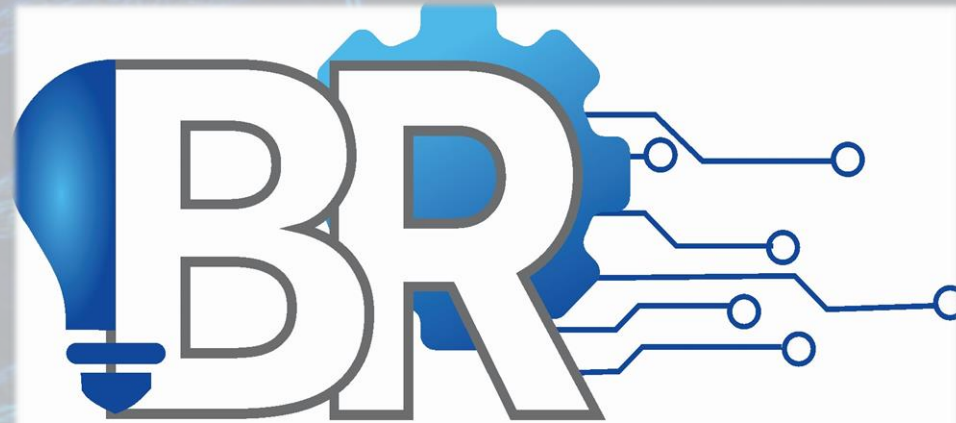




BRAVOSCAN

APPROVED INSPECTION AUTHORITY OF SA



employment & labour

Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA

APPROVED INSPECTION AUTHORITY No: CI 0015 EIR





Legal Implication of Electrical Installations

A brief look at the Occupational Health and Safety Act and the legal implications.

South Africa: Fuel tanker explosion kills at least 15 near hospital

24 December 2022



05 Aug

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Century City's Vodacom building fire due to electrical fault

Kaitlin Daniels



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05 Aug

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UPDATE | More than 70 people dead after fire breaks out at 'informal settlement' inside Joburg building

Compiled by Botho Molosankwe

news24

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A fire broke out at a five-storey building in Johannesburg early on Thursday morning.

Screengrab via @CityofJoburgZA/X

At least 73 people have died and more than 50 others were injured after a fire broke out at a

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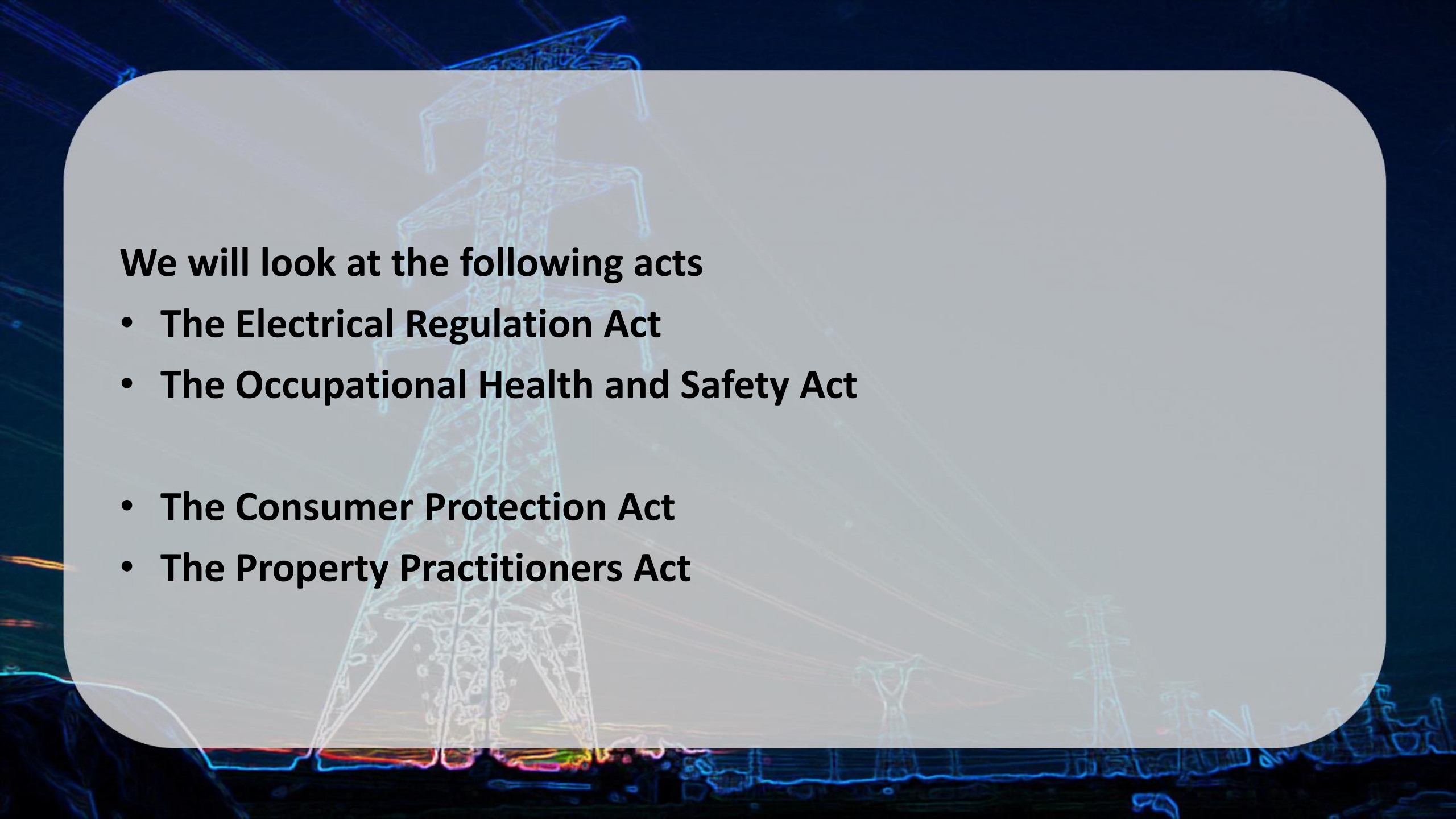
LIFESTYLE

