

**IN THE COURT OF SOUT AFRICA**  
**GAUTENG DIVISION, PRETORIA**

**CASE NO: 27605/2015**

*12/6/2015*

**In the matter between:**

**ESKOM HOLDINGS SOC LIMITED**

**Applicant**

**and**

**THE PERSONS LISTED IN ANNEXURE A**

**TO THE NOTICE OF MOTION**

**1<sup>st</sup> Respondent**

**NATIONAL UNION OF METAL WORKERS**

**2<sup>nd</sup> Respondent**

**OF SOUTH AFRICA (NUMSA)**

**NATIONAL UNION OF MINE WORKERS**

**3<sup>RD</sup> Respondent**

**BUILDING CONSTRUCTION AND**

**4<sup>th</sup> Respondent**

**ALLIED WORKERS UNION**

**UASA- THE UNION**

**5<sup>th</sup> Respondent**

**METAL ELECTRICAL WORKERS UNION**

**6<sup>th</sup> Respondent**

**OF SOUTH AFRICA**

|  |                             |
|--|-----------------------------|
| <b>mitsubishi hitachi power</b>                    | 7 <sup>th</sup> Respondent  |
| <b>AFRICA (PTY) LIMITED</b>                        |                             |
| <b>ACTOM (PTY) LIMITED</b>                         | 8 <sup>th</sup> Respondent  |
| <b>ALSTOM S&amp; E AFRICA (PTY) LIMITED</b>        | 9 <sup>th</sup> Respondent  |
| <b>AVENG GRINAKER (PTY) LIMITED</b>                | 10 <sup>th</sup> Respondent |
| <b>BASIL READ (PTY) LIMITED</b>                    | 11 <sup>th</sup> Respondent |
| <b>KARRENA –CONCOR JOINT VENTURE</b>               | 12 <sup>th</sup> Respondent |
| <b>ELB ENGINEERING SERVICES (PTY) LIMITED</b>      | 13 <sup>th</sup> Respondent |
| <b>LOW PRESSURE SERVICES CONSORTIUM</b>            | 14 <sup>th</sup> Respondent |
| <b>OVIVO AQUA SA (PTY) LIMITED</b>                 | 15 <sup>th</sup> Respondent |
| <b>RULA BULK MATERIALS HANDLING (PTY) LIMITED</b>  | 16 <sup>th</sup> Respondent |
| <b>THYSSENKRUOP PDNA ENGINEERING (PTY) LIMITED</b> | 17 <sup>th</sup> Respondent |
| <b>MEDUPI POWER STATION JOINT VENTURE</b>          | 18 <sup>th</sup> Respondent |
| <b>STANDBY SYSTEMS SA (PTY) LTD</b>                | 19 <sup>th</sup> Respondent |
| <b>CLYDE BERGERMANN AFRICA (PTY)</b>               | 20 <sup>th</sup> Respondent |
| <b>LEPHALALE SITE SERVICES</b>                     | 21 <sup>st</sup> Respondent |

## **JUDGMENT**

### **A.C BASSON, J**

- [1] An urgent application served before this Court on 7 May 2015 and was postponed to 15 May 2015 for further argument. On 15 May 2015 this Court

granted an order, *inter alia*, evicting with immediate effect the individual respondents listed in Annexure "A" to the Notice of Motion from three accommodation sites identified in the order as the "Maropong Contractors Village", "Section 30" and "Portion 7". The three accommodation sites ("the premises") relate to the Medupi Power Station ("Medupi").

- [4] The applicant in this application - ESKOM Holdings SOC Limited - brought an application in terms of section 18 of the Superior Courts Act<sup>1</sup> for leave to execute on the order of this court dated 15 May 2015 pending the outcome of any appeal process but only to the following limited extent: That those person who are presently in occupation of the premises known as Maropong Contractors Village and Portion 7 are to be evicted and that they be provided with alternative accommodation at Shalela Building.
- [5] The application for leave to execute was heard simultaneously with the application for leave to appeal brought by the second respondent (the National Union of Metalworkers of South Africa ("NUMSA")). At the hearing of the application for leave to appeal counsel on behalf of NUMSA confirmed that NUMSA was not opposing the application for leave to execute. NUMSA,

---

<sup>1</sup> Act 10 of 2013: "**18 Suspension of decision pending appeal**

(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.

