


IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA



Case number: 99969-2025

Date of hearing: 10 December 2025

Date delivered: 21 December 2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) <del>REVISED</del>	
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In the application between:

**ESKOM HOLDINGS SOC LTD**

**Applicant**

and

**NATIONAL ENERGY REGULATOR**

**First Respondent**

**OF SOUTH AFRICA**

**Second Respondent**

**AFRIFORUM NPC**

**MINERALS COUNCIL SOUTH AFRICA**

**Third Respondent**

**This judgment is handed down electronically by the Judge whose name is reflected herein, and is submitted to the parties or their legal**

representative by email. This order is further uploaded to the electronic file of CaseLines by the Judge or his Registrar. The date of this order is deemed to be 21 December 2025.

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## JUDGMENT

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**SWANEPOEL J:**

### *INTRODUCTION*

[1] A calculation error of R 107 billion, or perhaps less, made by NERSA in determining the 2025/2026, 2026/2027 and 2027/1019 electricity tariffs, has resulted in this application. The applicant (“ESKOM”) has applied for:

[1.1] The review and setting aside of the decision of the first respondent (“NERSA”) published on 9 June 2025 in respect of ESKOM’s allowable revenue application for the 2025/2026, 2026/2027 and 2027/2028 financial years (collectively referred to as “MYPD 6”);

[1.2] An order directing that the order above shall not have retrospective effect on the validity of the ESKOM tariffs determined by NERSA in respect of the 2025/2026 tariff year;

[1.3] An order the decision referred to in paragraph 1.1 above be remitted to NERSA so that NERSA can redetermine the value

of the Eskom Regulatory Asset Base ("RAB") and the allowable revenue due to Eskom in respect of depreciation and adjust the allowable revenue and Eskom average tariff for the 2026/2027 and 2027/2028 tariff years;

[1.4] An order that the redetermination referred to above be made by no later than 15 January 2026;

[1.5] Costs, including the costs of two counsel on Scale C.

[2] Eskom is a state-owned company that is responsible for the generation of most of the electricity consumed in South Africa. NERSA is the National Energy Regulator of South Africa, an organ of state that was established in terms of section 3 of the National Energy Regulator Act, 40 of 2004 (the Act").

[3] The second respondent ("Afriforum") and the third respondent ("Minerals") are parties who have intervened in the matter as having a direct and substantial interest in these proceedings. They shall be referred to collectively as 'the intervening parties'.

[4] Eskom and NERSA have, since the application was launched, settled the matter in terms of a draft order that they seek to make an order of Court. All the parties agree that the decision should be reviewed and set aside. However, the parties disagree on the relief that should be granted once the decision is set aside. This Court must determine what

just and equitable relief should be granted in terms of section 172 (1) (b) of the Constitution.

### *THE DECISION*

[5] ESKOM's business is separated into three parts, namely, generation, transmission and distribution. On 9 June 2025 NERSA published its Reasons for Decision, also divided into three parts. This application only concerns its revenue decision relating to generation. ESKOM alleges, and it is agreed by the other parties, that NERSA's revenue decision was unlawful and reviewable as it was:

[5.1] ultra vires the framework governing the determination of electricity tariffs;

[5.2] inconsistent with NERSA methodology to determine revenue applications;

[5.3] inconsistent with an order of court that determined how the revenue decision was to be reached;

[5.4] irrational and/or unreasonable.

### *INTERVENTION*

[6] This matter was heard urgently by agreement between the parties, as a special allocation by the Acting Judge President. Although both ESKOM and NERSA agreed to the intervention by the intervening parties

in order not to delay the determination of the application, there is still some controversy regarding their entitlement to intervene in the matter, and it is necessary to deal with that issue briefly.

