

SOUTH AFRICA / JUDGMENT

Topigs Norsvin SA Proprietary Limited v Eskom Holdings SOC Ltd and Others (013715/2022) [2024] ZAGPPHC 848 (28 August 2024)

[2024] ZAGPPHC 848

COURT

North Gauteng High Court, Pretoria

BEFORE

ML Twala

CASE / FILE NUMBER

013715/2022

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 013715/2022

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED.

Date: 28/08/2024

ML TWALA

In the matter between:

TOPIGS NORSVIN SA PROPRIETARY

LIMITED

APPLICANT

And

ESKOM HOLDINGS SOC LTD FIRST

RESPONDENT

ANDRE MARINUS de RUYTER

SECOND RESPONDENT

CALIB CASSIM

THIRD RESPONDENT

MALEGAPURU WILLIAM MAKGOBA

FOURTH RESPONDENT

BANOTHILE CHARITY MAKHUBELA

FIFTH RESPONDENT

PULANE ELSIE MOLOKWANE

SIXTH RESPONDENT

BUSISIWE MAVUSO

SEVETH RESPONDENT

RODERICK de BRASSIC CROMPTON

EIGHT RESPONDENT

TSHEPO HERBERT TONG-MONGALO

NINTH RESPONDENT

MLAWULI MAYOR MAJINGOLO

TENTH RESPONDENT

DEIDRE HERBST

ELEVENTH RESPONDENT

BONGUMUSA MASHAZI

TWELFTH RESPONDENT

LESIBA KGOBE

THIRTEENTH RESPONDENT

MINSTER OF WATER AND SANITATION FOURTEENTH RESPONDENT

DIRECTOR-GENERAL: DEPARTMENT OF

WATER AND SANITATION

FIFTEENTH RESPONDENT

MINSTER OF FORESTRY, FISHERIES

AND THE ENVIRONMENT

SIXTEENTH RESPONDENT

FORESTRY, FISHERIES AND THE
ENVIRONMENT

SEVENTEEN RESPONDENT

MINISTER OF MINRAL RESOURCES
AND ENERGY

EIGHTEENTH RESPONDENT

NATIONAL ENERGY REGULATOR OF
SOUTH AFRICA

NINETEENTH RESPONDENT

CLIVE RAYMOND LE ROUX

TWENTIETH RESPONDENT

PAUL MPHO MAKWANA

TWENTY- FIRST RESPONDENT

AUSTIN LESLIE MKHABELA

TWENTY-SECOND RESPONDENT

BUSISIWE VILAKAZI

TWENTY-THIRD RESPONDENT

LWAZI LEON GOQWANA

TWENTY-FOURTH RESPONDENT

FATHIMA BEE BEE ABDUL GANY

TWENTY-FIFTH RESPONDENT

ANYANDA PEARL ZINHLE

MAFULEKA

TWENTY-SIXTH RESPONDENT

TSKANI LOTTEN MTHOMBENI TWENTY-SEVENTH RESPONDENT

BEKI ZACHARIA NTSHALINTSHALI TWENTY-EIGHT RESPONDENT

NTETO NYATHI

TWENTY-NINETH RESPONDENT

TRYPHOSA RAMANO

THIRTIETH RESPONDENT

CLAUSELLE von ECK

THIRTY-FIRST RESPONDENT

RULE 42 JUDGMENT

TWALA J

- [1] The applicant, discontent with the whole of the judgment and order of this Court handed down on the 19 June 2024 dismissing its application with no order as to costs, launched an application for leave to appeal.
- [2] On perusal and consideration of the papers filed for the application for leave to appeal, this Court realised that it made a patent error by not dealing and making a specific finding against the National Energy Regulator of South Africa (“NERSA”), the nineteenth respondent in this case. The court regrets the error and seeks to correct it in this judgment.
- [3] It is noteworthy that the Court, on realising the error, invited the parties to make any submissions as it intended to correct the error in terms of Rule 42 of the Uniform Rules of Court. All the parties recorded no objection to the Court effecting an amendment to deal with and make a finding regarding the NERSA, except for the applicant which reserved its rights to effect any amendment to its application and grounds for leave to appeal.
- [4] NERSA is an organ of State and has been referred to as such in paragraph [12] of the main judgment and as one of the State respondents. However, NERSA as a Regulator established in terms of section 3 of the National Energy Regulator Act, 4 of 2006 (“The Act”) has a completely different mandate. Its functions are concerned, amongst other things, with the issuing of licenses for the generation and transmission of electricity and compliance with the conditions of those licenses. There is nothing in the Act that suggests that NERSA has the power to force its licensee to desist from polluting and degrading the downstream resources at Kusile Power Station as sought by the applicant.
- [5] I am unable to disagree with NERSA that the complaint by the applicant of non-compliance by Eskom with or breaches of its authorisations and or licence conditions is not related to any licence issued by NERSA. Therefore, so says NERSA, it is not authorised and empowered to enforce the compliance complained of in terms of the provisions of the National Energy Regulator Act and or the Electricity Regulator Act 40 of 2006 from which it receives its mandate.

[6] It is my respectful view that the applicant has failed to demonstrate to the Court that NERSA has a duty to protect against the pollution and degradation of the environment downstream at the Kusile Power Station. The inescapable conclusion is therefore that the application against NERSA falls to be dismissed.

[7] In the circumstances, I make the following order:

1. The application against NERSA, the nineteenth respondent is dismissed with no order as to costs.

TWALA M L

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

For the Applicant: Advocate MM Oosthuizen SC Advocate N Fourie Instructed by: Bishop Fraser Attorney Tel: 010 035 4944 davide@bishopfraser.co.za For the Eskom Respondents: Advocate P Lazarus SC (First to Tenth, Eleventh to Thirteenth and Twentieth to Thirty-First respondents) Advocate B Dhladhla Instructed by: Edward Nathan Sonnenbergs Inc Tel: 011 269 7600 hhugo@ensafrica.com For the State Respondents: Advocate A Liversage SC (Fourteenth to Seventeenth Respondents) Advocate L Maite Instructed by: Office of the State Attorney, Pretoria Tel: 012 309 1500 sakhosa@justice.gov.za For the Nineteenth Respondent: Advocate Mahlangu Instructed by: Mchunu Attorneys Tel: 011 778 4060 titus@mchunu.co.za Date of Hearing: RULE 42 ON PAPER Date of Judgment: 28 August 2024

Delivered: This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the order is deemed to be the 28 August 2024.

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