IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 114325/26

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

17 JUNE 2026 [redacted]

DATE SIGNATURE

In the matter between:

MJAYELI SECURITY SERVICES (PTY) LTD Applicant

and

ESKOM HOLDINGS SOC LTD First Respondent

NATIONAL TREASURY Second Respondent

NEUKIRCHER J:

1] This is an application brought in terms of the provisions of Rule 6(12) and set down for hearing on 9 June 2026. The applicant seeks to suspend the implementation of a decision taken by the first respondent (Eskom), in terms of which the applicant and its directors were restricted from doing business with Eskom for a period of seven years, until finalisation of a review of that decision. The applicant also seeks to suspend the alleged blacklisting of the payments in respect of its current contracts with Eskom.

2] The applicant provides security services to Eskom at several key point areas in the country. Those allegedly affected by the present blacklisting are the following:

a) Distribution area 1 in Kwa-Zulu Natal Operating Unit of the Central East Cluster where applicant employs 192 personnel;

b) the response and escort services in the Northern Cape where applicant employs 268 security personnel;

c) physical guarding services at Carletonville CLN where applicant employs 96 security personnel; and

d) physical guarding services at Zwavelpoort where applicant employs 6 security personnel.

The applicant thus alleges that 562 personnel are affected by the administrative decision which effectively restricts payment in respect of the applicant's current contracts.

3] It is common cause that in 2022 an anonymous whistleblower reported the applicant for procurement irregularities. The complaint alleged that a contract was awarded to the applicant[1] in respect of a bid for the provision of security services at a

[1] For a period of three years from 1 March 2021 until 31 January 2024

National Key Point at Matimba Power Station. The allegation is that the applicant provided guards who did not have the requisite certification to carry firearms, which resulted in a breach of Regulation 21 of the Firearms Control Act 60 of 2000, and the National Key Points Act 102 of 1980. The allegation was further that the applicant invoiced Eskom for armed guards whilst it was not in possession of the requisite certifications.

4] As a result of the complaint, Eskom appointed a service provider to conduct an investigation, which ultimately revealed that the applicant's security guards were armed and performing duties at a National Key Point without the required firearm certifications. Furthermore, following an incident in November 2021 where a firearm was accidentally discharged, Eskom discovered that the guards lacked the necessary qualifications. Firearms were confiscated and the required training only occurred much later.

5] Thus, the investigation found that the applicant had breached its contractual obligations, had failed to comply with key pieces of legislation and had submitted invoices for guards who were not properly qualified to perform armed duties. The investigation concluded that these payments were, in these circumstances, irregular.

6] As a result, Eskom initiated disciplinary proceedings against the applicant and invited it to make representations based on the allegations made. This the applicant did on 12 June 2025.

7] On 30 March 2026, Eskom considered the applicant's representations and on 14 April 2026 informed the applicant of the outcome: it restricted the applicant and its directors from doing business with Eskom for a period of seven years[2] effective from 30 March 2026. It also informed the applicant that it intended to consult the second respondent (National Treasury) to initiate the process set out in National Treasury Note no 3 of 2021/2022 (Note 3). The latter, if approved by National Treasury, would restrict the applicant and its directors from doing any business with the State.

8] The letter of 14 April 2026 specifically informed the applicant that the sanction "would not necessarily impact on any existing contract…which is not tainted by any fraudulent or other related impropriety and payment under such contract would be made… for goods and services duly shown to be delivered." In other words, and as was submitted by Eskom, the restriction would not prevent payment being made to the applicant in respect of existing contracts.

9] The applicant argues that instead of complying with this undertaking, Eskom appears to have blocked its vendor profile. This has prevented payments being made in respect of the invoices submitted in respect of existing contracts.

10] The applicant argues that Eskom does not have the authority to impose any restriction on any supplier and that any blacklisting/restriction can only be made by National Treasury in terms of Note 3. It argues that the procedure adopted by Eskom is thus arbitrary, irrational and unreasonable.

11] At present, and in this urgent application, only Part A is relevant: this is to seek that Eskom's decision to impose restrictions on the applicant be suspended until such

[2] The initial period was recommended to be five years, but the committee ultimately imposed a longer sanction

time as the review application in Part B is finalised. Essentially, the review is premised on the allegation that Eskom acted without legal power, failed to involve National Treasury as required by the procurement framework, and that Eskom imposed a disproportionate sanction on the applicant.

