



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 21 January 2022

**Status:** Immediate

***The following Summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal.***

*Eskom Holdings Soc Ltd v Lekwa Ratepayers Association and Others; Eskom Holdings Soc Ltd v Vaal River Development Association (Pty) Ltd and Others (870/20) [2022] ZASCA 10 (21 January 2022)*

Today the Supreme Court of Appeal (SCA) handed down judgment and dismissed an appeal against the decision of the High Court, Gauteng Division, Pretoria, with costs, including those of two counsel.

The primary issue before the SCA was this: whether the residents of two municipalities have established the requisite prima facie right at the level required for interim relief to restrain Eskom from implementing its unilateral decisions to reduce its bulk electricity supply to the municipalities concerned to historic, outdated and inadequate contractually agreed supply levels without prior compliance with the constitutional and statutory imperatives relating to intergovernmental dispute resolution mechanisms. Eskom's decisions and the implementation thereof rendered the two municipalities unable to fulfil their constitutional obligations owed to their citizenry, resulting in a catastrophe unfolding with hospitals, schools, households and businesses severely disrupted and with damage to the environment as a result of water sources being contaminated, particularly the Vaal River, due to damage to the municipal water and sewage systems.

In a unanimous judgment, the Supreme Court of Appeal held that the residents established the requisite prima facie right on the facts by demonstrating prospects of success in review proceedings in due course to review and set aside Eskom's decisions on the basis that they undermine constitutional and statutory imperatives. The relationship between Eskom on the one hand and municipalities on the other is more than merely a contractual one regulated purely in terms of the electricity supply agreements that the parties concluded. Eskom supplies bulk electricity to municipalities which, in turn, have a concomitant duty to supply it to the end-users. The unique feature of this relationship is that Eskom, as an organ of state, supplies electricity to local spheres of government to secure the economic and social well-being of the people. This brings the relationship within the purview of the Intergovernmental Relations Framework Act 31 of 2005 (IRFA). Organs of State are constitutionally (s 41 of the Constitution) and statutorily (ss 40 and 41 of the IRFA) required to make reasonable efforts in good faith to settle intergovernmental disputes.

Although there is no real dispute as to the existence of the debts owed to Eskom by both municipalities or as to the inability of these recalcitrant and dysfunctional municipalities to make any meaningful payments themselves due to their parlous financial state, disputes between Eskom on the one hand and the two municipalities on the other, as contemplated in s 41 of the Constitution and in ss 40 and 41 of the IRFA, have prima facie arisen in relation to the manner in which the debt would be liquidated, the remedies available to Eskom in the event of default, and the terms upon which Eskom would agree to increase their historically agreed electricity supply levels to meet their present electricity supply demands. Those intergovernmental disputes triggered the constitutionally and statutorily required dispute resolution mechanism for organs of state prescribed in the IRFA, and all efforts to resolve those disputes should have been exhausted in terms of chapter 4 of the IRFA. But the dispute resolution mechanism was prima facie not followed.

Eskom, therefore, was prima facie not constitutionally and statutorily permitted to unilaterally reduce the bulk electricity supply to the two municipalities to their historic contractually agreed electricity supply levels without it and the two municipalities, in collaboration with the other state role-players, first making every reasonable effort to settle the intergovernmental disputes. Had the dispute resolution mechanism been followed, it may well have resulted in the intervention of both the provincial and national levels of government, without which the two municipalities are unlikely to turn their fortunes around on their own.