SPORT

'EVERYTHING'S FALLING APART': JHB RESIDENTS LIVE IN FEAR AFTER ANOTHER CBD BLAST

On Tuesday, an explosion that injured five people occurred in Braamfontein while Egoli Gas employees were conducting maintenance on its pipelines, marking the second blast to hit the inner city in just two months.





We will look at the following acts

- **The Electrical Regulation Act**
- **The Occupational Health and Safety Act**

- **The Consumer Protection Act**
- **The Property Practitioners Act**

Legal Framework –Electrical Regulation Act (ERA)

- This act should not be confused with the Electrical Installation Regulations
- Regulated by NERSA
- Provides for the licensing of power suppliers
- Imposes duties and liability on power suppliers for any damage that might be caused out of their activities.

Liability of an Electrical Supplier

Liability of licensee for damage or injury

26. In any civil proceedings against a licensee arising out of damage or injury caused by induction or electrolysis or in any other manner by means of electricity generated, transmitted or distributed by a licensee, such damage or injury is deemed **to** have been caused by the negligence of the licensee, unless there is credible evidence to the contrary. **10**

Duty & Obligation to inspect an electrical installation -ERA

Powers of entry and inspection

23. (1) Any person authorised thereto by a licensee may at all reasonable times enter any premises to which electricity is or has **been** supplied by such licensee, in order to inspect the lines, meters, fittings, works and apparatus belonging to such licensee, or for the purpose of ascertaining the quantity of electricity consumed, or where a supply is no longer required, or where such licensee may cut off the supply, for the purpose of removing any lines, meters, fittings, works and apparatus belonging to such licensee. 15

(2) Any person wishing to enter any premises in terms **of** subsection (1) shall—

- (a) if possible, make the necessary arrangements with the legal occupant of the premises before entering such premises and shall adhere **to** all reasonable security measures, if any, of the occupant or owner of the premises; 20
- (b) exhibit his authorization at the request of any person materially affected by his activities.

(3) Damage caused by such entry, inspection or removal shall be repaired or compensated for by the licensee. 25

Duty & Obligation to inspect an electrical installation –EIR 7(6)

- (6) The relevant **supplier** may at any reasonable time inspect or test any electrical installation: Provided that the supplier shall not charge any fee for such an inspection or test unless the inspection or test is carried out at the request of the user or lessor.

Duty & Obligation to report defects of electrical installation –EIR 7(7)

- (7) If an inspector, an approved inspection authority for electrical installations or supplier has carried out an inspection or test and has detected any fault or defect in any electrical installation, that inspector, approved inspection authority for electrical installations or supplier may require the user or lessor of that electrical installation to obtain a new certificate of compliance: Provided that if such fault or defect in the opinion of the inspector, approved inspection authority for electrical installations or supplier constitutes an immediate danger to persons, that inspector, approved inspection authority for electrical installations or supplier shall forthwith take steps to have the supply to the circuit in which the fault or defect was detected, disconnected: Provided further that where such fault or defect is of such a nature that it may indicate negligence on the part of a registered person, the inspector, approved inspection authority for electrical installations or supplier shall forthwith report those circumstances in writing to the chief inspector.

