessary.

[17] The applicant is seeking an interim interdict against the respondent pending the processing, investigation and finalisation of the complaint referred to NERSA by the applicant. The question which this court must determine is whether the applicant has satisfied the requirements for granting of an interim interdict. The granting of an interim relief pending action is within the

discretion of the court to either grant or withhold. In *Knox D'Arcy Ltd and Others v Jamieson and Others*¹ EM Grosskopf JA said:

“That a Court has a discretion whether or not to grant a temporary interdict has often been said...Thus, in *Messina (Transvaal) Development Co Ltd v South African Railways and Harbours* 1929 AD 195 at 215-16 Curlewis JA said:

‘In an application for an interim interdict pending action, the Court has a large discretion in granting or withholding an interdict. Where there is merely a possibility, not a practical certainty, of interference or injury, as in the present case, the Court will be reluctant to grant an interdict, especially if the party seeking the interdict will have other means of redress and will not suffer irreparable damage. And the Court is entitled to and must regard the possible consequences, both to the applicant and to the respondent, which will ensue if an interdict be granted or withheld.’”

- [18] The requirements for the granting of an interim interdict have been restated in a number of decided cases and they (i) a prima facie right that might be open to doubt; (ii) reasonable apprehension of irreparable and imminent harm to the right if the interdict is not granted; (iii) the balance of convenience favourable to the grant of the interdict; and (iv) the absence of any other adequate remedy.
- [19] The whole of the applicant's application is based on the complaint that it had referred to NERSA regarding the historical debt that it is disputing. With regard to prima facie right, the applicant in its founding affidavit has submitted that the decision to terminate the electricity supply was taken prematurely and without notice to all whom it may have prejudicial effect on, including the Department of Education or the School Governing Body of both schools. Further that the pending dispute before NERSA would mitigate against the discontinuation of the electricity supply to the applicant.

¹ 1996 (4) SA 348 (A) at 360G-J

[20] It was the applicant who unilaterally took a decision to stop paying its current bills during December 2023. When the applicant stopped paying its current bills it was not as a result that it was unable to pay those bills, but was for fear that the payment it was making might be allocated by the respondent to its historical debt which it is disputing. That might have resulted in the applicant being unable to raise a plea of prescription to part of the historical debt as the payment which it would have made, might be viewed as having interrupted prescription. The applicant in their letter dated 31st March 2025 notified the respondent that it was referring a complaint to NERSA in relation to the historical debt only, and that it remains committed to paying all its current bills, and was seeking an undertaking from the respondent not to allocate any payment it will be making to the historical debt pending the finalisation of the complaint referred to NERSA.

[21] The respondent had acceded to the applicant's demand per its letter dated 30th May 2025, in which it advised the applicant that whilst waiting for the dispute to be resolved, the applicant must pay the bills issued after the capital amount in dispute. By then the arrears amounted to R1 203 073.26, and the threat to terminate the electricity supply in case of failure to pay was in relation to this amount and not the historical debt. When the applicant instituted the urgent application, it was in possession of this letter which it had attached to its founding affidavit as an annexure. From the contents of this letter, it is clear that the termination of the electricity supply on 17th June 2025 was in relation to the arrears which amounted to R1 203 073.26, which the applicant is not disputing. This amount has been separated from the historical debt which the applicant has referred to NERSA, which was as a result of an undertaking which the applicant has been seeking. Therefore, the termination of the electricity supply by the applicant has got nothing to do with the historical debt, but was based on debt which the applicant is not disputing.

[22] In relation to the alleged failure by the respondent to notify the Department of Education of the imminent termination of the electricity supply. The deponent of the respondent's answering affidavit has stated that he had held discussions with Yvonne Mathabatha, the CFO of the Department of

Education Limpopo Province wherein the Department was made aware of the respondent's intention to discontinue the supply of the electricity supply to the property because of the applicant's failure to pay the respondent. The applicant despite been warned of the consequences of failure to file a replying affidavit opted not to file it. In *National Credit Regulator v Lewis Stores (Pty) Ltd and Another*² Eksteen AJA referred with approval the judgment of *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the RSA* 1999 (2) SA 279 (T) where Joffe J said:

'It is trite that in motion proceedings the affidavits serve not only to place evidence before the Court but also to define the issue between the parties. In so doing the issues between the parties are identified. This is not only for the benefit of the Court but also, and primarily, for the parties. The parties must know the case that must be met and in respect of which they must adduce evidence in the affidavits'.

- [23] The version of the respondent that it had notified the Department of Education of the imminent termination of the electricity supply remain unchallenged. Even if the applicant was to attempt to reply on this issue, it was going to be difficult for it as it could not reply on behalf of the Department without been mandated to do so. The Department is not a party to the proceedings before court and the respondent did not raise any issue about that. Counsel for the applicant was engaged on whether the Department did not have any direct and substantial interest in the matter at hand, and he said the Department did not have. This court will confine itself to what the parties have placed before it. Since the version of the respondent that it had notified the Department of the imminent termination of the electricity supply was not challenged, that will be end of the applicant's case on that issue. By relying on referral of the complaint to NERSA and failure to notify the tenant of the imminent termination, the applicant had failed to establish a prima facie right.