12] In addition to Note 3, and in reply, the applicant sought to rely on a letter from National Treasury dated 16 March 2026 in which the latter, in response to a request to depart from Note 3, states:

> "…Therefore, the NT does not support Eskom's decision to temporarily restrict suppliers while the supplier disciplinary process is ongoing instead, the NT recommends that:
>
> - Eskom strengthens its service level agreements or special and general conditions od contracts to include clauses that allow for contractual remedies instead of outright suspension as this may help balance the fairness and risk of litigation.
> - Eskom may consider incorporating clauses that would specify that material non-performance, fraud, corruption, or other irregularities constitute grounds for suspension of a contract or possible termination of the contract…"

13] The applicant argues that considering this letter, Eskom had no approval from National Treasury to embark on its course of action, which is an essential requirement before any blacklisting can be imposed.

14] When assessing the applicant's argument, it does not appear that the complaint is directed at the process undertaken by Eskom, ie the disciplinary proceedings themselves – it is directed at the outcome and, specifically if one drills down to the nub of the complaint, it is that the applicant complains that the blacklisting appears to not only be in respect of future tenders and contracts, but current contracts and the payments in respect of those. It argues that the practical effect of the blacklisting is that the applicant is blocked from receiving payment even in respect of contracts not related to the disciplinary charges.

15] The applicant relies on *Economic Freedom Fighters v Gordhan and Others; Public Protector v Gordhan and Others*[3] for its argument that a lighter threshold must be met when seeking a suspension of an administrative action as opposed to an interdict.

16] But the argument is that whether the court orders either a suspension of Eskom's decision or an interdict, the effect of the order must be to suspend the imposition of the restriction of payments to the applicant.

17] In *Gordhan* the main judgment of Khampepe ADCJ states:

> "[47] An interim interdict is a temporary order that aims to protect the rights of an applicant, pending the outcome of a main application or action. It attempts to preserve or restore the status quo until a final decision relating to the rights of the parties can be made by the review court in the main application. As a result, it is not a final determination of the rights of the parties. It bears stressing that the grant of an interim interdict does not, and should not, affect the review court's decision when making its final decision and should not have an effect on the determination of the rights in the main application. The purpose of an interdict is to provide an applicant with adequate and effective temporary relief.

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[3] 2020 (6) SA 325 (CC)

[48] We were cautioned by this Court in *OUTA* that, where Legislative or Executive power will be transgressed and thwarted by an interim interdict, an interim interdict should only be granted in the clearest of cases and after careful consideration of the possible harm to the separation of powers principle. Essentially, a court must carefully scrutinise whether granting an interdict will disrupt Executive or Legislative functions, thus implicating the separation and distribution of power as envisaged by law. In that instance, an interim interdict would only be granted in exceptional cases in which a strong case for that relief has been made out."

18] The concurring judgment of Jafta J explains the effect of a suspension rather than that of an interim interdict:

"[113] Therefore, even if it could be said that there were prospects against the grant of the interdict, the applicants for leave would still be faced with the question whether there were prospects against suspension. Requirements for suspension differ from those needed for an interim interdict. The *OUTA* standard does not apply to suspension.

[114] The power to suspend the operation of the Public Protector's remedial action is sourced from section 172(1)(b) of the Constitution. If in a matter like the present, it is considered just and equitable to suspend a remedial action pending a determination of the review in which the validity of the remedial action is impugned, a court may grant the suspension. Guidance for issuing the suspension is derived from considerations of justice and equity.

[115] A determination of a just and equitable order of necessity requires a careful consideration of interests of parties on both sides of the litigation. The order must be fair and just when all relevant factors are taken into account. What is just and equitable in a given case, depends on the facts of that particular case. This sort of enquiry entails a flexible approach in pursuit of justice and equity in every matter.

> [116] As the first judgment observes, the enforcement of the remedial action before the review is determined would be prejudicial to the applicant for review. It would mean that he has to be punished in terms of the remedial action which he had successfully demonstrated was likely to be set aside as not meeting the requirements of the Constitution and the relevant legislation. This would be the position where the record shows no potentiality of prejudice to the Public Protector, should the enforcement of the remedial action be put on hold until the finalisation of the review application. Its immediate execution would serve no purpose other than short term expediency. The remedial action we are concerned with here does not address or promote the rights or interests of a particular person, let alone interests that require preservation pending the determination of the review application."