[7] Rule 12 of the Uniform rules provides that any party who is entitled to join as a plaintiff, or liable to be joined as a defendant in any action, may apply at any stage to intervene as either plaintiff or defendant. The principle that a party that has a direct and substantial interest in the subject matter of the case ought to be allowed to intervene, been long-since been established.<sup>1</sup>

[8] Afriforum says that its main purpose and objectives include the promotion of human, civil and other Constitutional rights. It represents more than 300 000 members, the vast majority of whom are electricity consumers and who would be directly affected by the remedy that is decided upon by this Court. Afriforum's standing as a non-governmental organization that seeks to protect and advance civil rights has been recognized in numerous cases.<sup>2</sup> In considering Afriforum's locus standi to challenge two notices published by the Minister of Trade and Industry, the Court said<sup>3</sup>:

"[33] Section 38 of the Constitution is wide and provides in s 38 (d) that anyone can approach the court acting as a member of in the interest of a group or class of persons. A narrow approach is unnecessary and in this regard a variety of cases were relied upon. (*Freedom under Law v Acting Chairperson: Judicial Services Commission and Others* 2011 (3) SA 549 (SCA); *Lawyers for Human Rights and Another v Minister of*

Home Affairs and Another 2004 (4) SA 125 (CC) (2004 (7) BCLR 775);  
Albutt v Centre for the Study of Violence and Reconciliation, and Others  
2010 (3) SA 293 (CC) (2010 (5) BCLR 391; [2010] ZACC 4) paras 33 –  
35)”

[9] In *Ferreira v Levin and Others*<sup>4</sup> the Constitutional Court also warned against a narrow approach, especially in litigation of a public nature that may affect a wide range of people.

[10] In my view Afriforum is acting not only in the interests of its members, but also in the broader interests of every consumer of electricity in the country. The same applies to Minerals. It represents mining companies who produce, collectively, some 90% of the minerals mined in South Africa. Their members’ financial health is particularly dependent upon an affordable electricity supply.

[11] For the above brief reasons I find that both Afriforum and Minerals have a direct and substantial interest in the outcome of the application, and that they were entitled to intervene.

#### *THE REGULATORY FRAMEWORK*

[12] As I have said, NERSA was established in terms of the Act with a mandate to regulate the generation, transmission and distribution of electricity. In terms of section 4 (1) (c) of the Act, NERSA is to undertake, as Regulator, the functions set out in section 4 of the Electricity

Regulation Act, 4 of 2006 ("the ERA"). The material provisions of section 4 (a) of the ERA setting out the duties of the Regulator are the following:

**"4 Powers and duties of Regulator**

The Regulator-

(a) must-

- (i) .....
- (ii) set and approve prices and tariffs in a manner prescribed by a rule;.....
- (viii) exercise any power or perform any duty conferred or imposed on it under this Act or any other law, and..."

[13] The objects of the ERA are to<sup>5</sup>:

- "(a) achieve the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure in the Republic of South Africa;
- (b) ensure that the interests and needs of present and future electricity customers and end users are safeguarded and met, having regard to the governance, efficiency, effectiveness and long-term sustainability of the electricity supply industry within the broader context of economic energy regulation in the Republic;
- (c) facilitate investment in the electricity supply industry;
- (d) facilitate universal access to electricity;
- (e) promote the use of diverse energy sources and energy efficiency;

- (f) promote competitiveness and customer and end user choice;
- (g) facilitate a fair balance between the interests of customers and end users, licencees, investors in the electrical supply industry and the public.

[14] Section 14 of the ERA provides that the Regulator may make any licence subject to conditions relating to, inter alia, the setting or approval of prices, charges, rates and tariffs which must be imposed by licencees<sup>6</sup>, the methodology to be used in determination of rates and tariffs<sup>7</sup>, and the regulation of licencees' revenue<sup>8</sup>.

[15] Section 15 (1) of the ERA<sup>9</sup> prescribes the principles applicable to the setting of tariffs:

**"15 Tariff principles**

- (1) The Regulator, when subjecting a licencee to conditions relating to the setting or approval of prices, charges and tariffs charged by licencees as contemplated in section 14 (1) (d)-
  - (a) must enable an efficient licencee to recover the full cost of the licensed activity;
  - (aA) must allow for a reasonable return proportionate to the risk of the licensed activity;
  - (b) may provide for or prescribe incentives for continued improvement of the technical and

economic efficiency with which services are to be provided;

- (d) must avoid undue discrimination between customer categories;
- (e) may permit the cross-subsidy of tariffs to certain classes of customers; and
- (f) may have regard to the need to ensure security of supply, the diversity of supply and to promote renewable energy.”

