

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 45598/2021

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
2/12/2024	[Redacted]
DATE	SIGNATURE

In the matter between:

**IGNACIO ROSSEGLIONE**

First Applicant

**FOROMOR INVESTMENTS NO 1411 (PTY) LTD**

Second Applicant

**BLUE LOUNGE TRADING 64 (PTY) LTD**

Third Applicant

**DARJON CC**

Fourth Applicant

**DANIEL MICHAEL MOORE**

Fifth Applicant

**MICHAEL JOHN DOVEY**

Sixth Applicant

**SALIM KASKAR**

Seventh Applicant

**CWFT INVESTMENTS (PTY) LTD**

Eighth Applicant

**FOLABI AYODELE OLADIPO-OSENI**

Ninth Applicant

<b>DEFACTO INVETSTMENT 205 (PTY) LTD</b>	Tenth Applicant
<b>TERSIA BESTER</b>	Eleventh Applicant
<b>ERIC JOHAN WIEHAHN N.O.</b>	Twelfth Applicant
<b>JENNIFER ANN WIEHAHN N.O.</b>	Thirteenth Applicant
<b>JOSIA JOHANNES JACOBUS VERMEULEN</b>	Fourteenth Applicant
<b>ALARIC BARNES ROBINSON</b>	Fifteenth Applicant
and	
<b>THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY</b>	Respondent

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## **JUDGMENT**

**(Leave to appeal)**

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**SENYATSI, J**

### *Introduction*

- [1] This is an application for leave to appeal the judgment handed down on 17 April 2024, dismissing the application brought against the City of Johannesburg Metropolitan Municipality (“the respondent”) in terms of which the applicants had sought an order setting aside a decision by the respondent, *inter alia*, to categorise certain properties mentioned in the application as sectional title business for the period 1 July 2013 to 30 June 2018. I, furthermore, refused to make an order in respect of the other prayers sought by the applicants for the reasons set out in the judgment.
- [2] The applicants have applied for leave to appeal the decision. The judgment is criticised based on the grounds of appeal, which I am not going to repeat

in this judgment. More importantly, the applicants argue that sections 34,54 and 78 of the MPRA must be read in conjunction with the true intention of the Legislature.

### *The legal principles*

[3] The requirements and the test for granting leave to appeal are regulated by section 17(1)(a) of the Superior Courts Act No. 10 of 2013 which states as follows:

“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.”

[4] In *Mont Chevaux Trust v Goosen and Others*<sup>1</sup> Bertelsmann J interpreted the test as follows:

“It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion...The use of the word ‘would’ in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”

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<sup>1</sup> 2014 2325 (LCC)



- [5] In *Acting National Director of Public Prosecutions and Others v Democratic Alliance: In re: Democratic Alliance v Acting National Director of Public Prosecutions*<sup>2</sup> the court acknowledged the test by Bertelsmann J and said the following:

“The Superior Courts Act has raised the bar for granting leave to appeal in *The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others*, Bertelsmann J held as follow:

“It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”

- [6] In *Mothuloe Inc Attorneys v The Law Society of the Northern Provinces and Another*<sup>3</sup>, the Supreme Court of Appeal stated as follows regarding the trial court’s liberal approach on granting leave to appeal:

“It is important to mention my dissatisfaction with the court a quo’s granting of leave to appeal to this court. The test is simply whether there are any reasonable prospects of success in an appeal. It is not whether a litigant has an arguable case or mere possibility of success.”

- [7] Having considered the grounds of appeal and the heads of argument by both counsel, I am not persuaded that the requirements of section 17(1) (a) of the Act have been met and another court may well differ with me on the interpretation of section 41(3) of the Act. As I said in the judgment, the

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<sup>2</sup> (Case no: 19577/09) ZAGPPHC 489 at para 25

<sup>3</sup> (213/16) [2017] ZASCA 17 (22 March 2017)

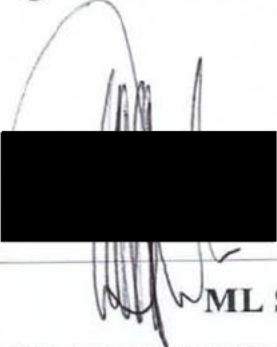
provisions of section 32 of the Local Government: Municipal Property Rates System Act prescribe the process for challenging the valuation and categorization of properties by the Municipal Valuer. It sets out the steps to be followed when such challenges on valuation and categorization of properties are made. If the processes have not been embarked upon within the prescripts of the law, the courts cannot come to the aid of the parties when the lives of the 2013 General Valuation Register, and the Valuation Appeal Board have ceased to exist.

- [8] Mr. Viviers, on behalf of the applicants contended in his written heads of argument that it is in the interests of justice that leave should be granted to appeal the judgment. I do not agree with the submission.
- [9] It follows in my view that the respondents have passed the muster on showing that the appeal would not succeed and accordingly, the application for leave to appeal should not succeed.

*Order*

- [10] The following order is issued:

- (a) The application for leave to appeal is dismissed.
- (b) The applicants are ordered to pay the costs of the application on scale B, jointly and severally, the one paying the others to be absolved.

  
**ML SENYATSI**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, JOHANNESBURG**

Delivered: This Judgment was handed down electronically by circulation to the parties/ their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be **2 December 2024**.

Appearances:

For the applicants: Adv AM Viviers  
Instructed by Schindlers Attorneys

For the respondent: Adv S Ogunronbi  
Instructed by Prince Mudau & Associates

Date of Hearing: 30 August 2024  
Date of Judgment: 2 December 2024