Liability of Suppliers

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

In the matter between:

ESKOM HOLDINGS LTD

and

JACOB JOHANNES HENDRICKS obo
J.J.H

Reportable
Case no: 262/2004

Appellant

Coram

Respondent

Date of Hearing :

SCOTT, STREICHER, BRAND, LEWIS
et MLAMBO JJA

Date of delivery :

3 MAY 2005
27 MAY 2005

Summary: Child of 11 years climbing pylon supporting high voltage power lines – negligence of Eskom – failure to take reasonable steps to prevent harm to the public – especially children – anti-climbing device inadequate in the circumstances – child attempting to touch glass insulators – shocked impulsive behaviour indicative of absence of delictual capacity.

Eskom vs Hendricks

[8] Section 26 of the Electricity Act 41 of 1987 provides:

□e26. In any civil proceedings against an undertaker arising out of damage or injury caused by induction or electrolysis or in any other manner by means of electricity generated or transmitted by or leaking from the plant or machinery of any undertaker, such damage or injury shall be presumed to have been caused by the negligence of the undertaker, unless the contrary is proved.'

It is common cause that Eskom is an 'undertaker' as defined in the Electricity Act and that J.' injuries were caused by means of electricity transmitted by Eskom's 'plant or machinery' in the form of the high voltage power lines. The effect of the section therefore is that Eskom bore the onus of proving on a balance of probabilities that it was not negligent or, if it was, that there was no causal link between that negligence and the injuries sustained by J.. It was also common cause that in the event of Eskom being found to have been negligent, its conduct would have been wrongful. In other words, Eskom owed a legal duty to would-be climbers of its pylons to act without negligence, ie to take such steps, if any, as may have been reasonable in the circumstances to prevent them from suffering harm. (See *Gouda Boerdery BK v Transnet Ltd* **[2004] 4 All SA 500** (SCA) para 12.)

<https://www.saflii.org/za/cases/ZASCA/2005/46.html>

[10] What remains of the inquiry regarding Eskom's alleged negligence, therefore, is what is generally referred to as the second leg of the inquiry, namely whether a reasonable person would have taken steps to guard against the danger and, if so, whether the steps taken by the defendant were reasonable in the circumstances. What is to be regarded as reasonable must depend upon a consideration of all the relevant circumstances. It is inappropriate to place any limitation on these, but the inquiry would ordinarily involve a consideration of:

□e(a) the degree or extent of the risk created by the actor's conduct; (b) the gravity of the possible consequences if the risk of harm materialises; (c) the utility of the actor's conduct, and (d) the burden of eliminating the risk of harm.

[12] The debate in this court as to whether Eskom was negligent or not ultimately centred around whether the ADC it installed on the pylon in question was one which was reasonable in the circumstances. As I have indicated, both the NRS code and the Electrical Machinery Regulations require lattice-type pylons to be 'adequately protected'. However, neither provides an indication of what is to be regarded as adequate. Nonetheless, this requirement of the industry does provide some assistance.

[13] It was emphasized in evidence and argued before us that it would be virtually impossible to erect a barrier that was impenetrable. That is no doubt so, but it is not suggested that the ACD should have been impenetrable. In the present case, J. was able to pass through the ACD simply by pushing the wire out of the grooves. He required no tool to do so, not even an ordinary pair of household pliers. The evidence suggests that the device hardly retarded his progress up the tower. Some eight years later, Professor Reynders, who described himself as about to retire, was similarly able to push the wire out of the grooves and climb through the device 'without any difficulty'. The angle at which the grooves were cut is indicative of a design that was intended to prevent the device from being dismantled in this way. But whether it was possible to do so by reason of faulty design or improper installation need not be decided. The point is that although formidable in appearance, the device in reality did not constitute an effective barrier. Nor could it be contended that, although properly installed, the wire had become slack with the passage of time. Mr Arthur Gullan, a former employee of Eskom who gave evidence on its behalf, testified that the wire would not become slack of its own accord. In the circumstances, the device installed by Eskom cannot in my view be regarded as having 'adequately' protected the pylon within the meaning of the regulations and the NRS code. If for any reason the barbed wire could not have been made sufficiently taut, it would have been a simple matter to affix it to the horizontal bars at each groove. This could have been done at very little cost and effort. Perhaps the simplest (but not the only) method would have been to use binders of the kind that one encounters in an ordinary fence. In that event, a child, or other aspirant climber, would at least have had to go to the extent of arming himself with a tool of some kind to dismantle the device. In my judgment a reasonable person would at least have ensured that the ACD could not be dismantled simply by pushing the wire out of one or more of the grooves. Indeed, it is not without significance that in the case of the devices fitted to the pylons belonging to the Cape Town City Council, the strands of barbed wire are made fast to the horizontal bars so that they can not simply be pushed out of the way.

