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COURT FORCED TO GO VIRTUAL

No power and no reliable generator at one of the country's busiest courts

By FRANNY RABKIN, SABELO SKITI, GILL GIFFORD, AMANDA KHOZA and KGOTHSO MADISA

● The deputy judge president of one of South Africa's busiest courts has directed most of the court's hearings to be conducted virtually because of load-shedding and the "failure of the office of the chief justice (OCJ) and the department of public works to provide a reliable generator".

The Gauteng judiciary voiced frustration at stage 6 load-shedding and its blackouts of up to 11 hours a day through deputy judge president Roland Sutherland, who apologised for the "grossly inadequate service being made available to the litigating public".

He told the Sunday Times that the move to mostly virtual hearings at the Johannesburg high court was the result of a "total failure of management, by bureaucrats ... who are too far away from the fire to feel the heat".

Sutherland said the court's generator had been acting up for some time. In the past two days he was told it was overheating. The court was still in recess and only a few courts were operating. "So you can only imagine what draw there will be on the energy when we come back full time," he said.

Sutherland said the OCJ refused to have a dedicated service provider appointed to maintain the generator. Every time it failed, the court's manager had to phone the OCJ, "who, in turn, phones the department of public works, who then picks the next subcontractor on their list", he said.

The Gauteng division of the high court is South Africa's busiest, carrying an estimated 40% of the country's caseload.

Sutherland said there were some types of court hearings that could optimally be conducted virtually.

But there were others where virtual hearings were not ideal and some – in particular criminal trials – where in-person hearings were the only option, unless circumstances were truly exceptional.

He said load-shedding meant the criminal courts stopped work at 1pm. "So you're losing half a day, times six courts," said Sutherland.

There was already a backlog in the criminal trial roll with a wait of between two to three years from the date of arrest until the date a trial starts, he said. And, "with the nature of crimes at the high court", most of the accused people are in custody.

Sutherland said the head of Johannesburg Prison had recently visited and implored him to speak to his judges because the prison was more than 100% overcrowded.

"So that's another source of depression," he said.



Deputy judge president Roland Sutherland

Sutherland said there were other disadvantages to virtual hearings – it was burdensome on judges but more so on the judges' administrative staff, who worked "into the night" to ensure smooth virtual hearings. It was also hard on young lawyers, who depend on being seen doing credible work in court to grow their practices.

Gauteng judge president Dunstan Mlambo said the Pretoria high court was situated in an area that did not get load-shedding, so it was not affected in the same way.

Mlambo said the Johannesburg high court has two generators. The first one works but overheats when it runs for more than two hours, which is when the other one is supposed to kick in. But that one is faulty and he hopes "public works will provide us with a new generator".

Mlambo said he did not believe the OCJ, which relies on public works, is to blame.

The OCJ said the two generators, installed in 2009, are "functional". It said it relies on the department of public works & infrastructure "to plan and schedule maintenance and attend to repairs when the need arises".

However, public works said the generator it provided to the high court "is reliable". It was unclear which of the two generators the department was referring to.

"The only problem with it is the issue of fuel," the department said, adding in a statement yesterday that the "client" is responsible for buying fuel and ensuring the generator does not run out of diesel, which it failed to "procure timeously".

"As we understand it, they are still waiting for an order. Once the diesel is on site [the department] will go and refill the diesel and switch on the generator."

Just 15 days into 2023, rolling blackouts are at record levels for January, prompting concern that once demand increases from March towards winter, Eskom may be forced to add even higher states of load-shedding with more hours without electricity.

This week, Cosatu entered the fray, criticising the National Energy Regulator of



Gauteng judge president Dunstan Mlambo

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Blackouts force Joburg high court to go virtual

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South Africa for giving Eskom an 18.65% price hike for the year (see Business Times).

It also said Eskom's outgoing CEO André de Ruyter should be asked to remain until a suitable replacement could be found.

Presidential spokesperson Vincent Magwenya said President Cyril Ramaphosa had convened the National Energy Crisis Committee on Friday and pushed for more urgency and speed.

"Teams are working together across all relevant areas of government and Eskom, and there is progress being made. However, the levels of collaboration are not enough for the president. He is demanding more collaboration, action, urgency and speed in realising the national energy plan and mitigating the current devastating load-shedding," Magwenya said.

"There are elements of the energy plan that were announced in July last year, some of them could have been expedited and implemented much quicker," he added.

On Wednesday afternoon, Eskom announced that because of failures at 11 generating units at Camden, Duvha, Grootvlei, Hendrina, Kendal, Kriel, Majuba and Matla power stations, a further 5,084MW of power was lost to the grid, plunging the country into stage 6 load-shedding with less than two hours' notice.

Energy expert Lungile Mashele said the sudden breakdown of so many generating units showed that Eskom was continuing to run its plants hard, despite their unreliability and age. She referred to a concession made by COO Jan Oberholzer in Eskom's annual financial statements issued in December that the power utility was not doing enough reliability maintenance and was instead putting plaster on wounds.

In November, Eskom said money for maintenance was a critical challenge.



**Eskom's outgoing CEO
André de Ruyter**

"We actually don't know what is happening there," Mashele said. "I was sure that they were doing reliability maintenance at the beginning of the year because that's what they said, but Jan's report says they've not done it for over two years. When you speak to the original equipment manufacturers, they will tell you that no-one is doing boiler maintenance."

"If you look at the energy utilisation factor right now, it's high, and they have admitted that they are running the plant hard, otherwise you would have higher stages of load-shedding. What they have accused their predecessors of – running the plants hard – is exactly what they are doing now," she said.

Increased load-shedding has wreaked havoc with damage to electrical appliances and insurance companies are increasingly reluctant to pay for the damage.

The ombudsman for short-term insurance said complaints related to claims for damage caused by power surges increased from 3% in 2018 to 16% in 2021.

"With the country continuously dealing with load-shedding and power outages, [the ombud] recommends that consumers review their policy documents to ensure they enjoy cover for damage caused by a power surge. Some household contents insurance policies do not include this cover, while others may only cover power surge damage for an additional premium if it is requested."

Outsurance spokesperson Natasha Kawulesar said while they covered appliances damaged by power surges, there had been a notable increase in such claims.

Consumer rights journalist Wendy Knowler advised consumers to check their policies.

"Not all insurance companies do the same thing. Some will not even entertain a claim unless you can show you had surge protection. There has been a big increase in these kinds of claims and the insurers have cottoned on to this and made it more difficult for people to claim," she said.