



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: 1 October 2025

Status: Immediate

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Mafilika and Others v Elundini Local Municipality and Another (620/2024) [2025] ZASCA 142 (1 October 2025)

Today the Supreme Court of Appeal (the SCA) handed down a judgment in which it upheld the appeal of the appellants against the judgment and order of the Eastern Cape Division of the High Court, Makhanda (the high court).

The appellants are the tenants of a property in Maclear, Cape Town (the property). In February 2023, the Elundini Local Municipality (the municipality) disconnected electricity supply to the property at the request of the owner. The next day, water supply was also disconnected from the property. These actions were both taken without any prior notice to the appellants. As a result, the appellants launched an urgent application in the high court. Part A of the application sought urgent relief and a mandatory interdict, compelling the municipality to restore the electricity and water supply (the services) to the property immediately, and an interim interdict restraining the municipality from terminating the services pending Part B of the application. The relief in Part B, which was not urgently sought, was an order declaring the municipality's termination of the services without prior notice to be unlawful; null and void *ab initio*, and not procedurally fair in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

The municipality opposed the appellants' urgent application to restore the services, arguing that the electricity disconnection was a contractual matter between the municipality and the owner of the property. Further, the municipality raised a non-joinder point *in limine*, arguing that it was not responsible for water supply as that mandate fell within the scope of the Joe Gqabi District Municipality (the district municipality), which was not joined as a party to the proceedings. It denied disconnecting the water supply.

The high court found that it could not grant an order to restore water as that service fell under the district municipality. As a result, it upheld the municipality's non-joinder point *in limine*. Furthermore, the high court agreed with the municipality and found that the disconnection of the electricity was a contractual matter between the property owner and the municipality, and therefore not an administrative action requiring notice to the appellants. As a result, the high court dismissed the entire application with costs.

The core issues for determination by the SCA were whether the high court was correct to uphold the non-joinder point *in limine* regarding the disconnection of water, and whether the high court erred in finding that the appellants had not established a legal right to receive pre-termination notice before their electricity was disconnected.

On the first issue, the SCA agreed with the high court. It found that the supply of water was the responsibility of the district municipality, which had not been joined as a party to these proceedings. Therefore, no competent order for the restoration of water supply could be made against the municipality.

On the second and main issue, the SCA found that the high court had misdirected itself. It found further that the municipality misunderstood the nature of municipal services, the supply thereof to persons who are occupiers but not consumers, and administrative action. Relying on the precedent set by the Constitutional Court in *Joseph v City of Johannesburg*, the SCA held that the provision of electricity is a basic municipal service and a constitutional obligation. A municipality cannot avoid its duty to act procedurally fair towards the tenants/occupiers due to its contractual relationship with the owner of the property.

The SCA held the appellants had a *prima facie* right not to have a basic service like electricity terminated without notice. It held further that the municipality's actions fell squarely within s 3(1) of PAJA, as they materially and adversely affected the rights and dignity of the appellants. As such, the municipality was required to provide the tenants with reasonable notice and an opportunity to be heard before disconnecting the supply.

As a result, the SCA upheld the appeal with costs. It set aside the order of the high court and replaced it with an order directing the municipality to restore the electricity supply to the property within 24 hours of the service of the order to the offices of the municipality, pending the final determination of the orders sought under Part B.

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