[14] It follows, therefore, that in my view Eskom failed to rebut the presumption of negligence. On the contrary, negligence on its part was established on the evidence. Eskom's appeal must accordingly fail.

Occupational Health and Safety Act

- The Occupational Health and Safety Act imposes duties and obligations on “employers” and “employees”
- (note the definitions expand the terms of employer and employees)
- The Occupational Health and Safety Act imposes obligation not only for the care of employees, but for any other person that might be affected by the operation of the enterprise, the conduct of employees or contractors
- The Occupational Health and Safety Act holds the CEO of any organization, as well as the State, personally liable for the execution of the duties imposed by the Act

Section 8- General Duty of the Employer

General duties of employers to their employees

8. (1) Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.

(2) Without derogating from the generality of an employer's duties under subsection (1), the matters to which those duties refer include in particular—

- (a) the provision and maintenance of systems of work, plant and machinery that, as far as is reasonably practicable, are safe and without risks to health;
- (b) taking such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of employees, before resorting to personal protective equipment;
- (c) making arrangements for ensuring, as far as is reasonably practicable, the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transport of articles or substances;
- (d) establishing, as far as is reasonably practicable, what hazards to the health or safety of persons are attached to any work which is performed, any article or substance which is produced, processed, used, handled, stored or transported and any plant or machinery which is used in his business, and he shall, as far as is reasonably practicable, further

Section 37(2) –Liability for contractors

Acts or omissions by employees or mandataries

37. (1) Whenever an employee does or omits to do any act which it would be an offence in terms of this Act for the employer of such employee or a user to do or omit to do, then, unless it is proved that— 5

- (a) in doing or omitting to do that act the employee was acting without the connivance or permission of the employer or any such user;
- (b) it was not under any condition or in any circumstance within the scope of the authority of the employee to do or omit to do an act, whether 10
lawful or unlawful, of the character of the act or omission charged; and
- (c) all reasonable steps were taken by the employer or any such user to prevent any act or omission of the kind in question,

the employer or any such user himself shall be presumed to have done or omitted to do that act; and shall be liable to be convicted and sentenced in respect thereof; 15
and the fact that he issued instructions forbidding any act or omission of the kind in question shall not, in itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

(2) The provisions of subsection (1) shall *mutatis mutandis* apply in the case of a mandatary of any employer or user, except if the parties have agreed in writing 20
to the arrangements and procedures between them to ensure compliance by the mandatary with the provisions of this Act.

(3) Whenever any employee or mandatary of any employer or user does or omits to do an act which it would be an offence in terms of this Act for the employer or any such user to do or omit to do, he shall be liable to be convicted 25
and sentenced in respect thereof as if he were the employer or user.

(4) Whenever any employee or mandatary of the State commits or omits to do an act which would be an offence in terms of this Act, had he been the employee or mandatary of an employer other than the State and had such employer committed or omitted to do that act, he shall be liable to be convicted and 30
sentenced in respect thereof as if he were such an employer.

Section 14- General Duty of the Employees

General duties of employees at work

14. Every employee shall at work—

- (a) take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions;
- (b) as regards any duty or requirement imposed on his employer or any other person by this Act, co-operate with such employer or person to enable that duty or requirement to be performed or complied with;
- (c) carry out any lawful order given to him, and obey the health and safety rules and procedures laid down by his employer or by anyone authorized thereto by his employer, in the interest of health or safety;
- (d) if any situation which is unsafe or unhealthy comes to his attention, as soon as practicable report such situation to his employer or to the health and safety representative for his workplace or section thereof, as the case may be, who shall report it to the employer; and
- (e) if he is involved in any incident which may affect his health or which has caused an injury to himself, report such incident to his employer or to anyone authorized thereto by the employer, or to his health and safety representative, as soon as practicable but not later than the end of the particular shift during which the incident occurred, unless the circumstances were such that the reporting of the incident was not possible, in which case he shall report the incident as soon as practicable thereafter.

Section 47- Binds the state

State bound

47. This Act shall bind the State.

Duties & obligations of Suppliers & Manufactures

Section 10 OHSA

10. General duties of manufacturers and others regarding articles and substances for use at work

- (1) Any person who designs, manufactures, imports, sells or supplies any article for use at work shall ensure, as far as is reasonably practicable, that the article is safe and without risks to health when properly used and that it complies with all prescribed requirements.
- (2) Any person who erects or installs any article for use at work on or in any premises shall ensure, as far as is reasonably practicable, that nothing about the manner in which it is erected or installed makes it unsafe or creates a risk to health when properly used.
- (3) Any person who manufactures, imports, sells or supplies any substance for use at work shall—
 - (a) ensure, as far as is reasonably practicable, that the substance is safe and without risks to health when properly used; and
 - (b) take such steps as may be necessary to ensure that information is available with regard to the use of the substance at work, the risks to health and safety associated with such substance, the conditions necessary to ensure that the substance will be safe and without risks to health when properly used and the procedures to be followed in the case of an accident involving such substance.

