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IN THE HIGH COURT OF SOUTH AFRICA  
LIMPOPO DIVISION, POLOKWANE

**CASE NO.: 2330/2023**

(1) REPORTABLE: YES/NO  
(2) OF INTEREST TO THE JUDGES: YES/NO  
(3) REVISED: YES/NO

\_\_\_\_\_  
**SIGNATURE**

11/05/2026  
**DATE**

In the matter between:

**D[...]** **R[...]** **T[...]** **O.B.O.**  
**D[...]** **D[...]** **T[...]** **O.BO.**  
**B[...]** **K[...]** **T[...]**

**APPLICANT**

**AND**

**ESKOM HOLDINGS SOC LTD**

**1<sup>ST</sup> RESPONDENT**

**ESKOM LIMLANGA REGIONAL CLUSTER  
POLOKWANE MUNICIPALITY**

**2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT**

**DELIVERED:**

**11 MAY 2026**

**This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be 11 MAY 2026 at 16:00.**

**Date heard:**

**11 MAY 2026**

**Coram:**

**NGOBENI J**

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**JUDGMENT**

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**NGOBENI J**

[1] The applicant is D[...] R[...] T[...], an adult female person, with identity number 9[...], currently residing at stand number 1[...] Ga-Matlala, Vlakfontein, Moletjie, Limpopo Province. She acts in her personal capacity and also in her representative capacity as the biological mother of D[...] D[...] T[...] and B[...] K[...] T[...], who are both minor children.

[2] The first respondent is Eskom Holdings (State Owned Company) LTD, LimLanga cluster, with its physical address at Nedbank Building, 6[...],

Polokwane Central, Polokwane. The second respondent is Eskom(State Owned Company) LTD, LimLanga Cluster with its physical address at 6[...] H[...] V[...] R[...] Street, Polokwane. The third respondent is the Polokwane Municipality, with its physical address at corner L[...] and B[...] street, Polokwane.

[3] This is an application for contempt of the court order (order) that was granted by Judge Naude-Odendaal on 14 November 2023. The court is asked in this application to order the second respondent to comply with the order within ten court days of service of the order, and if the records sought are not available the second respondent is called upon to explain the reason for their unavailability. Failing to comply with what I have just mentioned, then one Mrs Caron Phakula (Mrs Phakula) must submit herself to the South African Police Service (SAPS) within five days of non-compliance to serve a sentence of 180 days which must be imposed by the court.

[4] If Mrs Phakula does not submit herself to the SAPS, the Minister of Police (Minister) and the Limpopo Provincial Commissioner (Commissioner) must within three calendar days take all steps necessary and permissible to bring Ms Phakula to a correctional centre to commence serving the sentence. In paragraphs 1,3.4 and 1.4. of the notice of motion, the

applicant is seeking costs, and the two prayers are not so clear to the court, but that is not the cause for concern at this stage.

[5] It is common cause that in reaction to the application that I outlined above, the first respondent filed a 'Notice of Counter Application' (counter application) to the main application. The counter application is accompanied by an affidavit titled 'First Respondent's Affidavit'.

[6] The matter was set down for hearing of the application today on 11 May 2026, and when trying to determine at to who is supposed to start because the first respondent brings an application in the counter application for the rescission of the judgment by Judge Naude-Odendaal, the applicant then raised an issue that the first respondent did not file an answering affidavit to the contempt of court application, but rather filed a two in one affidavit which answers and also seeks rescission of the judgment or order granted by Judge Naude-Odendaal, which according to the applicant is irregular.

[7] In reaction to the aspect that was raised by the applicant, the court was referred to Uniform Rule (rule) 6(7), which reads as follows:

## **6. Applications**

*"(7)(a) Any party to any application proceedings may bring a counter-application or may join any party to the same extent as would be competent if the party wishing to bring such counter-application or join such party were a defendant in an action and the other parties to the application were parties to such action. In the latter event the provisions of rule 10 will apply.*

*(b) The periods prescribed with regard to applications apply to counter-applications: Provided that the court may on good cause shown postpone the hearing of the application".*

[8] In issue between the parties is as to whether an answering affidavit and a founding affidavit can be combined in the counter-application as the first and second respondents did.

[9] In *Dolce Domus CC and Elmarie Herholdt & 1 other*<sup>1</sup> (Dolce case), the first respondent filed an answering affidavit which also served as a founding affidavit for the counter-application. The applicant in the *Dolce* case, *supra*, filed a reply which also served a dual purpose. Similarly in the case at hand, the replying affidavit is titled 'Answering and Replying Affidavit'. So, just like the affidavit in the counter-application which served a dual purpose, so is the replying affidavit of the applicant in the

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<sup>1</sup> (742/2021) [2022] ZAECPHC 5 (24 February 2022).

case at hand. There is therefore no prejudice that has been suffered by the applicant as a result of the affidavit filed by the first respondent.

[10] Rule 30(2)(a) implores an opponent not take a further step where the opposing party would have taken an irregular step with the cause where the irregularity is known to the opponent. In the case at hand the applicant took a further step by filing the 'Replying and Answering affidavit.' If what the first respondent did was indeed irregular, then the applicant must have raised it. I find that what the first respondent did, by filing the answering and founding affidavit which serves a dual purpose is not irregular and the court allows that the proceedings continue with the said affidavit as so filed.

[11] The application before court is for contempt of court as described, and a counter-application for rescission of judgment. Logic dictates that the rescission application be heard first, so that the validity of the order can be dealt with first. I therefore order that the counter-application of the rescission of judgment or order be heard first if the matter is re-enrolled at a later stage.

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

- (i) if the matter is re-enrolled, the application will proceed with all the affidavits as filed,

- (ii) the counter-application with regard to the rescission of the court order granted on 14 November 2023 shall commence first,
- (iii) costs in the cause.

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**J.T. NGOBENI**

**JUDGE OF THE HIGH COURT OF  
SOUTH AFRICA, LIMPOPO DIVISION,  
POLOKWANE**

## **APPEARANCES**

|                                                                 |                                         |
|-----------------------------------------------------------------|-----------------------------------------|
| <b>For the applicant:</b>                                       | <b>Advocates Sako and Kotswane</b>      |
| <b>Instructed by:</b>                                           | <b>Ntwampe Thobejane Inc. Attorneys</b> |
| <b>For the 1<sup>st</sup> &amp; 2<sup>nd</sup> respondents:</b> | <b>Adv. P.L. Uys</b>                    |
| <b>Instructed by:</b>                                           | <b>Gildenhuis Malatji Attorneys</b>     |
| <b>For 3<sup>rd</sup> respondent:</b>                           | <b>No appearances</b>                   |
| <b>Date heard:</b>                                              | <b>11 May 2026</b>                      |
| <b>Date delivered:</b>                                          | <b>11 May 2026</b>                      |

POLOKWANE HIGH COURT