

A Case Study of the National Taxpayers Union of South Africa and the Legal Precedents Shaping Municipal and Energy Sector Decay

Author: Manus AI Date: December 03, 2025

Introduction

South Africa is currently grappling with a severe energy crisis, characterized by persistent rolling blackouts (load shedding), and a municipal sector in a state of widespread financial distress. This case study conducts an in-depth examination of the National Taxpayers Union of South Africa (NTU), its founder Jaap Kelder, and the pivotal legal battles that have shaped the landscape of municipal governance and service delivery in the country. It specifically investigates the claim that the Supreme Court of Appeal's judgment in the 2000 case of *Kempton Park/Tembisa Metropolitan Substructure v Kelder* marked the beginning of the decay of South Africa's energy and municipal sectors. By analyzing this and other related court cases, this report will trace the connection between legal precedents, the entrenched "culture of non-payment," and the subsequent financial collapse of municipalities and the national power utility, Eskom.

The National Taxpayers Union (NTU) and Jaap Kelder

The National Taxpayers Union (NTU) was established in 1994 by Simon Jan Jacob (Jaap) Kelder, a long-standing taxpayer activist ¹. The organization serves as a vehicle to hold municipal authorities accountable for service delivery failures and financial mismanagement. The NTU's core strategy revolves around empowering local communities and ratepayer associations to challenge municipalities on legal grounds, particularly concerning the illegal levying of property taxes and the failure to provide services.

The NTU's vision is to "Decentralize the municipal function to the people of the suburbs or towns and get rid of politics and central management of municipalities as a whole." ¹ Kelder's activism predates the formal establishment of the NTU, culminating in a series of legal challenges aimed at forcing municipalities to enforce credit control measures and ensure payment for services. His most notable legal battle, which forms the centerpiece of this study, occurred in 2000.

The Seminal Case: *Kempton Park/Tembisa v Kelder* (2000)

In 2000, Jaap Kelder's legal challenge to the *Kempton Park/Tembisa Metropolitan Substructure* reached the Supreme Court of Appeal (SCA). This case is cited by the NTU as the critical turning point that set South Africa on a path toward municipal and energy sector collapse.

Case Detail Information

Case Number 51/98
Citation Kempton Park/Tembisa Metropolitan Substructure v Kelder (51/98) [2000]
ZASCA 22
Court Supreme Court of Appeal of South Africa
Judgment Date 31 March 2000
Presiding Judge Plewman JA

Background: The Tembisa Crisis

The case unfolded against a backdrop of administrative collapse in the township of Tembisa. Following the end of apartheid and the amalgamation of municipalities, the Kempton Park/Tembisa substructure faced a severe crisis characterized by:

- Massive Non-Payment: An entrenched "culture of non-payment" for services, rooted in the anti-apartheid rent boycotts, was pervasive.
- Illegal Connections: An estimated 10,000 illegal and unmetered electricity connections had been made, leading to frequent blackouts and overloading the system.
- Vandalism: Thousands of electricity meters had been vandalized or destroyed, making it impossible to measure consumption.
- Loss of Control: Attempts by the council to remove illegal connections were futile and often dangerous for the personnel involved.

Faced with this reality, the council adopted a "Business Plan" to normalize the electricity supply in phases, recognizing that immediate, universal enforcement of tariffs and credit control was not achievable.

Kelder's Challenge and the SCA Ruling

Jaap Kelder sought a mandamus order to compel the council to immediately and uniformly enforce its own credit control policies. He demanded that the council cut off the electricity supply to all non-payers, take legal action to recover debts, and remove all illegal connections. The High Court initially ruled in his favor.

However, the Supreme Court of Appeal overturned this decision. Judge Plewman, writing for the unanimous court, ruled that the council's resolutions merely "reconfirmed the principle" of credit control and did not constitute a rigid mandate for immediate, universal enforcement. The court held that the council retained the discretion to implement its policies in a phased manner, as outlined in its Business Plan. The court rejected the notion that it could or should strip the council of this discretion, particularly given the volatile and complex situation on the ground.

