

**IN THE HIGH COURT OF SOUTH AFRICA  
(SOUTH GAUTENG HIGH COURT)**

**CASE NO:**

**08/22689**

In the matter between:

**DEIDRE LEANDA DARRIES**

**First Applicant**

**OCCUPIERS OF ENNERDALE MANSIONS,  
STAND 158 PERCY STREET, ENNERDALE**

**Second to Thirtieth Applicants**

**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**

Jajbhay J

Is it lawful and constitutional for the respondents to disconnect the **electricity supply** to a residence without complying with the recognised components of the right to procedural fairness as envisaged by the PAJA and the Constitution and without even considering the circumstances of the residents affected?

The essence of the applicants' arguments in this regard may be summarised as follows. PAJA and section 33 of the Constitution require that the respondents comply with procedural fairness in respect of the residents of a building before disconnecting electricity to that building. Procedural fairness in this regard is an inherently flexible standard. In the circumstances of the present case, it may well be that procedural fairness in respect of the residents would have been discharged by the respondents placing one prominent notice in the foyer of the affected building, indicating that the residents were entitled to make written representations, and if the residents elected to make such written representations, considering those representations and the circumstances set out therein, before deciding whether to disconnect. Moreover, it was argued that section 26 of the Constitution requires that the personal circumstances of persons must be taken into account before any measure is taken which impacts negatively on their right to housing. The applicants contended that Electricity is an important component of that right.

Municipalities form an important component of our constitutional scheme of government. They are closer to the community and they constitute the first line for the delivery of services. Indeed one of the objects of local government is to ensure the provision of services to communities in a sustainable manner.

The obligation imposed on a municipality, under s 96(a) of the Municipal Systems Act, to collect all money that is due and payable to it, accords with the same requirement in terms of the common law, which stresses the fiduciary obligations of local government.

It is clear from the provisions of section 15 that disconnection of electricity supply is a legitimate method for the collection of arrears and may be followed by legal action to recover payment. It does not have to be preceded by such legal action.

**There is no absolute right of access to electricity – let alone a right to an uninterrupted supply of electricity where the municipal provider is not being paid and where the consumers are not indigent persons.**

By disconnecting electricity, City Power is not denying the applicants' right of access to adequate housing or, indeed, to municipal services. City Power says that it is happy to restore the supply of electricity, provided that suitable arrangements are made for payment of the arrears. To the extent that the applicants have allegedly paid for electricity to their landlord (fourth respondent) and he has not paid this over to City Power, the applicants have rights of recourse against the fourth respondent.

There is a proper basis to justify limitation under section 36 on the facts of this case. Applicants can pay and they are not indigent. If they were indigent they would apply for assistance in terms of chapter 4 (indigent persons) of the Credit Control by-laws for assistance and would be provided with electricity on that basis. They are not like Grootboom.