

Can A Private Party Terminate an Agreement to Supply Electricity to A Community?

The limitation of electricity is nothing new to many South Africans who experience loadshedding or power outages due to municipal issues. The issue of right to electricity has long been disputed and when looking at a purported obligation of electricity being supplied a party may expect some form of obligation; but is this necessarily the case?

The Supreme Court of Appeal case of *Emalahleni Local Municipality v Lehlaka Property Development* sought to provide clarity on the matter. In understanding the court's reasoning some background information is necessary: Lehlaka is a private property development group which took over the supply of electricity to a village with electricity in terms of an agreement with the Municipality. Lehlaka wished to terminate the agreement. When Lehlaka gave notice of termination of the agreement, the municipality advised Lehlaka to first inform the unlawful occupiers and then put a plan in place to relocate them before disconnecting the electricity. This is contrary to the long-standing principles of the *Modderklip* case (*Modderklip Boerdery (Pty) Ltd v Modder East Squatters and Another*) which confirmed that an obligation in terms of S26(1) of the constitution is not enforceable against the private landowner.

The court in Lehlaka proceeded in explaining and confirming a few key principles namely:

- The obligation to be provided with electricity is that of the municipality and not a private individual.
- When lawfully terminating an agreement there is no room for discretion by the municipality.
- The lawful occupants are entitled to be aware of any termination of the agreement so that they can take up issues in future with the correct authority.
- The Rental Housing Act's provisions where it is considered an offence to levy a penalty can be exercised if a landlord unlawfully locks out a tenant

or shuts off the utilities (water and electricity) to the property, only finds application with lawful occupiers.

Accordingly, from the court case it becomes clear. That if there is a contractual undertaking by a private party to supply electricity the municipality is obliged to accept a lawful termination of that agreement and that any obligation to supply electricity is that of the municipality and not a private party.

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