[16] In summary, “*NERSA is therefore responsible for determining whether a licence should be granted; the terms of the licence; the methodology by which tariffs and charges are to be determined and the imposition of that methodology on the licensee by way of a licence condition; and the tariffs and charges that the licensee may recover from its customer.*”<sup>10</sup>

[17] The Electricity Pricing Policy was promulgated under General Notice 1398 of 2008 in Government Gazette 31741 of 19 December 2008. Policy Position 2 thereof requires the Regulator to set tariffs that reflect the cost of rendering electrical services as accurately as practical.

#### *THE METHODOLOGY*

[18] NERSA develops a Multi-Year Price Determination Methodology (“the MYPDM”) by which it determines tariffs and tariff increases to be charged by licencees at intervals of three or more years. In 2016 it

developed a methodology which is still applicable to the determination of the current tariff increases.<sup>11</sup> The methodology by which the ESKOM Regulatory Asset Base ("RAB") value is to be calculated was also determined by court order on 24 October 2022.<sup>12</sup>

### *BACKGROUND*

[19] In August 2024 ESKOM submitted an allowable revenue application for the financial years 2026 to 2028. On 30 January 2025 NERSA announced its decision, and on 9 June 2025 it published its Reasons for Decision in three parts, each dealing separately with generation, transmission and distribution. It is only the decision on generation that is in dispute in this case.

[20] ESKOM took the stance that the decision was unlawful as regards ESKOM'S generation business and stood to be set aside for the reasons set out in paragraph [5] above. On 30 June 2025 ESKOM launched this application. It alleged that NERSA had understated its revenue by R 107 463 million. NERSA did not oppose the application nor has it filed a record. NERSA says that once it had considered the application, it identified miscalculations and incorrect application of the methodology, which affected asset depreciation and the RAB value.

[21] On 25 July 2025 NERSA and ESKOM met. NERSA had recalculated that some R 44 billion in additional revenue should be allowed. ESKOM rejected the proposal on the basis that not all of its RAB complaints had been considered. It sought an additional amount of R 62

billion. Eventually Eskom and NERSA decided to compromise on an additional R 54 billion in revenue. NERSA's decision to compromise was outlined in its Reasons for Decision ("RFD") dated 16 September 2025.

[22] The amount of R 54 billion was made up, according to the RFD, of an alleged R 14 513 million depreciation data input error, and R 39 487 million as a re-evaluation of the RAB. The "data input error" was agreed to be liquidated over two financial years from 2026/2027 to 2027/2028 in two amounts of R 11 493 million and R 3 020 million respectively. A further R 507 million and R 19 993 million would be recovered over these two financial years and the balance of R 18 987 million would be recovered in MYPD 7. On this basis the matter became settled.

[23] NERSA and Eskom now seek an order that the above settlement be made an order of court. The intervening parties oppose this relief.

#### *REVIEW*

[24] It is common cause that the decision by NERSA constitutes administrative action under the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA"). In terms of section 6 (2) of PAJA a court is empowered to review administrative action. It is also common cause that the decision should be reviewed on a number of grounds. Firstly, it was not authorized under the empowering provision in that it breached section 15 of the ERA by not applying the tariff principles appropriately<sup>13</sup>. Secondly, the decision does not take account of the court orders that prescribed the method by

which the RAB is to be valued.<sup>14</sup> Thirdly, the decision is also not rationally connected to the information placed before NERSA.<sup>15</sup> Fourthly, the decision was arbitrary, given the fact that it was based upon erroneous calculations.<sup>16</sup> The decision must, consequently, be reviewed and set aside.<sup>17</sup>

## *REMEDY*

[25] What remedy must be applied? Both sections 8 of PAJA and section 172 of the Constitution apply. In terms of section 8 of PAJA a court reviewing administrative action may grant any order that is just and equitable. Section 172 (1) of the Constitution provides:

### **"Powers of courts in constitutional matters**

- (1) When deciding a constitutional matter within its power, a court-
  - (a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and
  - (b) make any order that is just and equitable, including-
    - (i) an order limiting the retrospective effect of the declaration of invalidity; and
    - (ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect."

