



CONSTITUTIONAL COURT OF SOUTH AFRICA

Leon Joseph and Others v City of Johannesburg and Others

Case CCT 43/09

Date of hearing: 18 August 2009

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On Tuesday 18 August 2009, the Constitutional Court will hear an application for leave to appeal against a decision of the South Gauteng High Court, Johannesburg which held that there is no obligation to afford procedural fairness (in the form of notice and representations) to tenants with whom the service provider has no contractual relationship before taking a decision to disconnect their electricity supply.

The applicants are all tenants in a block of flats in Johannesburg (Ennerdale Mansions) owned and leased by the fourth respondent, Mr Thomas Nel. The applicants paid their electricity bills to Mr Nel as part of their rent accounts (although electricity was charged separately), and had all kept up with their electricity payments. Mr Nel is contracted with the second respondent, City Power, for the supply of electricity to the building and had accumulated arrears of approximately R400 000. Accordingly, on 8 July 2008, the electricity supply to Ennerdale Mansions was disconnected by City Power. The tenants received no prior notice of the disconnection.

In the High Court, the applicants contended that the Promotion of Administrative Justice Act 3 of 2000 (PAJA) required City Power to afford them procedural fairness before taking a decision to disconnect their electricity because the decision materially and adversely affected their right of access to adequate housing under section 26 of the Constitution. Alternatively, the applicants challenged the validity of the City of Johannesburg: Credit-Control By-Laws (2005) insofar as they restricted the duty to afford procedural fairness to “customers” of City Power. The High Court held that “customer” in the By-Laws could not be read to include persons who do not have a contractual relationship with a service provider, and that this limitation was justified by the City’s policy of debt-collection.

In this Court, the applicants make similar submissions to those made in the High Court, as well as challenge the High Court's failure to consider the By-Laws in the light of PAJA. They submit that the By-Laws must be read consistently with PAJA, and that if they cannot be so read, the By-Laws must be declared unconstitutional.

The respondents resist the relief sought on the basis that they owe no duty of procedural fairness to the tenants, but only to the landlord with whom they have contracted. Further, they submit that PAJA does not apply because no existing rights of the tenants were affected by the disconnection. In this regard, they reject the submission that access to electricity is an aspect of the right of access to adequate housing.