REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: **2025-226981**

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

11/06/2026 [redacted]
DATE SIGNATURE

In the matter between:

EKURHULENI METROPOLITAN MUNICIPALITY	First Applicant
NATIONAL ENERGY REGULATOR OF SOUTH AFRICA (NERSA)	Second Applicant

and

MPACT LIMITED	First Respondent
MPACT OPERATIONS (PTY) LTD	Second Respondent
MPACT PLASTIC CONTAINERS CASTLEVIEW (PTY) LIMITED	Third Respondent
RECYCLING CONSOLIDATED HOLDINGS (PTY) LTD	Fourth Respondent

JUDGMENT

MBONGWE, J:

INTRODUCTION

[1] The present First Applicant, Ekurhuleni Metropolitan Municipality ("Ekurhuleni"), seeks leave to appeal against the judgments and orders of this Court delivered on 18 February 2026 and varied by it on 16 March 2026. The operative order interdicts Ekurhuleni from disconnecting the electricity supply to the premises of the present respondents pending the final determination of the review application under case number 2025-185401.

[2] The application is opposed by the Respondents, who contend that the order is not appealable; that no reasonable prospects of success exist; that there are no compelling reasons to justify the granting of leave to appeal and that the appeal, were the impugned orders appealable and leave granted, would be moot as a date for the hearing of the review application is only a few months away and before any date that may be allocated for the hearing of the appeal.

THE STATUTORY FRAMEWORK

[3] Section 17(1)(a) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be granted where the judge is of the opinion that the appeal would have a reasonable prospect of success, or where there is some other compelling reason, including conflicting judgments or questions of public importance.

[4] Section 16(2)(a) further stipulates that an appeal against an interlocutory order may only be entertained if the interests of justice so require.

APPEALABILITY OF INTERIM ORDERS

[5] The orders concerned herein are plainly interim in nature and do not dispose of the substantive relief sought in the review application, nor do they finally determine the rights of the parties. It merely preserves the status quo pending the review.

[6] The *Zweni v Minister of Law and Order*[1] test requires that an appealable order be final in effect, definitive of the rights of the parties, and dispositive of a substantial portion of the relief claimed. This order meets none of those attributes.

[7] While subsequent jurisprudence has recognised that interim orders may be appealable if the interests of justice so dictate,[2] no such factors are present here. Unlike in *Vresthena*,[3] the Applicants continue to pay a tariff covering the full cost of supply plus a reasonable return, ensuring that Ekurhuleni suffers no prejudice.

GROUNDS OF APPEAL

[8] Many of Ekurhuleni's grounds of appeal have been rendered moot by the variation judgment of 16 March 2026, which corrected a patent error and confined the order to the interim relief pending review.[4]

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[1] 1993 (1) SA 523 (A).

[2] *United Democratic Movement v Lebashe Investment Group (Pty) Ltd* 2023 (1) SA 353 (CC) at paras 40–48.

[3] *City of Tshwane Metropolitan Municipality v Vresthena (Pty) Ltd* 2024 (6) SA 159 (SCA).

[4] Rule 42(1)(b), Uniform Rules of Court; *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A).

[9] The remaining grounds—whether section 102 of the Municipal Systems Act applies, whether the Afriforum judgment invalidated the tariffs, and whether the order undermines Ekurhuleni's constitutional mandate—do not sustain prospects of success:

a) Section 102: This Court has already declared the 2024/25 and 2025/26 tariffs invalid. The Applicants' dispute is accordingly "internal" and squarely within section 102(2).[5]

b) Afriforum judgment: Under the *Oudekraal* principle, an unlawful administrative act cannot be relied upon to exercise coercive powers.[6] Ekurhuleni cannot disconnect supply based on tariffs declared invalid.

c) Constitutional mandate: The interim order does not compel Ekurhuleni to supply electricity without payment. The Applicants continue to pay a lawful tariff, distinguishing this case from *Vresthena*.

d) Mootness: Even if leave were to be granted, the appeal would be moot. The timetable set by Acting Deputy Judge President Collis provides that the review application will be heard in November 2026. Any appeal against the interim order could not be finalised before that hearing, by which time the review will have been determined, rendering the appeal academic.[7]

INTERESTS OF JUSTICE

[10] Ekurhuleni invokes conflicting judgments within this Division as a compelling reason. It relies on *CFMCSA I & II* (Fourie J and Bam J), which held that section

[5] *Body Corporate Croftdene Mall v eThekwini Municipality* 2012 (4) SA 169 (SCA); *Casting, Forging & Machining Cluster of South Africa NPC v City of Johannesburg* [2024] ZAGPPHC 1216 (Baqwa J).
[6] *Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA).
[7] Case Management Note before Collis ADJP (25 May 2026), paras 3–4, recording the timetable culminating in the hearing of the review application on 9–13 November 2026.

102 does not apply to NERSA tariff disputes, contrasted with *CFMCSA III* (Baqwa J), which held otherwise.

[11] However, the present matter is distinguishable: here, tariffs have already been declared invalid, and the Applicants have identified specific amounts in dispute and tendered payment of lawful tariffs. The conflict of authority does not create a compelling reason to grant leave to appeal in circumstances where the operative order is interim and tailored to prevent irreparable harm.

CONCLUSION

[12] The impugned order is interim, not appealable, and does not implicate the interests of justice in a manner warranting appellate intervention. The grounds advanced by Ekurhuleni are either moot or devoid of merit.

[13] Accordingly, the application for leave to appeal must fail.

ORDER

1. The application for leave to appeal is dismissed with costs, including the costs of counsel.

[redacted]

MPN MBONGWE

JUDGE OF THE HIGH COURT

GAUTENG DIVISION

PRETORIA

APPEARANCES

For the Applicants:	**JC UYS SC**
Instructed by:	Klopper Jonker Incorporated
For the First Respondent:	**S PUDIFIN-JONES**
Instructed by:	Nortons Incorporated
Date of Hearing:	**26 May 2026**
Date of Judgment:	**11 June 2026**

THIS JUDGMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES' LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINES ON 11 JUNE 2026.