[26] ESKOM and NERSA seek an order in terms of the draft order in which their settlement agreement is recorded. Both Minerals and

Afriforum argue that essentially, by granting an order in terms of the draft, the Court would be granting a substitution order. They also argue that:

[26.1] NERSA entered into the settlement agreement in order to avoid public scrutiny of its error;

[26.2] the settlement agreement binds NERSA in future issues that are not before Court, by delaying the recovery of some 18 billion to MYPD 7;

[26.3] the settlement agreement circumvents meaningful public participation;

[26.4] the settlement agreement is an attempt to rectify a nullity.

#### *IS THE SETTLEMENT AGREEMENT A SUBSTITUTION FOR NERSA'S DECISION?*

[27] Section 8 (1) (c) (ii) empowers a court to substitute or vary administrative action or to correct a defect, but only in exceptional cases. In principle, the default remedy is to remit the decision back to the decision maker for reconsideration.<sup>18</sup> It is important to give deference to the administrator, unless the facts of a specific case dictate otherwise. The administrator is generally in a better position, having better knowledge of the facts, and more expertise on the subject, to make the decision. In *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa*<sup>19</sup> the Court said the following regarding

substitution orders, and the factors to be considered before such an order is made:

“The first is whether a court is in as good a position as the administrator to make the decision. The second is whether the decision of an administrator is a foregone conclusion. These two factors must be considered cumulatively. Thereafter a court should still consider other relevant factors. These may include delay, bias or incompetence of an administrator.”

[28] I am unable to grant a substitution order. I do not have sufficient information to consider what the correct decision should have been, nor do I believe, on these papers, that NERSA and ESKOM do either. However, I do not believe that should I make the settlement agreement an order of court I would be substituting my decision for that of the decision maker. The settlement agreement is the product of negotiations between NERSA and ESKOM, and contains their judgment as to what would be a just outcome of the matter. It is not the Court’s decision being substituted for that of NERSA. I am only asked to endorse their decision by making the settlement agreement an order of court.

*SHOULD THE SETTLEMENT AGREEMENT BE MADE AN ORDER OF COURT?*

[29] As was correctly pointed out by the intervening parties, a settlement agreement is not simply there for the taking. In *Eke v Parsons*<sup>20</sup> the Constitutional Court explained the approach to adopt in

making a settlement agreement an order of court. Firstly, a court must be satisfied that the settlement agreement is related to the litigation before court. Secondly, the agreement must not be objectionable *“that is, its terms must be capable, from a legal and practical point of view, of being included in a court order. That means, its terms must accord with both the Constitution and the law. Also, they must not be at odds with public policy.”*<sup>21</sup> Finally, the agreement must hold some practical and legitimate advantage.

[30] The main question in this case, in my view, is whether the settlement agreement accords with the Constitution and the law. The point that the intervening parties have made is that by entering into the settlement agreement, NERSA and ESKOM have decided a matter that would inevitably result in substantial increases in tariffs, thereby affecting the entire nation, without having allowed any public participation.

[31] ESKOM says that the decision to settle the dispute is not administrative action within the meaning of PAJA. If it were, the provisions of section 3 and 4 of PAJA regarding public participation would apply.

[32] It seems to me that the decision was likely administrative action. However, I do not have to make such a finding, nor did I hear argument on this issue. In my view, as I will show below, the manner in which the settlement agreement was reached is clearly contrary to public policy, whether PAJA applies or not.

[33] Section 9 of the Act requires NERSA to act in a justifiable and transparent manner whenever it exercises a discretion.<sup>22</sup> The material portion of section 10 (1) of the Act provides as follows:

- (1) Every decision of the Energy Regulator must be in writing and be-
  - (a) consistent with the Constitution and all applicable laws;...
  - (d) taken within a procedurally fair process in which affected persons have the opportunity to submit their views and present relevant facts and evidence to the Energy Regulator;..."

[34] I see no reason why the words "every decision" in section 10 (1) should not bear their ordinary meaning, nor why a decision to settle a dispute on tariffs should be excluded from the definition of "decision".

[35] The proposition put forth by NERSA and ESKOM, that a major amendment could be made to the tariff decision without public participation, is untenable, and offends the principle of transparency enshrined in the Act and the ERA. The notion that this was a matter to be settled between two litigants ignores the broader picture: that the settlement has an impact on every electricity consumer in South Africa. The general public had, in my view, the right to submit their views on the proposed settlement, and, consequently, the decision to settle the matter without public participation deprived the public of its right to participate in the decision as provided for in section 10 of the Act.

