



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case no: 620/2024

In the matter between:

SIPHOKAZI MAFILIKA

FIRST APPELLANT

ONESIPHO GUZA

SECOND APPELLANT

VUYOLWETHU NDAMASE

THIRD APPELLANT

THEMBANI BREAKFAST

FOURTH APPELLANT

LINDELWA KLAAS

FIFTH APPELLANT

ASTHOBELE MKHANGALA

SIXTH APPELLANT

and

ELUNDINI LOCAL MUNICIPALITY

FIRST RESPONDENT

MUNICIPALITY MANAGER:

ELUNDINI LOCAL MUNICIPALITY

SECOND RESPONDENT

Neutral citation: *Mafilika and Others v Elundini Local Municipality and Another* (620/2024) [2025] ZASCA 142 (01 October 2025)

Coram: HUGHES, WEINER, MOLEFE and KOEN JJA and CHILI AJA

Heard: 1 September 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for the hand-down of the judgment is deemed to be 11h00 on 01 October 2025.

Summary: Municipal Law – Administrative Law – Promotion of Administrative Justice Act 3 of 2000 – termination of electricity supply to property on the instructions of the title owner – lack of pre-termination notice – Constitutional right to electricity – *prima facie* right not to have electricity supply terminated unfairly and without adequate notice.

ORDER

On appeal from: Eastern Cape Division of the High Court, Makhanda (Beshe J, sitting as court of first instance):

1 The appeal is upheld with costs, such costs to include the costs of two counsel.

2 The order of the Eastern Cape Division of the High Court, Makhanda is set aside and replaced with the following:

‘Pending the final determination of the orders sought in Part B, the respondents are directed to restore the electricity supply within 24 hours after service of this court order by the applicants’ attorneys at the offices of the second respondent.’

JUDGMENT

Molefe JA (Hughes, Weiner and Koen JJA and Chili AJA concurring):

[1] This is an appeal against an order of the Eastern Cape Division of the High Court, Makhanda (the high court), dismissing the appellants’ application for the restoration of electricity and water supply to Erf 3488, Maclear, Eastern Cape (the property) by the first respondent, the Elundini Local Municipality (the municipality), pending the determination of the lawfulness of the municipality’s termination of the services. The issue on appeal is whether the services can be lawfully disconnected from the property, which was leased, without providing the tenants with a reasonable pre-termination notice and if

required, an opportunity to be heard in terms of section 3(1) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).¹

[2] The appellants occupy the property as tenants. They leased the property from Ms Pinky Madikane. The municipality provides electricity to the property. The appellants allege that they regularly purchase water and electricity from the municipality.

[3] The municipality is a structure duly established pursuant to the Constitution, in terms of the Local Government: Municipal Structures Act 117 of 1998 (the Structures Act), and the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act). The second respondent is the Municipal Manager of the municipality, a repository of the functions and powers set out in the Structures Act and the Systems Act.

[4] At all material times, the municipality had a contractual agreement with the owner/title holder of the property, Ms Nosipho Flora Nyezi (Ms Nyezi), for the provision of electricity to the property. On 4 February 2023, Ms Nyezi addressed a letter to the municipality requesting it to ‘temporarily disconnect the power connection’ to the property.

[5] On 7 February 2023, at the instance of Ms Nyezi and pursuant to the aforesaid contractual arrangement between her and the municipality, the municipality terminated the electricity supply to the property. The next day, on 8 February 2023, the water supply was terminated. Both terminations were done without any pre-termination notice(s).

¹ Sec 3(1) of PAJA provides that ‘[a]dministrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair’.

[6] Consequently, the appellants launched an urgent application in the high court. Part A of the application sought urgent relief and a mandatory interdict, compelling the respondents to restore the electricity and water supply to the property immediately, and an interim interdict restraining the respondents from terminating the electricity and water supply 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 electricity and water supply without prior notice to be unlawful; null and void *ab initio*, and not procedurally fair in terms of PAJA.

[7] The municipality opposed the application and raised a non-joinder point *in limine*, asserting that the authority to provide water does not fall within its mandate but within the scope of Joe Gqabi District Municipality (the district municipality), which was not joined as a party to the proceedings. It denied disconnecting the water supply to the property.