(4) If a court orders otherwise, as contemplated in subsection (1)-

- (i) the court must immediately record its reasons for doing so;
- (ii) the aggrieved party has an automatic right of appeal to the next highest court;
- (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and
- (iv) such order will be automatically suspended, pending the outcome of such appeal.

(5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules."

however, persisted with its application for leave to appeal. (This application is dealt with in a separate judgement.)

- [6] I do not intend for purpose of this brief judgement repeating what is set out in the papers that served in the main application nor with what is contained in the judgement handed down pursuant to the urgent application. Suffice to point out that a large number of employees have refused to vacate the three accommodation premises despite a direct instruction to do so. Detailed facts have been placed before the court in the main application showing the extent of the damage that was caused to the applicant's security and access control system by some of the individuals who have remained on the premises (despite an instruction to vacate the premises). Some of these individual occupiers also make it impossible for the applicant to gain entry to the premises in order to urgently repair and restore the security system. The applicant explained that there exists an urgent need to repair and restore security control systems at the accommodation premises of the applicant and that, unless this is done urgently, no employee of any of the contractors will be allowed to access the premises and take up occupation in any one of the three premises.
- [7] I have already referred to the fact that, despite an instruction that all employees who occupy the accommodation premises return home, a substantial number of individual respondents refused and are still refusing to vacate the premises. The vast majority of workers have, however, returned to their respective homes.
- [8] At the time when the papers were filed approximately 205 individuals occupied the premises. This number subsequently reduced to approximately 120 people at the time of the hearing. Presently approximately 50 people spread across two residences (Maripong Contractors Village and Portion 7) remain in occupation of the accommodation premises. As will be pointed out herein below, these 50 people are effectively preventing the thousands of other employees who are willing and able to return to work from doing so. They are doing so notwithstanding the fact that alternative accommodation was and is still offered to them. In fact, the court order dated 15 May 2015 provides for alternative accommodation: In an attempt to minimise any possible harm to

those who are refusing to vacate the accommodation, the applicant is ordered to provide alternative accommodation to them until such time the access control system has been repaired and restored and until such time as the contractors inform the workers to return to work. However, by refusing to vacate the premises, the applicant is prevented from repairing and restoring the security system. As already pointed out, this situation has the effect that thousands of other workers are prevented from returning to the accommodation sites. In this regard it was submitted on behalf of the applicant that the financial impact of this is significant not only for the applicant, but for the economy as a whole: The Medupi Power Plan cannot resume its normal operational activities under these circumstances. (I will return to this point where I discuss the balance of convenience.)

- [9] The order of 15 May 2015 was served by the Sheriff on the accommodation premises on Saturday 16 May 2015. On Monday 18 May 2015 the applicant's attorneys became aware of an application for leave to appeal. The Sheriff of Court was then instructed not to proceed with the actual eviction of the individual respondents who are still occupying the Maropong Village and Portion 7 accommodation sites.
- [10] The Extension 30 accommodation site has, however, since been vacated and the repair work on the access control was completed on 28 May 2015. This site is accordingly ready to be accommodated by employees but can only accommodate 378 individuals. The applicant therefore urgently needs to restore the security systems at the other two premises in order to accommodate all the other (returning) employees that need to be accommodated. In light of this fact, it was submitted on behalf of the applicant that there exist exceptional circumstances that would justify the execution of the order.
- [11] It should be pointed out that the identities of the 50 individuals who are occupying the premises are unknown. In this regard NUMSA has taken no measures to establish whether any of its members are even part of those who are presently still in occupation of the premises. According to the applicant

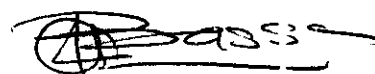
NUMSA's *locus standi* is therefore at best questionable. I have however already referred to the fact that NUMSA is not opposing this application. In fact not one of the respondent unions is opposing this application.