[36] NERSA and Eskom have argued that the settlement agreement only reflects a recalculation of the RAB, and that there had already been wide public participation on the tariff increases. They say that further consultation would be fruitless. I disagree. Public participation is central to the determination of electricity tariffs, and it is not for Eskom nor NERSA to decide when to allow public participation and when not. As the Supreme Court of Appeal said in *Borbet (supra)*<sup>23</sup>:

“Electricity tariff increases affect all South Africans. They impact the business world as well as domestic households. Thus, there is a statutory framework to ensure fairness so that tariff increases have the result that electricity infrastructure remains sustainable while at the same time ensuring that undue hardships are not imposed on consumers.”

[37] It bears repeating, that public participation in a transparent and open manner is a cornerstone of the Act and the ERA. Decisions made in secret and without public knowledge is anathema to the statutory framework, and to our Constitutional norms. In providing reasons for its decision to settle the matter, NERSA said the following in its RFD<sup>24</sup>:

“The other benefit of entering into a settlement with Eskom is that the settlement becomes binding between the parties and achieves the relief sought by Eskom, does not enable the ventilation of the details in open court, which can expose NERSA further.

It further removes a space for a just and equitable order, in which the court can determine the regulatory scope and set a decision that may have to be abided by.”

[38] NERSA was clearly embarrassed by its mistake. Its purpose in entering into the agreement was, at least partially, to avoid public scrutiny of its error. It also wished to avoid judicial scrutiny and a just and equitable order that may not have suited it. Even though it was attempting to correct a mistake, one of its motives was self-serving and improper. As was pointed out in argument, *"...the co-existence of a proper motive, ie the attainment of a legitimate purpose cannot neutralise the fact that an improper, ulterior motive has at least in part been influential in the exercise of the official's discretion."*<sup>25</sup>

[39] If the settlement agreement were to be made an order of Court, it would be giving legitimacy to an agreement reached, albeit partially, for improper reasons.

[40] A further difficulty is that nobody knows what the correct amount is for ESKOM's allowable revenue. NERSA has conceded that its undervaluation by R 107 billion was the result of errors in calculation and application of the methodology. However, when NERSA entered into negotiations with ESKOM its re-calculation showed that the RAB value had been underestimated by R 44 billion. ESKOM took the stance that a re-evaluation of R 66 billion was acceptable to it. Based on those figures ESKOM and NERSA seem to have agreed to split the difference, and to agree to a figure of R 54 billion.

[41] There is no explanation how this figure was arrived at, save to say that it was a compromise. However, surely if one reaches a compromise

one should start from a mathematically determined figure, and then decide on how much to compromise. On NERSA's own version it intends to undertake an independent assessment of ESKOM's RAB once it receives ESKOM's latest asset valuation report. It seems to me that NERSA does not know, at this point, what the correct RAB value should be. In my view NERSA has not determined these costs accurately, as is required of it by Policy Position 2 of the Electricity Pricing Policy.

[42] The absence of any explanation as to how the compromise amount of R 54 billion was arrived at leaves one with the uncomfortable feeling that the compromise was little more than a thumb-suck.

[43] The intervening parties also took the point that the settlement agreement attempted to revive a nullity. I do not believe that this point is well founded. The decision is only a nullity once set aside. When the settlement agreement was entered into the decision still stood. They also say that the settlement improperly defers the recovery of some R 19 billion to MYPD 7. Due to the view that I have expressed above, I do not find it necessary to make a finding on this submission.

[44] For the above reasons I decline to make the settlement agreement an order of Court.

[45] Furthermore, for the reasons set out above, remittal is the only remedy that can be granted. It follows, also from what I have said above, that public submissions have to be sought, especially given the fact that there is still uncertainty as to the correct RAB value. However, there are

some time pressures to the matter, as the 2026/2027 tariffs have to be approved and tabled in Parliament by 15 March 2026. I therefore propose to allow a brief period for written submissions to be made, only on the specific aspect to be reconsidered, whereafter NERSA may reconsider its decision.

