



SUPREME COURT OF APPEAL SOUTH AFRICA

MEDIA SUMMARY – JUDGEMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 18 June 2019

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgement of the Supreme Court of Appeal.

ESKOM HOLDINGS SCO LIMITED

v

NOMAJAPAN MASINDA

The appellant in this matter, Eskom Holdings SOC Limited (Eskom), disconnected the supply of electricity to a property owned by the respondent and in her possession. The respondent proceeded to successfully apply to the high court in Mthatha as a matter of urgency for a spoliation order. Eskom then appealed to the Supreme Court of Appeal against that decision. It was Eskom's case that the connection made from its grid to the respondent's property was

illegal and a danger to the public. For this reason it contended that it had acted lawfully in disconnecting the supply. The respondent, however, argued that this was irrelevant and that, as she sought a spoliation order, the lawfulness or otherwise of the dispute was not an issue, and that the supply had to be reconnected whereafter the parties could determine its legality.

The court analyzed the principles applicable to spoliation proceedings. It concluded that the mere existence of the electrical supply which had been terminated was in itself insufficient to constitute an incident of the possession of the property to which it was delivered, and that more than a purely personal right was required in order to show that the right to receive the supply should be regarded as such: rights bestowed by servitude, registration or statute being obvious examples. In order to justify a spoliation order the right must be of such nature that it vests in the person in possession of the property. Rights that flow from a contractual nexus between the parties are insufficient for that purpose.

Applying these principles to the facts, it was clear that the respondent had not attempted to show that the supply of electricity was an incident of her possession of the property to which it was delivered. This had been insufficient to establish her right to an order that it be reconnected. The appeal was therefore upheld with costs, and the spoliation order was set aside.