

# **NUMSA, UDM, HAITU, BOSA, ACTIONSA, SAFTU, IFP, DIA ARE HEADED TO COURT ON 20 MARCH TO STOP LOADSHEDDING!**

**13 February 2023**

## **Press statement**

The Deputy Judge President of the Gauteng Division of the High Court, Judge Ledwaba, has directed that the matter of United Democratic Movement and 18 Others vs Eskom and the Government of the Republic of South Africa shall be heard on 20 March 2023 to 24 March 2023 by a Full Court. The initial court date was set for the 28<sup>th</sup> February but that has been changed to accommodate the full court. The National Union of Metalworkers of South Africa (NUMSA), United Democratic Movement (UDM), Health Workers Indaba Trade Union (HAITU), Build One South Africa (BOSA), the IFP, South African Federation of Trade Unions (SAFTU), and Democracy In Action (DIA) are applicants in the matter.

The case is divided into two parts, being Part A – for interim relief – and Part B – for final relief. In Part A, the applicants submit that the manner in which the government has responded to the crisis of loadshedding is unconstitutional and breaches several constitutional rights. The applicants argue that loadshedding has become a pressing human rights concern. The government's response has undermined the fundamental rights of citizens.

Evidence has been produced as to the impact of loadshedding in hospitals, schools, small and medium businesses, telecommunication services and a range of other critical sectors of the economy which cannot function during the periods of loadshedding. The applicants further argue that bearing in mind that loadshedding is not an inevitable fact of history, like Covid-19, but has been directly caused by deliberate state action, negligence of the state, and general disregard to the obligations of the state under the Constitution, there is an obligation on the state to alleviate the human suffering, which has been caused by loadshedding.

The relief sought by the applicants, who include nurses, doctors, small businesses, is in the first instance that the government is under a duty to prevent the humanitarian catastrophe which has been directly caused by loadshedding. Loadshedding impacts the poor, the unemployed, and black people in less affluent areas, in ways that cannot be prevented, except by governmental support and intervention. To prevent the human cost of loadshedding, which the government has ignored, the applicants ask for compliance with the Constitution, which requires that in times of hardship, the needs of the poor and marginalized must be prioritized. Unfortunately, the practical reality shows that the government has no strategy to shield the poor against loadshedding, or to alleviate the suffering which has been caused by loadshedding.

The applicants thus ask for a general exemption in specific sectors of the economy and social services: health, education, police stations, courts, small and medium enterprises, agriculture and food production and telecommunication services. The manner in which this must be done will be left to the government, but it is worth noting that the government has not hesitated to declare certain areas in which its own ministers live as “loadshedding free zones”. The applicants point out that if this is possible for Ministers, it must be possible for the poor.

In Part B, the applicants shall seek an order holding the President, as head of the national executive legally responsible for the human cost of loadshedding. The President’s primary responsibility is to give effect to the Constitution and the Bill of Rights. While there has been much talking in government, the reality has been that loadshedding has escalated, rather than decreased. Now the country faces the real prospect of a total blackout, as evidenced by the government’s own declaration of state of national disaster. The applicants shall seek an order declaring that the President and his government have failed to respect, protect, promote and fulfil the rights of citizens in the manner in which they have responded to crisis of loadshedding, which the government is responsible for in the first place.

The application is also concerned about the impact of loadshedding on employment. Eskom's current and outgoing Chief Executive Officer, Andre de Ruyter, has presided over the period of the worst loadshedding. While his primary responsibility was to end loadshedding, no one who is an honest observer, can deny that he has failed. We say that De Ruyter's deliberate strategy of closing down coal power stations and units in certain power stations, without alternatives which can generate the similar amount of electricity has also contributed to loadshedding. While the government claims that it will not close down power stations, the evidence on the grounds shows the contrary. Our view is not ideological – we do not oppose Independent Power Producers if that is what the government has decided. Nor are we opposed to green energy sources if they can be found and operate at the same level as the power stations which are being sacrificed.

But the country needs clarity as to the specific actions that are being taken by the government to bring power stations into operations. We need to know the budget, the steps being taken, the time it will take to bring the power stations back into production. The country needs to know how the green energy sources will address the issue, which every engineer now agrees is at the heart of the problem, the baseload.

We call upon all South Africans to support the case. We are looking at own resources to fund the case. Our resources are limited. We are confident that the cause we represent is a just cause. We are grateful to our team of attorneys and counsel, led by Tembeka Ngcukaitobi SC, Reghana Tulk, Retha Richards, Yusuf Peer, Michael Gwala, Mosima Rasesemola for taking on the case.

For more information, please contact:  
Phakamile Hlubi-Majola  
NUMSA National Spokesperson  
0833767725  
phakamileh@numsa.org.za

NUMSA Head Office number: 0116891700  
NUMSA Facebook page: <https://www.facebook.com/NumsaSocial>  
NUMSA Twitter account: [@Numsa\\_Media](https://twitter.com/Numsa_Media)  
NUMSA Website: <https://numsa.org.za/>