Duties & obligations of Suppliers & Manufactures Section 10 OHSA

- (4) Where a person designs, manufactures, imports, sells or supplies an article or substance for or to another person and that other person undertakes in writing to take specified steps sufficient to ensure, as far as is reasonably practicable, that the article or substance will comply with all prescribed requirements and will be safe and without risks to health when properly used, the undertaking shall have the effect of relieving the first-mentioned person from the duty imposed upon him by this section to such an extent as may be reasonable having regard to the terms of the undertaking.

Section 9 –OHSA – General Duty on any enterprise

General duties of employers and self-employed persons to persons other than their employees 25

9. (1) Every employer shall conduct his undertaking in such a manner as to ensure, as far as is reasonably practicable, that persons other than those in his employment who may be directly affected by his activities are not thereby exposed to hazards to their health or safety. 30

(2) Every self-employed person shall conduct his undertaking in such a manner as to ensure, as far as is reasonably practicable, that he and other persons who may be directly affected by his activities are not thereby exposed to hazards to their health or safety.

Section 22 –a Sellers duty in OHSA

Sale of certain articles prohibited

22. Subject to the provisions of section 10(4), if any requirement (including any health and safety standard) in respect of any article, substance, plant, machinery or health and safety equipment or for the use or application thereof has been prescribed, no person shall sell or market in any manner whatsoever such article, substance, plant, machinery or health and safety equipment unless it complies with that requirement. 20

User

- The user/lessor is the person in control of the use and access to the installation.
- The user/lessor bears the responsibility for the safety of the electrical installation. (EIR 2)
- The user/lessor must be in possession of a valid CoC- (*See EIR 7(1)*)
- No one is person(suppliers) may supply electricity to an installation unless that installation has been inspected by a registered person and a CoC has been issued (See EIR 8)

Registered person

- Is a person registered with the Department of Employment and Labour- either as IE, MIE or Single-phase tester.
- Only a registered person may issue a Certificate of Compliance. There is a limitation on the scope of the certificate in the event of a single-phase tester.
- Must exercise general control over the installation and be in the employment of the Electrical Contractor.
- A registered person must produce his certificate of registration to any person he/she intends to issue a certificate of compliance.

Registered person – EIR 11

11. Application for registration as a registered person

- (1) An application for registration as a registered person shall be made to the chief inspector in the form of Annexure 5 together with the registration fee prescribed by regulation 14.
- (2) Any natural person who satisfies the chief inspector that he or she—
 - (a) has sufficient knowledge of the rules applicable to electrical installations in the category for which the application is being made; and
 - (b) has appropriate practical experience in respect of the electrical installation, verification and certification of the construction, testing and inspection of the type of electrical installation for which application is being made,shall be registered as an electrical tester for single phase, an installation electrician, or a master installation electrician, as the case may be.
- (3) The chief inspector shall furnish a registered person with the appropriate certificate of registration and enter such registration into the national database.
- (4) A registered person shall on request produce his or her certificate of registration to an inspector, an approved inspection authority for electrical installations, a supplier or any person to whom he or she intends to issue a certificate of compliance.

Electrical Contractor

- Must register with the Department of Employment and Labour
- Must have a registered person in their full time employment
- Must provide a CoC for the electrical installation work

Electrical Contractor – EIR 6

6. Electrical contractor

- (1) No person may do electrical installation work as an electrical contractor unless that person has been registered as an electrical contractor in terms of these Regulations.
- (2) Any person who does electrical installation work as an electrical contractor shall register annually in the form of Annexure 3 with the chief inspector or a person appointed by the chief inspector.
- (3) An application for registration as referred to in subregulation (2) shall be accompanied by the fee prescribed by regulation 14.
- (4) The chief inspector or a person appointed by the chief inspector shall register any person referred to in subregulation (1) as an electrical contractor and enter such registration into the national database: Provided that such person—
 - (a) has a fixed address and a telephone; and
 - (b) employs a registered person in a full-time capacity, or is himself or herself a registered person.

