



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 18 December 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

*Eskom Holdings Soc Ltd and Another v Sonae Arauco (Pty) Ltd (1018/2023) [2024] ZASCA
177 (18 December 2024)*

Today, the Supreme Court of Appeal (SCA) handed down judgment, upholding the appeal with costs, including the costs of two counsel, against an order of the Mpumalanga Division of the High Court, Mbombela (the high court). The high court had granted interim interdictory relief in favour of Sonae Arauco (Pty) Ltd (Sonae), restraining Eskom Holdings SOC Ltd (Eskom) and the Mbombela Local Municipality (the municipality) (collectively the appellants) from implementing loadshedding at Sonae's factory, based on a purported electricity curtailment agreement between Sonae and the municipality.

During 2020, Sonae, a wood panel manufacturer, approached the municipality to address the adverse effects of loadshedding on its operations. Sonae claimed that its factory equipment, operating at high temperatures, faced substantial fire risks and safety concerns during power interruptions. Additionally, continued loadshedding threatened the factory's viability, job security for 250 employees and the local economy. To mitigate these risks, Sonae proposed an oral electricity curtailment agreement under which the municipality would exclude its factory from loadshedding schedules, provided Sonae reduced its electricity usage to 70% during loadshedding periods (the curtailment agreement). Sonae asserted compliance with the

curtailment agreement, but in 2023, Eskom implemented loadshedding at its factory, allegedly breaching the curtailment agreement.

Sonae approached the high court seeking urgent interim relief (Part A) and, in Part B, declaratory relief to confirm the validity of the purported curtailment agreement with the municipality. The appellants, however, opposed the application and argued that the oral curtailment agreement was unenforceable as it violated regulatory Codes under the Electricity Regulation Act 4 of 2006 (the Act). Furthermore, that Eskom was compelled to implement loadshedding when municipalities failed to comply with load reduction requirements of the National Energy Regulator (NERSA) Code of Practice and the South African Grid Code System Operation Code (the Codes). The high court granted the interim relief, finding that Sonae had proved the existence of the curtailment agreement. It further found that Sonae had shown a *prima facie* right by virtue of the curtailment agreement; it had shown irreparable harm if loadshedding continued and Sonae had no other effective remedy. Furthermore, it held that the balance of convenience favoured Sonae. Dissatisfied, Eskom appealed the decision and this appeal is with the leave of the high court.

The SCA confirmed that the interim order was appealable as the order was final in effect and granted without any consideration of Sonae's prospects of success in respect of the relief sought in Part B. The Court held that it was in the interests of justice that the order should be regarded as appealable.

The SCA held that the Act and the Codes mandate Eskom to ensure the stability of the national electricity grid. As the 'Systems Operator', Eskom is obligated to take prompt remedial action, including implementing loadshedding, when municipalities fail to meet prescribed load reduction requirements. The SCA found that the purported curtailment agreement between Sonae and the municipality did not meet the formal requirements of the Codes. Such agreements must be in writing, verifiable and applicable only to entities meeting defined thresholds. Sonae's factory did not qualify under these provisions. Additionally, Eskom was not a party to the agreement and therefore was not bound by its terms. The Court emphasised that the municipality's failure to implement adequate loadshedding measures compelled Eskom to intervene as required by the Codes. Eskom's assumption of responsibility for loadshedding was lawful and consistent with its statutory obligations.

Moreover, the SCA found Sonae's claims of irreparable harm speculative and unsupported by sufficient evidence. While Sonae highlighted potential fire risks and economic impacts, it failed to explain why these risks would materialise solely due to loadshedding. In contrast, the

catastrophic consequences of a national grid collapse if loadshedding were not implemented outweighed the harm alleged by Sonae.

As a result, the SCA upheld the appeal with costs, including the costs of two counsel where so employed.

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