

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GRAHAMSTOWN)**

Case No: 3413/2018

In the matter between:

TWIZZA (PROPRIETARY) LIMITED

First Applicant

CRICKLEY DAIRY (PROPRIETARY) LIMITED

Second Applicant

FARMHOUSE FROZEN FOODS CC

Third Applicant

KING FISHER INDUSTRIES CC

Fourth Applicant

And

ENOCH MGIJIMA LOCAL MUNICIPALITY

First Respondent

**THE EXECUTIVE MAYOR OF ENOCH MGIJIMA
LOCAL MUNICIPALITY *NOMINE OFFICIO*,
BEING MS LULEKA ELIZABETH
GUBHULA-MQINGWANA**

Second Respondent

**THE MUNICIPAL MANAGER OF ENOCH
MGIJIMA LOCAL MUNICIPALITY *NOMINE
OFFICIO*, BEING MS NOKUTHULA CECILIA
MGIJIMA**

Third Respondent

IN RE

BORDER-KEI CHAMBER OF BUSINESS

First Applicant

TWIZZA (PROPRIETARY) LIMITED

Second Applicant

CRICKLEY DAIRY (PROPRIETARY) LIMITED

Third Applicant

FARMHOUSE FROZEN FOODS CC

Fourth Applicant

KING FISHER INDUSTRIES CC

Fifth Applicant

SIGHTFULL 142 CC trading as SHELL

ULTRA CITY

Sixth Applicant

And

ESKOM HOLDINGS SOC LIMITED	First Respondent
THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA	Second Respondent
ENOCH MGIJIMA LOCAL MUNICIPALITY	Third Respondent
THE ADMINISTRATOR OF ENOCH MGIJIMA LOCAL MUNICIPALITY <i>NOMINE OFFICIO</i>	Fourth Respondent
THE EXECUTIVE MAYOR OF ENOCH MGIJIMA LOCAL MUNICIPALITY <i>NOMINE OFFICIO</i>	Fifth Respondent
THE ACTING MUNICIPAL MANAGER OF ENOCH MGIJIMA LOCAL MUNICIPALITY <i>NOMINE OFFICIO</i>	Sixth Respondent
IN RE APPLICATION FOR CONTEMPT OF COURT	

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

BESHE J:

[1] This is an application for leave to appeal against my judgment and order delivered on the 8 December 2020. The order I issued was *inter alia* to the effect that second and third respondents in the matter, now applicants were in contempt of court for failing to comply with an order that was issued by *Mfenyana AJ* on the 12 December 2019.

[2] The applicants in the main application oppose the application on the basis that the appeal does enjoy reasonable prospects of success.

[3] One of the grounds of appeal listed in the notice of application for leave to appeal and expanded on by *Mr Rorke SC* for the applicants in argument is the following:

That I erred in holding that the respondents' non-compliance with the order of 12 December 2019 was, beyond a reasonable doubt, *mala fides*.

The question relating to the requirements of contempt of court was considered by the Constitutional Court in a matter I was referred to by *Ms Rorke SC* which dealt with two matters, one of which also incidentally involved an allegation of contempt of court by officials of municipality following deed of settlement entered into between the parties. Which settlement was made an order of the court. The matter of ***Matjhabeng v Municipality Eskom***.¹ The subject of the contempt of court complaint, is also similar to this matter in that it concerned the non-payment of a municipal bill to Eskom in one of the matters under consideration by the Constitutional Court.

[4] I still stand by the reasons I gave for coming to the conclusion that that non-compliance with the court order in question was beyond a reasonable doubt, wilful and *mala fide*. However, after a reading of the ***Matjhabeng Municipality*** judgment in particular paragraphs [86] – [88] I am unable to say that there are no reasonable prospects that the appellate court might find that the explanation(s) proffered by the respondents create doubt regarding the requirement of wilfulness and *mala fides* on their part. Although leave to appeal was sought to the Supreme Court of Appeal on the basis that the matter is of importance, I am not persuaded that this is a matter that calls for the attention of the Supreme Court of Appeal.

[5] Accordingly, leave to appeal is granted to the full bench of this division. Costs to be costs in the appeal.

NG BESHE
JUDGE OF THE HIGH COURT

¹ 2018 (1) SA 1 CC at 32 paragraphs 86 -88.

APPEARANCES

For the Applicants	:	Adv: S Rorke SC
Instructed by	:	WESLEY PRETORIUS & ASSOCIATES INC. C/o NETTELTONS ATTORNEYS 118A High Street GRAHAMSTOWN Ref: Mr M Nettelton/Liza Tel.: 046 – 622 7149
For the Respondents	:	Adv: I J Smuts SC
Instructed by	:	WHEELDON RUSHMERE & COLE INC. 119 High Street GRAHAMSTOWN Ref: Mr Brody/Glyn/S23045 Email: 046 – 622 7005
Date Heard	:	16 February 2021
Date Reserved	:	16 February 2021
Date Delivered	:	23 February 2021