THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY

FROM: The Registrar, Supreme Court of Appeal

DATE: 1 December 2022

STATUS: Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Pioneer Foods (Pty) Ltd v Eskom Holdings SOC Limited & Others (325/2021) [2022] ZASCA 171 (1 December 2022)

Today the Supreme Court of Appeal handed down a judgment in which it furnished reasons for an order made on 8 November 2022 dismissing the appeal of the appellant, Pioneer Foods (Pty) Ltd (Pioneer) with no order as to costs. In its reasons, the Court concluded that the appeal had become moot for the following reasons.

Pioneer had challenged Eskom's decisions made between July 2017 and January 2018 to implement intermittent electricity supply interruptions in the Walter Sisulu Municipality between July 2017 and January 2018. Pioneer, as an end-user, was affected by Eskom's decisions. In its review application against Eskom, Pioneer had raised two legal issues, ie whether: (a) Eskom was in law entitled to invoke s 21(5) of the ERA without a court order authorising it to do so; (b) s 30 of the Electricity Regulation Act 4 of 2006 (the ERA) provides for an internal remedy envisaged in the Promotion of Administrative Justice Act 3 of 2000 (the PAJA) which must be exhausted before resorting to the courts. The Gauteng Division of the High Court, Johannesburg (the high court) had dismissed Pioneer's review application.

While Eskom's appeal was pending, judgment in *Eskom Holdings SOC Ltd v Resilient Properties (Pty) Ltd and Others; Eskom Holdings SOC Ltd v Sabie Chamber of Commerce and Tourism and Others; Chweu Local Municipality and Others v Sabie Chamber of Commerce and Tourism and Others* [2020] ZASCA 185; [2021] 1 All SA 668 (SCA); 2021 (3) SA 47 (SCA) (*Resilient),* was delivered. This Court provided clarity on two issues raised by Pioneer in the appeal. As to the first issue, this Court concluded that s 21(5) of the ERA empowers Eskom to reduce or terminate the supply of electricity to its customers in the circumstances spelt out in the section. And that it may exercise that power without prior authorisation by a court. As to the second issue, this Court rejected Eskom's contention that s 30 constituted an internal remedy envisaged in s 7 of the PAJA, holding that it did apply in the circumstances.

Additionally, in *Resilient*, this Court also made another important finding (which did not feature in the present case). It held that Eskom was obliged to resolve its disputes with the municipalities to which it supplies electricity, through the framework of the Intergovernmental Relations Framework Act 13 of 2005 (the IRFA). Therefore, before taking the decision to interrupt electricity supply to the

municipalities failing to pay for the electricity supplied, Eskom was required to comply with ss 40 and 41(3) of the IRFA, which require organs of state to exhaust all other remedies to resolve disputes before they approach a court.

Given the above, this Court concluded that in the light of the *Resilient* judgment, the issues of law which Pioneer sought clarity on, had been decided. As to Eskom's decisions to implement electricity interruptions made in period July 2017 – January 2018, the Court pointed out that those were time-bound. They had come and gone, and it was not possible for Eskom to implement them again. Whether they were tainted by procedural and substantive irregularities, as Pioneer asserted, was immaterial now. An order in respect of those decisions would have no practical effect. If in future it needs to implement electricity supply interruptions, Eskom would have to take new decisions, which would have to comply with the relevant provisions of the IRFA and the PAJA.
Accordingly, the Court held that the appeal had become moot, and had to be dismissed on this basis alone in terms of s of 16(2)(*a*)(i) of the Superior Courts Act. However, the Court also considered whether it should exercise its discretion to enter into the merits of an appeal, notwithstanding the mootness. This it can do, when a discrete legal issue of public importance arose that would affect matters in the future and on which adjudication of the Court is required. It concluded that no such issue arose in the present matter, hence the dismissal of the appeal. With regard to costs, the Court deemed it fair that there should not be any order in respect thereof.

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