19] The applicant argues that it meets the requirements for both a suspension and an interim interdict. It argues that the prima facie rights is based on the argument that Eskom cannot arrogate to itself powers which reside in National Treasury; that the balance convenience and irreparable harm are intertwined as, if Eskom continues to withhold essential payments on current contracts, it will be unable to pay the salaries of the 562 employees dependent on it and this will have a knock-on effect to their families who will be unable to meet their monthly obligations and put food on their tables.

20] The applicant also points out that Eskom does not allege that it is not entitled to receive payments – to the contrary, it undertook to pay, but the payment made in April 2026 and May 2026 paint a very different picture: in April 2026 invoices of approximately R13 million were paid, but as at 3 May 2026 no payments had been made and, ultimately, in May 2026 payments were made in the amount of approximately R3 million.

21] The applicant ultimately argues that there is no other remedy available to it to alleviate the immediate plight of its employees. Damages in due course will be cold comfort to those whose livelihoods and living depends on the meagre salary they receive every month.

22] Eskom opposes the relief sought. Ultimately it argues that the application is not urgent and that any urgency is entirely self-created. It also argues that the applicant has misconstrued the powers granted to Eskom by various pieces of legislation to regulate its procedures and determine an outcome. It argues that proper procedures were adopted, that applicant was granted an opportunity to respond to the allegations made against it and that no case has been made out for the relied sought.

23] Eskom argues that it derives the power to impose restrictions from several key pieces of legislation ad policy considerations. The first is s51(b) of the Public Finance Management Act, 1999 which provides that an accounting authority for a public entity[4] must

> "(b) take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct and expenditure not complying with the operational policies of the public entity."

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[4] Eskom is a Schedule 2 of the PFMA public entity

24] Note 3 is aimed at enhancing compliance, transparency and accountability in supply chain management and is applicable to Schedule 2 and Schedule 3 public entities. Eskom is a Schedule 2 entity and is bound by Note 3. Paragraph 10 of Note 3 inter alia provides that where an investigation indicates any irregularity by a person, Eskom must act against the person in accordance with the relevant prescripts and, in addition to the penalties/remedies provided for in the relevant prescripts, also implement remedial actions which may include, inter alia, cancelling the contract and restricting the person from concluding business with the State.[5] Note 3 then provides for the mechanism to be employed by Eskom if it wishes to restrict the person from doing business with the State.

25] Eskom also requires suppliers to be registered on the Central Supplier Database (CSD) maintained by National Treasury. A restriction on doing business with the State refers to a restriction of a supplier on the CSD. Eskom however manages its own supplier database[6] which is separate from the CSD. A restriction on doing business with Eskom does not equate to an automatic registration on the CSD.

26] Revisions 4[7] and 5[8] of Eskom's Procurement and Supply Chain Management Procedure (SCMP) are also relevant. In terms of Revision 4, Eskom's Executive Tender Committee is empowered to approve adoption of the July 2019 SCMP and any deviation or relaxation thereof. Revision 4 also provides that the Supplier Review

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[5] Note at paragraph 10.1(d)(ii) and (iii)
[6] The Eskom Supplier Database (ESD)
[7] Dated 1 July 2019
[8] Dated 1 February 2024

Committee is appointed by the Executive Tender Committee to consider complaints regarding suppliers and pursue remedial action.[9]

27] The February 2024 SCMP provides that the manner of conducting investigation into supplier irregularities and any decision taken in respect thereof, shall be within the sole discretion of Eskom. It also provides that Eskom may impose and lawful and appropriate sanction against a supplier including inter alia the deregistration or restriction of a supplier on the Eskom Database.[10]

28] At the time of the applicant's bid, the Eskom Supplier Integrity Pact was applicable. It provides that Eskom has the rights, following a process of investigation and having given the supplier an opportunity to state their case, to suspend a supplier from the Eskom Supplier Database. It also provides that Eskom will forward the names of suspended suppliers to National Treasury who will remove it from the CSD.[11]

29] All of the above detail the source of Eskom's authority to impose the sanction it did on the applicant. None of this is disputed by the applicant in reply. The highwater mark of the replying affidavit is to place before the court the letter from National Treasury set out in paragraph 12 supra and to state:

> "The balance of the answering affidavit is disputed. More significantly, the issues arising there so not relate to the relief claimed, and more particularly as it related to effecting blacklisting such as to apply to other unrelated contracts, contrary to the undertaking provided by Eskom on 16 April 2026."

[9] Clause 5.1.20
[10] Clause 4.2.6
[11] Clause 4.5

30] Notwithstanding the applicant's dismissive stance, as set out in par 29 supra, it is clear that Eskom's explanation regarding the source of its powers, for its disciplinary processes and the sanctions it may impose, are indeed relevant to the relief sought, have been fully explained and have not been impugned.

