

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA
(HELD AT BRAAMFONTEIN)**

**CCT NO: _____
HIGH COURT CASE NO: 08/22689**

In the matter between:

LEON JOSEPH	First Applicant
VALERIE MOSES	Second Applicant
VICTOR MOKETE MOKOENA	Third Applicant
LUCRICIA VAN WYK	Fourth Applicant
SHANICE MAYEZA	Fifth Applicant
DIANA VAN ROOYEN	Sixth Applicant

and

CITY OF JOHANNESBURG	First Respondent
CITY POWER (PTY) LTD	Second Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT, GAUTENG	Third Respondent
THOMAS NEL	Fourth Respondent

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE THAT the applicants apply to this Court for an order in the following terms:

- 1 Granting leave to appeal against the judgment and order of His Lordship Mr Justice Jajbhay in the South Gauteng High Court, handed down on 3 April 2009;
- 2 Upholding the appeal with costs;
- 3 Setting aside the order of the High Court of 3 April 2009 under case number 08/22689 and replacing it with the following order:
 - 3.1 It is declared that the disconnection of the electricity supply to Ennerdale Mansions, Stand 158 Percy Street, corner Sixth Avenue, Mid Ennerdale, Ennerdale, Johannesburg (“Ennerdale Mansions”) on 8 July 2008 without adequate notice, without affording the affected parties an opportunity to make representations and without complying with the other requirements of procedural fairness set out in section 3(2)(b) of the Promotion of Administrative Justice Act 3 of 2000 was unlawful and invalid.
 - 3.2 It is declared that the disconnection of the electricity supply to Ennerdale Mansions on 8 July 2008 was unlawful and invalid to the extent that the first and second respondents failed to take the personal circumstances of those to be affected by the proposed electricity cut, and all other relevant circumstances, into account before making a decision to discontinue the electricity supply.

- 3.3 The disconnection of the electricity supply to Ennerdale Mansions on 8 July 2008 is set aside.
- 3.4 The second respondent is ordered immediately to reconnect the electricity supply to Ennerdale Mansions.
- 3.5 It is declared that it is unlawful to disconnect the supply of electricity to a building or residence without adequate notice, without affording the affected parties an opportunity to make representations and without complying with the requirements of procedural fairness set out in section 3(2)(b) of the Promotion of Administrative Justice Act 3 of 2000.
- 3.6 It is declared that the first and second respondents are required to take the personal circumstances of those to be affected by a proposed electricity cut, and all other relevant circumstances, into account before making a decision to discontinue the electricity supply to a building or residence.
- 3.7 In the alternative to paragraph 3.5 above, it is declared that section 15 of the City of Johannesburg Metropolitan Municipality: Credit Control and Debt Collection By-Laws, published in notice 1857 of 2005 in terms of section 13(a) of the Local Government: Municipal Systems Act 32 of 2000 ("the Credit Control By-Laws") is unconstitutional and invalid to the extent that it allows the first and second respondents to disconnect an electricity supply to a building or residence without notice to the occupants, without affording them an opportunity to make representations, and without complying with the requirements of

procedural fairness set out in section 3(2)(b) of the Promotion of Administrative Justice Act 3 of 2000.

3.8 In the alternative to paragraphs 3.6 above, declaring that section 15 of the Credit Control By-Laws is unconstitutional and invalid to the extent that it allows the first and second respondents to discontinue the electricity supply to a building or residence without taking the personal circumstances of those to be affected by a proposed electricity cut, and all other relevant circumstances, into account before making the decision.

3.9 The first and second respondents are liable to pay the applicants' costs.

TAKE NOTICE FURTHER that within ten (10) days from the date upon which this application is served on them, the respondents may respond by affidavit, indicating whether or not they consent to leave to appeal being given and, if the application is opposed, the grounds for such opposition.

TAKEN NOTICE FURTHER that the accompanying affidavit of SHAHEDA HASSIM MAHOMED is annexed in support of the application.

TAKE NOTICE FURTHER that the applicants have appointed the offices of their attorneys of records set out below as the address at which they will accept notice and service of all documents in these proceedings.

DATED at JOHANNESBURG on this day of APRIL 2009

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TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
Johannesburg

AND TO: THE FIRST RESPONDENT
City of Johannesburg
C/O BHAM & DAHYA ATTORNEYS
Third Floor, Suite 1
30 Loveday Street
Johannesburg

AND TO: THE SECOND RESPONDENT
City Power (Pty) Ltd
C/O MOKHATLA ATTORNEYS
7th Floor, Surrey House
35 Rissik Street
Johannesburg

AND TO: THE THIRD RESPONDENT

Member of the Executive Council for Local Government, Gauteng
c/o the State Attorney
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AND TO: THE FOURTH RESPONDENT

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