Offences and penalties – Sec 38 of OHSA

Offences, penalties and special orders of court

38. (1) Any person who—

- (a)** contravenes or fails to comply with a provision of section 7, 8, 9, 10(1), 40
(2) or (3), 12, 13, 14, 15, 16(1) or (2), 17(1), (2) or (5), 18(3), 19(1), 20(2)
or (4), 22, 23, 24(1) or (2), 25, 26, 29(3), 30(2) or (6), 34 or 36;
- (b)** contravenes or fails to comply with a direction or notice under section
17(6), 19(4) or (7), 21(1) or 30(1)(a), (b) or (c) or (3), (4) or (6);
- (c)** contravenes or fails to comply with a condition of an exemption under 45
section 40(1);
- (d)** in any record, application, statement or other document referred to in
this Act wilfully furnishes information or makes a statement which is
false in any material respect;
- (e)** hinders or obstructs an inspector in the performance of his functions; 50
- (f)** refuses or fails to comply to the best of his ability with any requirement
or request made by an inspector in the performance of his functions;
- (g)** refuses or fails to answer to the best of his ability any question which an
inspector in the performance of his functions has put to him;

Offences and penalties -EIR

15. Offences and penalties

Any person who contravenes or fails to comply with any of the provisions of regulations 3(3), 4, 5, 6(1), 7, 8, 9, 11 (4) and 11(5) shall be guilty of an offence and liable upon conviction to a fine or to imprisonment for a maximum period of 12 months and, in the case of a continuous offence, to an additional fine of R200.00 for each day on which the offence continues or to additional imprisonment of one day for each day on which the offence continues: Provided that the period of such additional imprisonment shall not exceed 90 days.

Liability of suppliers & Manufactures under the CPA

Liability for damage caused by goods

61. (1) Except to the extent contemplated in subsection (4), the producer or importer, distributor or retailer of any goods is liable for any harm, as described in subsection (5), 40 caused wholly or partly as a consequence of—

- (a) supplying any unsafe goods;
 - (b) a product failure, defect or hazard in any goods; or
 - (c) inadequate instructions or warnings provided to the consumer pertaining to 45 any hazard arising from or associated with the use of any goods,
- irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor or retailer, as the case may be.

Liability of suppliers & Manufactures under the CPA

Liability for damage caused by goods

61. (1) Except to the extent contemplated in subsection (4), the producer or importer, distributor or retailer of any goods is liable for any harm, as described in subsection (5), 40 caused wholly or partly as a consequence of—

- (a) supplying any unsafe goods;
- (b) a product failure, defect or hazard in any goods; or
- (c) inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods, 45

irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor or retailer, as the case may be.

(2) A supplier of services who, in conjunction with the performance of those services, applies, supplies, installs or provides access to any goods, must be regarded as a supplier of those goods to the consumer, for the purposes of this section.

(3) If, in a particular case, more than one person is liable in terms of this section, their liability is joint and several.

Duty of care –Property Practitioners Act

Consumer education and information

69. (1) The Authority must from time to time conduct campaigns to educate and inform the general public of their rights in respect of property transactions and property practitioners of their functions, duties and obligations.

(2) A property practitioner owes a buyer and a seller a duty of care.

Deeds Registries Act- Conveyancers

15A. Proof of certain facts in connection with deeds and ~~documents by means of certain certificates~~.—(1) A conveyancer who prepares a deed or other document for the purposes of registration or filing in a deeds registry, and who signs a prescribed certificate on such deed or document, accepts by virtue of such signing the responsibility, to the extent prescribed by regulation for the purposes of this section, for the accuracy of those facts mentioned in such deed or document or which are relevant in connection with the registration or filing thereof, which are prescribed by regulation.

(2) The provisions of subsection (1) shall apply mutatis mutandis to any person other than a conveyancer—

(a) who is prescribed by regulation; or

(b) who is authorized by any other law to prepare a deed or other document for registration or filing in a deeds registry, and who has in accordance with the regulations prepared a deed or other document for registration or filing in a deeds registry.

(3) A registrar shall accept, during the course of his examination of a deed or other document in accordance with the provisions of this Act, that the facts referred to in subsection (1) in connection with the registration or filing of a deed or other document in respect of which a certificate referred to in subsection (1) or (2) has been signed, have for the purposes of such examination been conclusively proved: Provided that the foregoing provisions of this subsection shall not derogate from the obligation of a registrar to give effect to any order of court or any other notification recorded in the deeds registry in terms of this Act or any other legal provision, and which affects the registration or filing of such deed or other document.

