

Unlawful Termination of Electricity Supply by Eskom and the City of Johannesburg (City Power)

The Risks of SMS Notices and Procedural Unfairness

INTRODUCTION

The termination of electricity supply by public utilities such as Eskom and the City of Johannesburg Metropolitan Municipal (City Power) for non-payment has become increasingly contentious. Recent litigation has brought into sharp focus the constitutional, statutory, and procedural requirements governing such disconnections, particularly where municipalities or Eskom rely solely on short message service ("SMS") notifications to inform customers of impending termination.

This article explores the unlawfulness of such disconnections, the legal framework regulating termination of supply, and the remedies available to affected consumers and businesses.

BACKGROUND

Both Eskom and City Power are empowered by statute and municipal by-laws to provide and, under certain circumstances, terminate electricity supply. However, such powers are constrained by the constitutional principles of administrative justice, as articulated in the Promotion of Administrative Justice Act 3 of 2000 ("PAJA").

In practice, disputes frequently arise where consumers, both residential and commercial, receive abrupt SMS notices threatening disconnection without formal written notice or adequate time to respond. Courts have repeatedly emphasized that electricity is a basic municipal service, integral to human dignity and livelihood, and cannot be lawfully terminated without compliance with due process.

ARGUMENTS MADE IN COURT

In numerous cases, applicants have challenged the lawfulness of disconnection notices delivered via SMS.

By **Chantelle Gladwin-Wood** (Partner),
and **Mpho Mogodi** (Senior Associate)

06 November 2025

Consumers argue that SMS messages are insufficient to meet the requirement for a 'written notice' as contemplated in the relevant by-laws and the principles of procedural fairness under PAJA. In addition, where a dispute over billing exists, such as alleged overcharging or erroneous meter readings, consumers contend that termination before resolution of the dispute is unlawful.

In contrast, utilities such as Eskom and City Power typically argue that disconnection is a lawful credit-control measure triggered by non-payment, and that SMS messages are an acceptable modern form of communication satisfying the 'written notice' requirement. They maintain that electricity consumers cannot continue to enjoy the service without payment and that urgent termination is justified in the public interest.

DISCUSSION ON THE LAW

The constitutional and statutory framework governing electricity supply termination is clear. Section 33 of the Constitution guarantees everyone the right to lawful, reasonable, and procedurally fair administrative action. PAJA gives effect to this right, requiring organs of state such as municipalities and Eskom to provide adequate notice and an opportunity to make representations before taking a decision that adversely affects rights.

Section 21(5) of the Electricity Regulation Act 4 of 2006 further provides that a licensee may not discontinue the supply of electricity without first giving adequate notice to the affected consumer. The City of Johannesburg's Credit Control and Debt Collection By-Laws (2005) and Electricity Supply By-Laws (2009) likewise require at least **14 (fourteen) working days'** written notice before services may be terminated for non-payment.

A mere SMS notification - lacking crucial details such as the proposed date and time of disconnection, reasons for termination, and channels for the customer to make representations as to why they should not be cut off, does not satisfy these requirements.

In *39 Van der Merwe Street Hillbrow CC v City of Johannesburg Metropolitan Municipality and Others*¹,

the City of Johannesburg relied on a pre-termination notice which was dated **2 (two)** days before the disconnection, but purported to give **14 (fourteen)** days' advance warning of disconnection if the applicant failed to pay its account². Dodson AJ referred to section 13(2) (a) of the City's Credit Control and Debt Collection By-laws³, which requires fourteen days' advance warning in a final demand notice.

The delivery of such a notice and failure to pay (or take other specified action) in terms of the pre-termination notice, is a precondition for the termination of the provision of electricity or water. Dodson AJ accordingly granted an order in the urgent court declaring the disconnection unlawful and requiring the City to reconnect the electricity immediately.