[46] As for costs, the intervening parties were, as I have found, entitled to intervene, and they have been substantially successful. They were opposed by both ESKOM and NERSA. There is no reason why ESKOM and NERSA should not pay their costs jointly and severally.

**[47] I make the following order:**

**[47.1] The decision published by NERSA on 9 June 2025 in respect of ESKOM's allowable revenue application for the 2025/2026, 2026/2027, and 2027/2028 financial years is reviewed and set aside.**


**[47.2] The order in paragraph 1 above shall not have retrospective effect on the validity of the ESKOM tariff determined by NERSA in respect of the 2025/2026 tariff year.**

**[47.3] The decision referred to in paragraph 1 above is remitted to NERSA so that NERSA can re-determine, after having considered submissions as provided for in paragraph [47.4] below, the value of the ESKOM Regulatory Asset Base and the allowable revenue due to ESKOM in respect of**

depreciation and then adjust the allowable revenue and ESKOM average tariff for the 2026/2027 and 2027/2028 tariff years accordingly.

[47.4] Any person having an interest in the re-determination referred to in paragraph [47.3] above, may make written submissions to NERSA by no later than 21 January 2026, whereafter NERSA may continue to make its re-determination.

[47.5] ESKOM and NERSA shall pay the costs of the intervening parties jointly and severally on Scale C, the one paying the other to be absolved, including the costs of two counsel for each intervening party, where so employed.



SWANEPOEL J  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

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Instructed by:	GMI Attorneys
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**Counsel for the third respondent:** Adv. G Marcus SC  
Adv. T Malusi

**Instructed by:** Bowmans

**Heard on:** 10 December 2025

**Judgment on:** 21 December 2025

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<sup>1</sup> Nelson Mandela Metropolitan Municipality v Greyvenouw CC 2004 (2) SA 81 (SE) at 89 B-C

<sup>2</sup> Afriforum and Another v University of the Free State 2018 (2) SA 185 (CC); Nelson Mandela Foundation Trust and Another v Afriforum NPC and Others 2019 (6) SA 327 (GJ)

<sup>3</sup> Afriforum v Minister of Trade and Industry and Others 2013 (4) SA 63 (GNP)

<sup>4</sup> Ferreira v Levin and Others; Vryenhoek and Others v Powell NO and Others 1996 (1) SA 984 (CC) at para [229]

<sup>5</sup> Section 2

<sup>6</sup> Section 14 (1) (d)

<sup>7</sup> Section 14 (1) (e)

<sup>8</sup> Section 14 (1) (g)

<sup>9</sup> As amended by Act 38 of 2024 (with effect from 1 January 2025)

<sup>10</sup> The National Energy Regulator of South Africa and Another v Borbet SA (Pty) Ltd and Others 2017 (ZASCA) 87 (6 June 2017) at para [12]; [2017] 3 ALL SA 559 SCA

<sup>11</sup> By order of Millar J dated 5 July 2022 Gauteng Pretoria case number 2021-51550

<sup>12</sup> Under Gauteng Pretoria case number 2022-006242 dated 24 October 2022

<sup>13</sup> Section 6 (2) (a) (i) of PAJA

<sup>14</sup> Section 6 (2) (d) of PAJA

<sup>15</sup> Section 6 (2) (f) (cc) of PAJA

<sup>16</sup> Section 6 (2) (e) (vi)

<sup>17</sup> See: Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer, South African Social Security Agency 2014 (4) SA 179 (CC) at [30]

<sup>18</sup> National Energy Regulator of South Africa and Another v PG Group (Pty) Ltd and Others 2020 (1) SA 450 (CC) at para [89]

<sup>19</sup> Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa 2015 (5) 245 (CC) at para [47]

<sup>20</sup> Eke v Parsons 2016 (3) SA 37 (CC)

<sup>21</sup> Eke at para [25] to [26]

<sup>22</sup> Section 9 (a)

<sup>23</sup> Borbet at para [3]

<sup>24</sup> Paras 1.10 and 1.11 of the RFD

<sup>25</sup> Highstead Entertainment (Pty) Ltd t/a "The Club" v Minister of Law and Order and Others 1994 (1) SA 387 (C) at 395 A