Case Studies

Dempsey v Ncube and Others (48584/2017) [2022] ZAGPPHC 81 (7 February 2022)



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED
DATE: 7th February 2022
SIGNATURE: [Redacted]

In the matter between:

DEMPSEY, SAMANTHA

And

NCUBE, VELAPHI MAZILAKANTLA
DEMBO, MARK

THE BODY CORPORATE OF THE SECTIONAL TITLE
SCHEME KNOWN AS STONEBROOK
CARR, DAVID ALLAN

Case No. 48584/20

PLAINTIFF

1st DEFENDANT

2nd DEFENDANT

3rd DEFENDANT

Case Studies

Summary: Law of delict – liability for electrocution of minor child – *nova causa interveniens* breaking chain of causation between negligent first defendant and electrocution - second defendant's agent / employee informed of danger but failing to convey knowledge to him or take any steps to mitigate harm – third party's employees switching electricity back on despite knowing of danger – agent/employee's knowledge of danger imputed to second defendant – liability established and declaratory order granted against the third party.

Case Studies

Dempsey v Ncube and Others (48584/2017) [2022] ZAGPPHC 81 (7 February 2022)

- Reiterates the common law position that the degree of reasonable duty of care is dictated by the presence of abnormally high risks and especial vulnerabilities of the situation.
- Reiterates the legal doctrine that the concept of personal duty departs from the basic principles of liability in negligence by substituting of the duty of reasonable care for a more stringent duty – a duty to ensure that reasonable care is taken.
- The case did not consider the sections of the OHSA but emphasize the legal principles that the OHSA is imposing on the parties.

Joubert vs Buscor


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, PRETORIA

CASE NUMBER: 2013/13116

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES:
(3)	YES/NO REVISED.
SIGNATURE <i>[Signature]</i>	
DATE <i>9/12/2016</i>	

In the matter between:
ILANA CEDAR JOUBERT
and
BUSCOR PROPRIETARY LIMITED

Applicant
Respondent

[1] The plaintiff seeks the court's leave to amend Particulars of Claim in proceedings instituted against the defendant. She seeks to recover the past and future loss of earnings due to her as well as to her two minor children. The loss follows the death of her husband ('the deceased'). The plaintiff alleges that the defendant requested or permitted or allowed the deceased to enter a sump with a submersible pump. The sump is a confined oxygen-deficient space with oil, toxic, hazardous vapour, dust, and fumes. As a consequence of the exposure, the deceased suffered severe injuries to his central nervous system leading to his death.

[2] At the time, the deceased, held the position of an apprentice with Lira Electrical CC ('the close corporation'). The close corporation was in turn contracted by the defendant to carry out electrical, mechanical repairs and maintenance of equipment owned by the defendant, situated at the defendant's premises and depot.

APPLICABLE LEGAL PRINCIPLES

[14] It is essential to refer to the provisions of OHSA as a starting point, to deal with the argument by the respondent, that the deceased in turn his dependents cannot institute a claim for compensation against the respondent for want of a direct employment relationship.

Is applicant excluded from instituting a claim against the employer by OHSA?

[15] I am in agreement in part with the respondent that the scheme of OSHA is to ensure preventative measures against health and safety hazards and injuries. OSHA provides for reciprocal obligations by employers and employees as well as joint governance structures for workplace safety through safety committees.^[9]

[16] The submission that, the deceased, an erstwhile employee of a subcontractor, is not owed a duty of care derives from a common-law principle evident in *PeriUrban Areas Health Board v Munarin*^[10]. The court in *Peri-Urban* held that a duty of care is not owed to workers of a contractor unless the terms of a contract or other factors create a duty. This common law principle predates OHSA. Consequently, a reference to some of the provisions of OHSA is necessary. The preamble to the act refers to the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with activities of persons at work.

[17] Section 9(1) of OSHA imposes general duties on employers towards other persons other than employees^[11] over and above duties of employees at work^[12] for workplace health and safety. The section refers to 'persons other than those in his employment' who are owed the general duty and protection. In my view, the wording of sec 9(1) is broad enough to include subcontractors like the deceased and the public at large if they may be affected by the employer's activities.

[21] As a result of the factors above, I part ways with the restricted interpretation argued by the respondent. It is not a tenable one. It would lead to an absurd result which precludes not only employees but third parties and the public at large from instituting civil claims for workplace-related health and safety injuries against An employer. Activities of an enterprise extend beyond employees and may include families and surrounding communities where the enterprise operates. OHSA was not only enacted for the benefit of employees but for the benefit of third parties and the public. I am satisfied that the applicant's right of action or that of a third party who is not an employee enjoys protection, and is thus not limited.

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[35] Given that the standard of care is already hard wired in OHSA together with the regulations, any existing fault (whether dolus or culpa) is inherent and can be inferred from the failure to meet the prescribed standard if it is found to be so from the facts. Furthermore, the enacted measure of reasonableness touches squarely on the extent of the employer's negligence or otherwise. I must accept that the effect of section 37 of OHSA is that the onus would be shifted to the respondent to demonstrate the reasonable measures taken. In my view, the absence of negligence on the part of the respondent will be an inherent component of discharging the onus of proving that it took the reasonable measures required of it. Under such circumstances, in a claim based on the breach of the provisions of OHSA, it would not be necessary to deal with negligence separately. It will be inherent or can be inferred from the failure to meet the prescribed standard should the failure be proved. Thus, an employer would not be deprived of showing an absence of negligence on its part as contended. To hold to the contrary would result in yet another absurdity. The complaint by the respondent is not well founded.

