

# A Tenant's Rights to Notice Before Electricity Disconnection

*De Koker v Eskom*

## INTRODUCTION

On 19 September 2023 the Johannesburg High Court granted an interim interdict in favour of a tenant in the case of *De Koker v Eskom* following an unfair electricity disconnection by Eskom. The judgment did not only set out the requirements that Eskom must comply with before disconnecting electricity of tenants but also highlighted Eskom's Constitutional obligations concerning administrative actions that materially and adversely affect people's rights.

## BACKGROUND FACTS OF THE CASE

On 04 August 2023 a tenant staying in a unit in a sectional title scheme brought an urgent application before the Johannesburg High Court seeking an interim interdict to reconnect their electricity supply to the sectional title scheme, pending a resolution of a dispute between the landlord of the property and Eskom. The applicant is a tenant in a sectional title owned by the second respondent, the landlord. The first respondent is Eskom, the sole electricity supplier in South Africa.

On 25 July 2023 and on 01 August 2023 Eskom disconnected the electricity supply to the sectional title scheme, where the tenant resides, without giving any prior notice to the tenants. The tenant stated that the disconnection of electricity not only gives rise to security concerns but also affects the ability of many tenants to work from home. Moreover, the tenant argues that the absence of electricity affects hygiene due to lack of hot water as pumps do not work without electricity. The tenant further argued that they struggle to prepare food for themselves without the electricity.

Each unit on the property has an IS-Metering remote electricity meter, whereby each unit of electricity used is run on a "pay-as-you-go" basis. The landlord's collects the payments from the tenants and pays over to Eskom. Thus, there is no contractual relationship between the tenants and Eskom. Although the tenants are up to date with their payments it appears that the landlord was not paying Eskom.

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The court had to determine the procedural requirements which Eskom must comply with to lawfully terminate the supply of electricity to tenants with whom it has no contractual relationship.

## THE COURT FINDINGS

The court highlighted that Eskom is an organ of the state, performing a public function in terms of legislation and the disconnection of electricity adversely affects the rights of persons. The court acknowledged that although there is no specific right to electricity, electricity facilitates the enjoyment and fulfilment of other socio-economic rights. Consequently, the disconnection of electricity is an administrative action in terms of s1 of Promotion of Administrative Justice Act 3 of 2000 (PAJA). Given the fact that Eskom's actions fall within the ambit of PAJA, any action taken by Eskom such as disconnecting electricity must comply with the principles of procedural fairness as set out in PAJA.

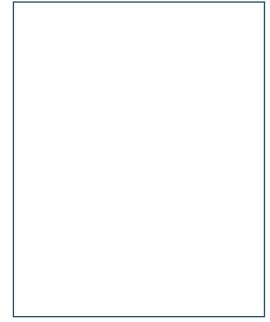
## PROCEDURAL REQUIREMENTS SET OUT IN PAJA

The procedural requirements for an administration action that Eskom must comply with are outlined in s3 of PAJA. S3(1) states that an administrative action that materially and adversely affects any person's rights or legitimate expectations must be procedurally fair. S3(2) (b) expressly stipulates that in order to give effect to the right to procedurally fair administrative action, an administrator, must give a person whose rights are materially and adversely affected, an adequate notice which includes the nature and purpose of the proposed administrative action; a reasonable opportunity to make representations; a clear statement of the administrative action; adequate notice of any right of review or internal appeal, where applicable; and adequate notice of the right to request reasons in terms of section 5. Consequently, the court highlighted that Eskom must provide an adequate notice to the persons whose rights are materially and adversely by the decision to disconnect electricity. The court found that the rights of the tenants have been materially and adversely affected by the disconnection of electricity thus Eskom's obligation to provide an adequate notice extends to the tenants although there is no direct contractual relationship between the tenants and Eskom.

The court concluded that in order for Eskom's disconnection of electricity to be lawful as set out in PAJA tenants, not only the building owner, must be given adequate notice of the proposed disconnection of electricity and a reasonable opportunity to make representations. The notice should contain all relevant information, including the date and time of the disconnection, the reasons for the disconnection, and how the parties can challenge the basis for the disconnection. The court also emphasized that the tenants must be given enough time to conduct the necessary enquiries, seek legal advice and organise collectively if they choose to do so. Additionally, placing the notice in a visible location within the building and providing a 14-day notice before disconnecting electricity was considered to be fair and met the "adequate notice" requirements. Therefore, the court ordered the reconnection of the electricity supply pending proper notice being given to the tenants.



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### **WHAT DOES THIS JUDGMENT MEAN FOR SOUTH AFRICAN TENANTS?**

Before Eskom can lawfully disconnect the supply of electricity for tenants, Eskom is required to give an adequate notice not only to the landlord but to the tenants as well. The notice can be done by placing it on any visible location in the residential building of the tenants at least 14 days before the proposed disconnection of electricity. Additionally, tenants must be given enough time to seek legal advice, make representation if they choose to do so, and make any alternative arrangements.

### **CONCLUSION**

The Johannesburg High Court highlighted Eskom's obligation as set out in PAJA when terminating the supply of electricity to tenants. The court further highlighted that while there is no right to electricity, electricity facilitates the enjoyment and fulfilment of other socio-economic rights. Consequently, when electricity is disconnected, it affects the enjoyment and fulfilment of these rights. The disconnection of electricity is an administrative action therefore the actions of Eskom in that regard are bound by PAJA.

Before disconnecting electricity of tenants Eskom is required to give an adequate notice to both the landlord and tenants. If no adequate notice was given, the disconnection is unlawful. The case does not only provide a legal framework for upholding rights but also sets a reminder of the importance of accountability in the public service delivery.