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**IN THE NORTH WEST HIGH COURT, MAHIKENG**

CASE NO: UM 141/2020

Reportable: YES/**NO**

Circulate to judges: YES/**NO**

Circulate to Magistrates: YES/**NO**

Circulate to Regional Magistrates: YES/**NO**

In the matter between:

**ESKOM SOC LTD**

Applicant

and

**TSHENOLO LEEUW**

Respondent

**DATE OF HEARING** : 05 FEBRUARY 2021

**DATE OF JUDGMENT** : 25 FEBRAURY 2021

**COUNSEL FOR APPLICANT** : ADV. NALANE SC

**COUNSEL FOR THE RESPONDENTS** : ADV. SCHOLTZ

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**JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL**

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**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives *via* email. The date and time for hand-down is deemed to be 10H00 on 25 February 2021.

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**ORDER**

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**Resultantly, the following order is made:**

- (i) Leave to appeal is granted to the Full Court of this division against the judgment and order.**
- (ii) The costs of the application for leave to appeal will be costs in the appeal.**

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## **JUDGMENT**

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**HENDRICKS DJP**

**Introduction**

[1] On the 30<sup>th</sup> July 2020, this Court granted an interim order in the following terms:

*“1. THAT: The forms and services provided for in the rules of the above Honourable Court be dispensed with and that the matter be treated as an urgent application in terms of the provisions of rule 6 (12) of the Uniform Rules of Court.*

*2. THAT: A rule nisi be issued calling upon the Respondent to furnish reasons, if any, on Thursday, 20 AUGUST 2020 at 10h00, as to why the following order should not be made:*

*2.1 That the Respondent be ordered to immediately take, the necessary steps to restore the electrical supply to the property known as House No. [...], [...], [...] as supplied under meter box number [...].*

- 2.2 *Should the Respondent fail to act in accordance with prayer 2.1 above, that the Sheriff, with the assistance of an electrician properly registered in terms of the Electrical Installation Regulations, be authorised to take each and every step necessary to restore the electricity supply to the property and meter box described in prayer 2.1 above.*
- 2.3 *That the Respondent, if intending to do an audit, be, ordered to conduct and finalise the aforesaid audit in respect of the electrical supply and meter box number within 30 days from this order, and to inform the Applicant of the outcome of same.*
- 2.4 *That the Respondent be ordered to install a functional meter box at the property within 14 days from the outcome of the audit referred to in prayer 2.3 above.*
- 2.5 *Costs on an attorney and client scale, only in the event of opposition of same.*

3. *THAT: Prayers 2.1 and 2.2 be of interim force pending the return date."*

On the return date, the rule nisi was confirmed with the effect that the interim order was made final. A request for reasons for the judgment/order was subsequently made, which reasons were provided.

- [2] An application for leave to appeal was made which was argued on 05<sup>th</sup> February 2021, when judgment was reserved. A long list of grounds of appeal is listed in the notice of application for leave to appeal, which needs no repetition. During argument Mr. Nalane SC who appears on behalf of the applicant/appellant (Eskom) dealt with three (3) points which he termed to be

the most important ones. These points relate to the lack of *locus standi* on the part of the respondent; the duty on Eskom to install the meter; and the legality or otherwise to reconnect the electricity. I will deal with these issues, amongst others, in this judgment. Suffice to state that each and every ground of appeal raised was taken into account.

- [3] Section 17 of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be granted where the Judges or Judges concerned are of the opinion that the appeal **would** have a reasonable prospect of success; or where there is some other compelling reason why the appeal should be heard, including conflicting judgments in the matter under consideration; the decision sought on appeal does not fall within the ambit of section 16 (2) (a); where the decision sought to be appealed does not dispose of all the issues in the case; or where the appeal would lead to a just and prompt resolution of the real issues between the parties. It was submitted that in this matter, the applicant has a reasonable prospect of success on appeal.
- [4] With regard to *locus standi*, the respondent (**Tshenolo Leeuw**) is the property manager and caretaker of the property in question. As such, this Court found that she is clothed with the necessary *locus standi* to institute this application. She has a direct and substantial interest in the matter and the relief sought. Mr. Nalane SC contended that there was/are no contractual relationship between the applicant (Eskom) and the respondent (Tshenolo). As such, she could not take any legal action against the applicant (Eskom). Furthermore, that this Court erred in relying on a public law basis to hold the applicant (Eskom) liable. I am holding a different view. However, in the interest of justice, I am of the view that another court as court of appeal, would possibly hold otherwise and come to a different decision than what this Court had arrived at.
- [5] Similarly on the facts, this Court found that the faulty meter was reported to the Customer Care Division of the applicant (Eskom) and that no attempts were made by Eskom to attend to these complaints. According to Eskom, the owner was notified that the capacity of the supply should be upgraded, which was not done. This Court held otherwise on the evidence presented by the respondent (Tshenolo). There was also a Certificate of Compliance (COC) supplied and

attached to the papers to prove compliance. This is however disputed by Eskom. It was contended however that the COC relate to a single dwelling and not eight (8) separate units. Furthermore, this Court found that Eskom has a statutory duty to supply electricity whereas it was contended that it is incorrect. There is a contractual relationship between Eskom and its customers which forms the basis upon which Eskom supplies electricity, including the installation of electricity meters. To this end, Mr. Nalalhe SC placed reliance on the matter of **Eskom Holdings SOC Limited v Masinda** 2019 (5) SA 386 (SCA). (the Masinda case). The Masinda case is clearly distinguishable on the facts. Unlikely in the Masinda case, in the case at hand there was no illegal connection to the Eskom grid. There was COC issued and electricity were supplied by Eskom until problems were experienced.

See: **Eskom Holdings SOC Limited v Resilient Properties (Pty) Ltd and Others**; and other cases [2020] ZASCA 185 (29 December 2020).

- [6] The order that Eskom should reconnect the electricity to the dwelling in question is contended to be an error. It was contended further that by so-doing, this Court ordered Eskom to do something which it was not entitled to do and which amounts to an illegality. Once again, I am holding a different view but on this basis too, another court as court of appeal, would probably hold differently.
- [7] I am of the view that there are reasonable prospects of success on appeal and that another court, as court of appeal, would in all probability conclude differently, having regard not only to the aforementioned reasons but also to the other grounds of appeal. It is for these reasons, amongst others, that I am of the view that leave to appeal should be granted to the Full Court of this division, in the interest of justice. As far as costs of this application for leave to appeal are concerned, it should be costs in the appeal.

**Order:**

- [8] Resultantly, the following order is made:

- (i) Leave to appeal is granted to the Full Court of this division against the judgment and order.**
- (ii) The costs of the application for leave to appeal will be costs in the appeal.**

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**R D HENDRICKS  
DEPUTY JUDGE PRESIDENT OF THE HIGH COURT,  
NORTH WEST DIVISION, MAHIKENG.**