[8] The municipality further denied that the disconnection of the electricity supply was unlawful. It argued that the disconnection of the electricity supply was purely contractual, carried out at the property owner's request, and therefore not an administrative action.

[9] The high court upheld the non-joinder point *in limine* and dismissed Part A of the application. It found that the municipality's termination of the electricity was not an administrative action, and that the appellants had not established a *prima facie* right for the interim relief. The high court also did not believe that the appellants would be successful in Part B of the application, and, therefore, dismissed the entire application with costs. The appellants appeal against that judgment and order, having been granted leave by this Court on 3 May 2024.

The non-joinder special plea

[10] The case presented by the respondents in the non-joinder special plea is that the authority to supply water to the property rested with the district municipality. Section 84 of the Structures Act addresses the division of functions and powers between district and local municipalities. One of the functions and powers of the district municipality is the bulk supply of water that affects a significant portion of municipalities within the district. ‘Municipal services’ in the district municipality’s by-laws² means, ‘services provided by the [m]unicipality, including refuse removal, *water supply*, sanitation, electricity services and rates or any one of the above’. (Emphasis added.)

[11] In *Absa Bank Limited v Naude N O & Others*,³ this Court held that ‘[t]he test whether there has been a non-joinder is whether a party has a direct and substantial interest in the subject matter of the litigation which may prejudice the party that has not been joined’.⁴ In *Gordon v Department of Health, KwaZulu-Natal*,⁵ it was held that if an order or judgment cannot be sustained without necessarily prejudicing the interest of third parties that have not been joined, then those third parties have a legal interest in the matter and must be joined.

[12] In *Johannesburg Society of Advocates and Another v Nthai and Others*,⁶ Ponnan JA held as follows:

‘... [J]oinder of a party is necessary if that party has a direct and substantial interest that may be affected prejudicially by the judgment of the court in the proceedings concerned. This court

² Joe Gqabi District Municipality (Ukhahlamba District Municipality) Water Services and Sanitation By-Laws published under Local Authority Notice 13 in *Eastern Cape Provincial Gazette* 1851 of 7 March 2008.

³ *Absa Bank Limited v Naude N O & Others* [2015] ZASCA 97; 2016 (6) SA 540 (SCA).

⁴ *Ibid* para 10.

⁵ *Gordon v Department of Health, KwaZulu-Natal* [2008] ZASCA 99 (SCA); 2008 (6) SA 522 (SCA); [2009] 1 All SA 39 (SCA); 2009 (1) BCLR 44 (SCA); [2008] 11 BLLR 1023 (SCA); (2008) 29 ILJ 2535 (SCA).

⁶ *Johannesburg Society of Advocates and Another v Nthai and Others* [2020] ZASCA 171; 2021 (2) SA 343 (SCA); [2021] 2 All SA 37 (SCA).

has set out the test as follows:

“The issue in our matter, as it is in any non-joinder dispute, is whether the party sought to be joined has a direct and substantial interest in the matter. The test is whether a party that is alleged to be a necessary party, has a legal interest in the subject-matter, which may be affected prejudicially by the judgment of the court in the proceedings concerned.”

The court went on to hold that *the primary question is the impact of the order that is sought on the interest of third parties. Particularly important is the question whether the order sought cannot be carried into effect without substantially affecting their interests.* For the purposes of assessing whether a party must be joined: “it suffices if there exists the possibility of such an interest. It is not necessary for the court to determine that it, in fact, exists; in many cases, such a decision could not be made until the party had been heard”.⁷ (Emphasis added.)

[13] The position in the present matter is not so much that the district municipality has a direct and substantial interest in relation to the water supply to the property, but that on the respondents’ version, which prevails,⁸ the first respondent supplies only electricity to the property and that it terminated the electricity supply, but it does not supply water to the property, that being the responsibility of the district municipality, and it had not terminated the water supply to the property. As the district municipality had not been cited as a respondent, no relief restoring the water supply was competent against the respondents. To the extent that any relief relating to the restoration of the water supply was claimed, such relief would potentially affect the rights of the district municipality. To that extent, it could be prejudicially affected if an order was made against it for the reconnection of the water supply. The high court was therefore correct in upholding the non-joinder point *in limine*. Thus, no order can be granted in relation to the provision and/or reconnection of the water supply.