31] Eskom argues that the outcome of the disciplinary process was communicated to the applicant as far back as 14 April 2026. Yet the applicant waited until 20 May 2026 to serve this application – more than a month after the decision was communicated.

32] Eskom also points out that in the founding affidavit, the applicant states that:

> "23.2 As at the communication of the restriction decision, the Applicant had no immediate concern warranting the commencement of court proceedings. A point of concern triggered after the fail of 03 May 2026, the date by which the Applicant would have received payments from Eskom in respect of other unrelated contracts."

33] As I have already stated, the applicant does not complain about unfairness in the procedural aspects of the disciplinary process. It also did not complain about the sanction imposed when the outcome was communicated to it on 14 April 2026. It has not complained about the restriction in respect of future tenders at all – in fact, it has not even mentioned that as an issue, other than to argue that this sanction can only be imposed by National Treasury, which is incorrect.

34] The applicant's first complaint came about in May 2026 when it says Eskom did not pay it and that is the nub of the application. That too seems to be a storm in a teacup as Eskom has undertaken to make payment of current contracts under certain terms – thus the proverbial ball has been in the applicant's court since the tender was made.

35] After it was served with this application, Eskom made a tender to the applicant (which is contained in its answering affidavit), that applicant provide it with a list of unpaid invoices and Eskom would then (i) establish the payment status of each invoice, (ii) revert with any issues which are causing a delay of payment and (iii) expedite payment of compliant invoices which are outstanding.

36] Although the applicant has stated in its reply that it has attempted to take Eskom up on this tender but without success, that allegation is vague and no substantiation has been provided by the applicant. In my view, Eskom's tender is sufficient to address the alleged urgency of this application – the payment of its employees. It is clear from both the argument and these papers that Eskom has made payments to the applicant for two months after the restriction date of 30 March 2026. That then demonstrates that the restriction is not in respect of existing contracts as is alleged.

37] It is clear from the *Gordhan* case that when considering whether a suspension of the decision should be ordered, considerations of justice and equity apply. A court must weigh the interests of both parties, and the order must be fair and just when all relevant factors are considered. Furthermore, what is just and equitable depends on the facts of the case.

38] On the other hand, there will be substantial prejudice to Eskom were its decision to be suspended pending the review application. Essentially this would mean that the applicant would be able to tender for future projects and, if the review application were to be ultimately unsuccessful, it would put Eskom in the untenable position where it may potentially have contracted with a restricted party past the initial date on which the restriction was imposed.

39] Perhaps, once a full record is received for purpose of the review envisaged in Part B of this application, that court will be of a different view, but at this stage the applicant has failed to satisfy me that Eskom's processes were tainted or its decision was procedurally unfair, arbitrary, irrational or unreasonable. Insofar as the applicant argues that Eskom's decision extends to restricting its business with the State, it is very clear from these papers that that is not so – Eskom intends to first consult with National Treasury, and it is for National Treasury to make that determination. This too is clear from the papers.

40] In my view, the applicant has failed to make out a case for the suspension of Eskom's decision of 30 March 2026. Its failure to meet this less stringent requirement means that it certainly does not meet the requirement for any form of interdictory relief: not only can it not prove that its right to a fair administrative procedure has been violated, it cannot demonstrate that the balance of convenience favours it nor that it will suffer irreparable harm were relief not to be granted – this is all tied up with the payment issue which I have addressed supra. The applicant has a satisfactory alternative remedy: it can approach Eskom with its invoices and, if necessary, in due course claim damages from Eskom.

41] In the event that Eskom either drags its feet on its undertaking or does not comply with its undertaking, the applicant is similarly not without remedy pending the review.

42] Thus, this application must fail both on urgency and on merits in respect of Part A.

43] In my view costs must follow the result. I am of the view that costs on Scale C are justified given the issues before court, the importance of the matter to both parties and that applicant has employed senior counsel.

Order

Part A of the application is dismissed with costs, which costs are to be taxed in accordance with Scale C.

[redacted]

B NEUKIRCHER
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 17 June 2026

Appearances

For the appellant	:	Adv Manala SC
Instructed by	:	Manala & Co Inc
For the first respondent	:	Adv Seape
Instructed by	:	Mchunu Attorneys
Matter heard on	:	9 June 2026
Judgment date	:	17 June 2026