Section 39 -OHSA

Proof of certain facts

39. (1) Whenever in any legal proceedings in terms of this Act it is proved that any person was present on or in any premises, that person shall, unless the contrary is proved, be presumed to be an employee.

(2) In the absence of satisfactory proof of age, the age of any person shall, in any legal proceedings in terms of this Act, be presumed to be that stated by an inspector to be in his opinion the probable age of the person; but any person having an interest who is dissatisfied with that statement of opinion may, at his own expense, require that the person whose age is in question appear before and be examined by a district surgeon, and a statement contained in a certificate by a district surgeon who examined that person as to what in his opinion is the probable age of that person shall, but only for the purpose of the said proceedings, be conclusive proof of the age of that person.

(3) In any legal proceedings in terms of this Act, any statement or entry contained in any book or document kept by any employer or user or by his employee or mandatary, or found on or in any premises occupied or used by that employer or user, and any copy or reproduction of any such statement or entry, shall be admissible in evidence against him as an admission of the facts set forth in that statement or entry, unless it is proved that that statement or entry was not made by that employer or user or by any employee or mandatary of that employer or user within the scope of his authority.

Section 39 -OHSA

or user within the scope of his authority.

→ (4) Whenever in any legal proceedings in terms of this Act it is proved that any untrue statement or entry is contained in any record kept by any person, he shall be presumed, until the contrary is proved, wilfully to have falsified that record.

(5) (a) Whenever at the trial of any person charged with a contravention of section 22 it is proved that the accused sold or marketed any article, substance, plant, machinery or health and safety equipment contemplated in that section, it shall be presumed, until the contrary is proved, that such article, substance, plant, machinery or health and safety equipment did not at the time of the sale or marketing thereof comply with the said requirements. 25 30

(b) At any trial any document purporting to be a certificate or statement by an approved inspection authority and in which it is alleged that the article, substance, plant, machinery or health and safety equipment forming the subject of the charge complies with the requirements prescribed in respect thereof or with any particular standard, shall on its mere production at that trial by or on behalf of the accused be accepted as *prima facie* proof of the facts stated therein. 35

(6) Notwithstanding the provisions of section 31(3) of the Standards Act, 1993 (Act No. 29 of 1993), whenever in any legal proceedings in terms of this Act the question arises whether any document contains the text of a health and safety standard incorporated in the regulations under section 44, any document purporting to be a statement by a person who in that statement alleges that he is an inspector and that a particular document contains the said text, shall on its mere production at those proceedings by any person be *prima facie* proof of the facts 40

Conclusion

Municipality and Electricity Suppliers

Users

Designers

Responsible person

Manufactures, designers, importers

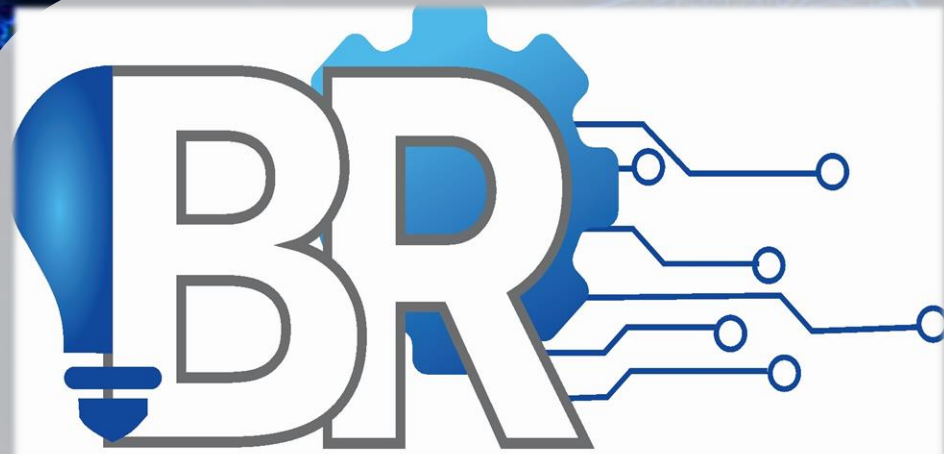
Electrical Contractors

Employees in general

Employers

Conclusion

Any questions?



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employment & labour

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REPUBLIC OF SOUTH AFRICA

APPROVED INSPECTION AUTHORITY No: CI 0015 EIR



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