In *Joseph v City of Johannesburg*⁴, the Constitutional Court held that the termination of electricity supply constitutes administrative action. The Court affirmed that residents are entitled to procedural fairness even if they are not direct parties to the service agreement. Notice of the disconnection must be provided in advance, to tenants as well as owners, and must contain sufficient information and provide those affected by the disconnection an opportunity to make representations⁵. With regards to notices, it was further held that:

"For the notice to be 'adequate' it must contain all relevant information, including the date and time of the proposed disconnection, the reason for the proposed disconnection, and the place at which the affected parties can challenge the basis of the proposed disconnection. Moreover, it must afford the applicants sufficient time to make any necessary enquiries and investigations, to seek legal advice and to organise themselves collectively if they so wish."

Similarly, in *S.S. Geranium Mansions v City of Johannesburg*⁶, the Gauteng High Court declared the City's disconnection unlawful because the pre-termination notice failed to meet procedural fairness standards. More recently, in *Regona Properties (Pty) Ltd v City of Johannesburg*⁷, the Court reaffirmed that disconnections carried out while a billing dispute remains unresolved are unlawful.

In *Moloabi v Eskom*⁸, the Free State High Court criticized Eskom's reliance on SMS communication as inadequate notice and ordered reconnection of supply. These cases underscore that the legality of termination depends not only on the existence of arrears but also on adherence to proper notice and fairness.

COURT'S FINDINGS

Courts have consistently held that electricity supply to a residential property constitutes a 'gebruiksreg'- a right

of use attached to possession of property - and is thus capable of protection under the *mandament van spolie*. Where Eskom or a municipality disconnects supply without proper notice or pending resolution of a billing dispute, such action amounts to unlawful spoliation and is actionable in law.

Consequently, both Eskom and City Power must obtain either the consumer's consent or a lawful court order before depriving consumers of supply, save in cases of tampering or grave safety risks.

WHAT DOES THIS MEAN FOR CONSUMERS AND BUSINESSES?

This line of jurisprudence carries significant implications. Before Eskom or City Power can lawfully terminate electricity supply, they must provide a clear written pre-termination notice containing the following:

1. The reason for the proposed termination;
2. The date and time on which the termination will occur;
3. The total amount owed (if any) and how it was calculated;
4. Details of how and where representations can be made; and
5. At least 14 (Fourteen) working days to make payment or resolve the dispute.

Where only an SMS is sent without the above information, or where termination occurs despite a pending billing dispute, the disconnection is likely to be unlawful. Consumers may approach the courts for an urgent *mandament van spolie* order to restore supply, or seek relief under PAJA to review and set aside the municipality's or Eskom's administrative action.

CONCLUSION

Electricity supply is indispensable for the exercise of basic constitutional rights to dignity, housing, and livelihood. Accordingly, Eskom and City Power must exercise their disconnection powers within the confines of the Constitution, PAJA, the Electricity Regulation Act, and municipal by-laws. Termination by SMS, without adequate written notice and opportunity to be heard, offends these principles and renders the action unlawful. Affected consumers and businesses are entitled to challenge such terminations and seek urgent restoration of supply.

Please note: Each matter must be dealt with on a case-case basis, and you should consult an attorney well versed in municipal law before taking any legal action.

¹Unreported judgment of the Gauteng Division, Johannesburg, case number 23/7784 (24 March 2023).

²Id at para 19-20.

³Credit Control and Debt Collection By-Laws City of Johannesburg GN 1857 GG 213, 23 May 2005.

⁴*Joseph v City of Johannesburg* [2009] ZACC 30; 2010 (4) SA 55 (CC).

⁵Ibid.

⁶*S.S. Geranium Mansions v City of Johannesburg Metropolitan Municipality* (2025) ZAGPJHC 110.

⁷*Regona Properties (Pty) Ltd v City of Johannesburg Metropolitan Municipality and Another* (2023) ZAGPJHC 877.

⁸*Justice Benjamin Segomotso Moloabi v Eskom Holdings Soc Limited* (6116/2024) [2025] ZAFSHC 194 (25 June 2025).



Chantelle Gladwin-Wood
(Partner)



Mpho Mogodi
(Senior Associate)