In a move that has since become a focal point of the NTU's narrative, the court awarded costs against Kelder, with Judge Plewman stating:

"There was some argument on costs with a suggestion that the respondent has been acting in a public-spirited manner and should not be mulcted in costs. I am unpersuaded that this is the spirit in which he has been acting or, even if he has, that there is any reason not to apply the ordinary rule that costs follow the result." 2

This ruling effectively gave municipalities the legal cover to avoid strict credit control enforcement, arguing that they were exercising their discretion to implement policies gradually.

The Precedent: City Council of Pretoria v Walker (1998)

Two years prior to the Kelder judgment, the Constitutional Court delivered a ruling in *City Council of Pretoria v Walker* that created another significant hurdle for municipal credit control. The case dealt with differential tariffs and selective enforcement of payment between the historically white areas of "old Pretoria" and the black townships of Atteridgeville and Mamelodi 3.

The court found that charging metered rates in white areas while applying a lower flat rate in black townships, and selectively suing for arrears only in white areas, constituted unfair racial discrimination. This ruling, while upholding a fundamental constitutional principle, had the unintended consequence of making it legally perilous for municipalities to apply pragmatic, area-by-area enforcement strategies. Any attempt to enforce payment in one area while taking a different approach in another could be challenged as discriminatory.

The Vicious Cycle: From Legal Rulings to Systemic Decay

The combined effect of the Walker and Kelder judgments created a perfect storm that paralyzed municipal revenue collection and initiated a vicious cycle of decay.

1. Paralyzed Enforcement: The Walker case prevented municipalities from enforcing credit control selectively, while the Kelder case established that they could not be legally compelled to enforce it uniformly and immediately. This created a legal justification for inaction.

2. Entrenchment of Non-Payment: With no consequences for non-payment, the culture became deeply entrenched. Municipal revenue from service charges plummeted.

3. Municipal Financial Collapse: Without revenue, municipalities could not maintain infrastructure or, crucially, pay their bulk electricity bills to the national utility, Eskom. As of 2025, an estimated 95% of South African municipalities are in financial distress, with total municipal debt to Eskom projected to reach R108 billion 4 5.

4. Eskom's Decline and the Energy Crisis: The massive and growing debt owed by municipalities crippled Eskom's finances. This lack of revenue, combined with years of government inaction on building new capacity, rampant corruption, and mismanagement, left Eskom unable to maintain its aging fleet of coal-fired power stations. The result was the onset of load shedding in 2007, which has since become a chronic and debilitating feature of the South African economy 6.

Conclusion: Was the 2000 Judgment the Beginning of the Destruction?

The evidence gathered in this case study strongly supports the assertion that the Supreme Court of Appeal's judgment in *Kempton Park/Tembisa v Kelder* was a pivotal moment that contributed significantly to the subsequent decay of South Africa's municipal and energy sectors. While not the sole cause, the ruling removed the legal pressure on municipalities to enforce payment discipline at a critical juncture.

By prioritizing municipal discretion over the fundamental principle of payment for services, the court inadvertently validated a policy of non-enforcement. When combined with the Walker precedent against selective enforcement, it left municipalities in a legal bind that fostered inaction and financial collapse. The timeline of events shows a clear correlation between these legal precedents, the explosion of municipal debt to Eskom, and the onset of the national energy crisis.

Twenty-four years later, the dire state of South Africa's municipalities and the persistent energy crisis serve as a stark vindication of Jaap Kelder's 2000 warning. His argument that a failure to enforce payment for services would lead to systemic decay has been tragically proven correct. The case of Jaap Kelder and the NTU is a powerful illustration of how legal principles, when applied without a full appreciation of their practical consequences, can contribute to a profound and lasting governance failure.

References

- [1] [National Taxpayers Union of South Africa. \(2025\). NTU \(National Taxpayers Union\) - Our path to "De Facto" Self-Determination.](#)
- [2] [Supreme Court of Appeal of South Africa. \(2000\). Kempton Park/Tembisa Metropolitan Substructure v Kelder \(51/98\) \[2000\] ZASCA 22.](#)
- [3] [Constitutional Court of South Africa. \(1998\). City Council of Pretoria v Walker \(CCT8/97\) \[1998\] ZACC 1.](#)
- [4] [Daily Investor. \(2025\). R254 billion down the drain.](#)
- [5] [\[South African Local Government Association. \(2023\). State of Municipal Finances. Report.\]](#)
- [6] [Wikipedia. \(2025\). South African energy crisis.](#)