⁷ Ibid para 31. Citations omitted. This was recently reaffirmed by this Court in *Tshivhase v Tshivhase N O and Another* [2025] ZASCA 131; [2025] JOL 69707 (SCA) para 19.

⁸ *Plascon-Evans Paints (TVL) Ltd v Van Riebeck Paints (Pty) Ltd* [1984] 2 ALL SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620.

Discussion

[14] The core question to be determined by this Court is, however, whether the high court erred in finding that the appellants had not established a *prima facie* right for an interdict of this nature, particularly in light of the municipality's powers and obligations in respect of the supply of electricity.

[15] The duty of the municipality to provide electricity to the people of South Africa is regulated by the Constitution, statutes and municipal by-laws. The relevant provisions of the Constitution are as follows:

‘Objects of the local government

152(1) The objects of the local government are –

- (a) to provide democratic and accountable government for local communities;
- (b) to ensure provision of services to communities in a sustainable manner;
- (c) to promote social and economical development;
- (d) to promote a safe and healthy environment; and
- (e) to encourage the involvement of communities and community organisations in the matters of local government.

(2) A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).

Development duties of municipalities

153 A municipality must –

- (a) structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and
-

Powers and functions of municipalities

156(1) A municipality has executive authority in respect of, and the right to administer –

- (a) the local government matters listed in Part B of the schedule 4 . . . ; and
- (b) any other matter assigned to it by national or provincial legislation.

(2) A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.

....’

[16] The provision of electricity is a competency of the local government. Section 4(2)(f) of the Systems Act requires municipal councils to ‘give members of the local community equitable access to the municipal services to which they are entitled’. Sections 73(1)(c) and 73(2)(a) further provide that a municipality ‘must ensure that all members of the local community have access to at least the minimum level of basic services’ and that such services must ‘be equitable and accessible’.

[17] It is apposite that I should highlight the relevant provisions of the Elundini Local Municipality Electricity Supply By-Laws (the Elundini by-laws).⁹ The purpose thereof is to provide for the supply of electricity to the residents within its area of jurisdiction, and to provide for procedures, methods and practices to regulate such provision of electricity.

[18] The Elundini by-laws defines ‘consumer’ and ‘occupier’ as follows:

“‘Consumer’ in relation to premises means:-

- (a) any occupier thereof or any other person with whom the [m]unicipality has contracted to supply or is actually supplying electricity thereat;

....

“‘Occupier’ in relation to any premises means:-

- (a) any person in actual occupation of such premises;
- (b) any person legally entitled to occupy such premises;
- (c) in the case of such premises being subdivided and let to lodgers or various tenants, the person receiving the rent payable by such lodgers or tenants, whether on his own account or as agent for any person entitled thereto or interested therein; or

....’

⁹ Elundini Local Municipality Electricity Supply By-Laws published under Local Authority Notice 60 in *Eastern Cape Provincial Gazette* 1929 of 30 July 2008.

[19] The Constitutional Court, in *Mkontwana v Nelson Mandela Metropolitan Municipality*,¹⁰ held that electricity is a component of basic services. It concluded that municipalities are constitutionally and statutorily obliged to provide their residents with electricity.¹¹

[20] In *Joseph and Others v City of Johannesburg and Others (Joseph)*,¹² the Constitutional Court dealt with the nature of the relationship between a local government as a service provider and the user of the service where the service is provided through a third party, such as a landlord. The Court was asked to decide whether the tenants of a block of flats were entitled to notice before their electricity supply was disconnected by the municipality, City Power. Similar to the present matter, the tenants contended that the disconnection without notice violated their constitutional rights to, *inter alia*, human dignity under s 10 of the Constitution and their access to electricity per their lease agreement. They also challenged the constitutional validity of by-laws that allowed for termination without notice and affording an opportunity to make a representation.