² [2019] ZASCA 190; 2020 (2) SA 390 (SCA) (13 December 2019) at para 29

[24] With regard to reasonable apprehension of irreparable and imminent harm, the applicant has stated that it has been visited with insurmountable hardships to its livelihood, commercial interest and normal way of life of its monks, learners, permanent staff and property and equipment since the respondent had terminated its electricity supply to its property. In *City of Tshwane Metropolitan Municipality v Afriforum*³ Mogoeng CJ said:

“Irreparable harm implies that the effects or consequences cannot be reversed or undone. Irreparable therefore highlights the irreversibility or permanency of the injury or harm. That would mean that a favourable outcome by the court reviewing allegedly objectionable conduct cannot make an order that would effectively undo the harm that would ensue should the order not be granted”.

[25] The applicant did not stop paying its current bills because it was unable to pay, but as sign of a protest in trying to force the respondent to accede to its demand to making an undertaking. From December 2023 the applicant was aware of its monthly obligations to the respondent, and even if it was not paying it should have made provision for that in case the dispute was resolved. The respondent had given an undertaking before the applicant instituted the current urgent application, and the termination was not based on the historical debt, but the current debt. Since the applicant had already terminated the electricity supply by the time applicant instituted its urgent application, what the applicant was complaining about was no longer imminent, but ongoing. It is therefore upon the applicant to show the reasonable apprehension of irreparable harm. Now that the respondent had given an undertaking, the harm that the applicant is complaining about is preventable as its demand for an undertaking has been met. The applicant has failed to advance any reasons for its failure to pay the current debt. It will therefore difficult to determine what harm will the applicant suffer, if it is in a position to pay, but simply elect not do so. The applicant has failed to establish any reasonable apprehension of irreparable harm.

³ [2016] ZACC 19; 2016 (6) SA 279 (CC) (21 July 2016)

[26] On the balance of convenience, the applicant is still relying on the complaint it had referred to NERSA. However, the dispute that has been referred to NERSA has not resulted in the electricity supply being terminated on applicant's property, but it was as result of the debt which the applicant allowed it to accumulate from December 2023 when it stopped paying its bills in protest of the respondent's failure to give an undertaking. The applicant has failed to advance any circumstances that render it unable to pay the arrears of R1 203 073.00 which was self-created. The applicant is only stating that if the respondent acts reasonably and prudent, the debt admitted may be recovered from the applicant and the Department of Education through proper procedures set out in the Intergovernmental Relations Framework Act 13 of 2005. However, the applicant is not stating why it was involving the Department whilst the decision to stop paying was its unilateral decision. Now that the respondent had made an undertaking, the applicant must pay its arrears of R1 203 073.26 including current bills as these arrears were self-created, but the applicant has failed to advance any reasons why it was not paying. If the applicant is unable to pay the outstanding amount in one lump sum, it can negotiate payment arrangements with the respondent. What the applicant has placed before court as amounting to the balance of convenience does not favour the granting of the interdict.

[27] With regard to absence of alternative remedy, the applicant has stated that there is no other conceivable way the applicant can achieve to restore the supply of electricity to its premises other than through the mechanism of mandatory interdict, as the relief it is seeking is a precautionary measure to prevent irreparable harm befalling it whilst its complaint is being finalised by NERSA. The applicant has failed to take into consideration that the respondent has separated the debt in relation to the dispute referred to NERSA and the debt it accumulated after December 2023 when the applicant took a unilateral decision to stop paying its current bills. The alternative remedy which the applicant is having is to resume payment of its current bills since the respondent had given the process of referral of the complaint to NERSA an opportunity to run its course. If the applicant is unable to clear its

debts at once, it can enter into payment arrangements with respondent since it is not disputing the debt that has accumulated after the 23rd December 2025. The applicant has therefore failed to show the absence of any other adequate remedy.

[28] Under the circumstances, the applicant has failed to satisfy the requirements for an interim relief pending finalisation of the complaint that it had referred to NERSA. With regard to costs, the applicant is a church which is a non-profit organisation. The dispute in this matter raises constitutional issues concerning basic human rights to electricity, and therefore the principle in *Biowatch Trust v Registrar, Genetics Resources and Others*⁴ is applicable. The appropriate order will be to order each party to pay its own costs.

[29] In the result the following order is made:

29.1 The applicant's application is dismissed.

29.2 Each party to pay its own costs.

KGANYAGO J
JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

Counsel for the applicant

: F Ndlovu

Instructed by

: Ndlovu Attorneys

Counsel for the respondent

: Adv PL Uys

Instructed by

: GMI Attorneys

⁴ 2009 (6) SA 232 (CC)

Date heard : 27th June 2025

Delivered by uploading on court online : 2nd July 2025

POLOKWANE HIGH COURT