- [12] I have already referred to the fact that because these 50 odd individuals are refusing to vacate two of the residences and take up the alternative accommodation provided to them, the applicant is unable to repair and restore the security and access system at these two accommodation sites. A number of contract employees have now on the instruction of various contractors returned to work. Because the applicant is unable to provide safe and secure accommodation for such employees at the accommodation premises occupied by the occupying respondents, contractors - to the extent possible - have had to provide returning workers with temporary alternative accommodation in the Lephale area.
- [13] The breakdown of the accommodation requirements are set out in the founding affidavit. Briefly, Portion 7 and Marapong Village (the two accommodation sites still occupied) are capable of providing between them approximately 4600 contractor employees with accommodation. This accommodation is currently urgently needed. Section 30 which has had access control repaired is only able to accommodate some 378 contractor employees. All in all there is a need for the applicant to accommodate approximately 3626 of the contractors' employees. This number will grow by approximately 160 individuals per day in line with the contractors' intended remobilisation. Until the applicant can access the accommodation sites at Portion 7 and Marapong it can only provide accommodation (using temporary alternative including lodges in the area) to approximately 3010 out of the 3626 of the contractors' employees. There is therefore a shortage of accommodation for approximately 616 of the contractors' employees who are unable to be accommodated.
- [14] 1972 of the 3626 of the contractors' workers that the applicant is able to currently accommodate are being accommodated at alternative accommodation sites that has been secured by contractors in light of the fact that the applicant

is not able to gain access to the Maropong and Portion 7 accommodation sites. Once the project is in full production, the applicant will be required to accommodate approximately 4934 of the contractors' employees. Because of the shortage of accommodation due to the fact that the Maropong and Portion 7 accommodation sites are unavailable, approximately 1164 individuals will not be able to be accommodated.

- [15] The applicant further explained that it is currently required to pay for the alternative accommodation for all those workers who have returned to the Medupi site to work and will now also have to pay wages to those workers who are unable to be accommodate on-site and who will therefore have to remain at their homes.
- [16] The applicant submitted that, in light of the foregoing, exceptional circumstances exist which justify the execution of the order. It was further submitted that the applicant will suffer irreparable harm if an order of execution is not granted but that the same is not true in respect of the second and third respondents should the order sought be granted.
- [17] I have considered the papers and I am satisfied, on a balance of probabilities, that the second and third respondents will suffer no irreparable harm should the order to execute be granted pending the outcome of any appeals against the order of 15 May 2015. I am in agreement that this is particularly so in circumstances where the second respondent has failed to indicate to this court whether any of their members are even among those currently in occupation of the premises in question. This court simply does not know whether any NUMSA members are amongst those still occupying the premises. In fact, even when the main application was argued the court, apart from the despondent, did not know whether any of NUMSA's members were even amongst those occupying the premises. According to the deponent to the founding affidavit in this affidavit the second and third respondents have not, to the best of his knowledge, even visited the accommodation premises to determine whether any of its (NUMSA's) members were among those in occupation of the premises or if so what the views of those members are.

- [18] I am therefore satisfied that no harm will be suffered by any of the occupying residents should the execution of the order be granted in light of the fact that the order granted on 15 May 2015 itself addresses any prejudice that may be suffered by the occupying residents: It is required in the order that all occupying residents who vacate the premises must be provided with alternative accommodation in the Shalela Building in Lephalale until such time as the applicant notifies the contractor respondents that the accommodation premises are ready for occupation in terms of the relevant policies. The order further provides that this order shall not affect the rights otherwise enjoyed by any of the parties to the application.
- [19] I am on the other hand persuaded on a balance of probabilities that the applicant will suffer irreparable harm if the order is not granted: Not only can the applicant not repair and restore the damaged security and access control system, it cannot accommodate the large volumes of individual employees who are returning to work and who are tendering the services. Effectively the 50 odd remaining employees are preventing thousands of other employees from returning to work and take up the accommodation provided to them by the applicant.
- [20] In the event the following order is granted:
1. Those persons who are present in occupation of the premises known as Marapong Contractors Village and Portion 7 are to be evicted.
  2. Those persons who are evicted as contemplated in paragraph 1 of this order are to be provided with alternative accommodation at Shalela Building.
  3. The Sheriff is directed to comply with paragraph 5 of the order of this order dated 15 May 2015.
  4. <sup>There</sup> ~~The~~ is no order as to costs



**AC BASSON**  
JUDGE OF THE HIGH COURT