[21] Unanimously reversing the decision of the high court, the Constitutional Court found that electricity is an important basic municipal service. It held that the local government has a constitutional and statutory obligation to provide it, which means that the tenants were entitled to procedural fairness in the context of the exercise of the right. This included an adequate notice of at least 14 days before disconnection. As a result, by-laws dispensing with the obligation to adequately inform those receiving electricity of a proposed termination, were declared unconstitutional.

¹⁰ *Mkontwana v Nelson Mandela Metropolitan Municipality; Bissett and Others v Buffalo City Municipality and Others; Transfer Rights Action Campaign and Others v MEC, Local Government and Housing, Gauteng, and Others (KwaZulu-Natal Law Society and Msunduzi Municipality and Amici Curiae)* [2004] ZACC 9; 2005 (1) SA 530 (CC); 2005 (2) BCLR 150 (CC).

¹¹ *Ibid* paras 35 and 38.

¹² *Joseph and Others v City of Johannesburg and Others* [2009] ZACC 30; 2010 (3) BCLR 212 (CC); 2010 (4) SA 55 (CC).

[22] In the present matter, the appellants contended that the municipality's decision to terminate their electricity and water supply was an administrative action under PAJA. They further contended that, as such, the municipality should have complied with the requirement of procedural fairness. The appellants sought to enforce their right to just administrative action, to be warned and notified of the impending termination of services, and an opportunity to make representations.

[23] The municipality argues that its contractual relationship with the property owner supersedes any obligations to the tenants. This argument fundamentally misunderstands the nature of municipal services, the supply thereof to persons who are occupiers but not consumers, and administrative action.

[24] In *Joseph*, the Constitutional Court settled the law regarding the relationship between a local government body as a service provider and the end user of the service, even when a direct contractual relationship does not exist. The Constitutional Court explicitly rejected the argument that a lack of contractual privity between tenants and service providers eliminates the rights of tenants to procedural fairness. The decision established a crucial precedent, affirming that the constitutional rights to dignity and access to services create a legal relationship that obliges a municipality to provide notice and an opportunity to be heard before disconnecting a service, regardless of who the property owner is.

[25] In the present matter, the high court misdirected itself in its finding that the municipality's disconnection of electricity to the property was not administrative action under PAJA, and that they were merely executing the owner's contractual instructions. The municipality's actions fall squarely within

s 3(1) of PAJA, as they materially and adversely affected the appellants' constitutional rights to basic services. Consequently, the high court should have granted the order in favour of the appellants, as they did satisfy the requirements of an interim interdict.¹³

[26] This judgment only deals with the procedural unfairness in terminating the electricity supply without proper notice of termination. It does not deal with the issue whether the appellants are entitled to the further supply of electricity from the first respondent, if the supply was terminated after due and proper notice of termination was delivered to the appellants. That is a different enquiry altogether.

[27] In the circumstances, the following order is made:

1 The appeal is upheld with costs, such costs to include the costs of two counsel.

2 The order of the Eastern Cape Division of the High Court, Makhanda is set aside and replaced with the following:

‘Pending the final determination of the orders sought in Part B, the respondents are directed to restore the electricity supply within 24 hours after service of this court order by the applicants’ attorneys at the offices of the second respondent.’

D S MOLEFE
JUDGE OF APPEAL

¹³ The requirements for an interim interdict are well established. This Court in *KSL v AL* [2024] ZASCA 96; 2024 (6) SA 410 (SCA) para 16 held as follows:

‘The requirements for an interim interdict are: (a) a *prima facie* right, even if it is open to some doubt; (b) injury actually committed or reasonably apprehended; (c) the balance of convenience; and (d) the absence of similar protection by any other remedy.’ See also *Setlogelo v Setlogelo* 1914 AD 221 at 227; *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1187.

Appearances

For the appellants: D Skoti with T Coto

Instructed by: SB Bavu Inc. Attorneys, Kokstad
Maduba Attorneys, Bloemfontein

For the respondents: A Badlani SC with L Ntikinca and H Miya

Instructed by: TL Luzipho Attorneys, Mthatha
Moroka Attorneys, Bloemfontein.