

✓ 01/12/2017

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA



Case Number: 56517/17  
~~10619/10~~

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO.  
(2) OF INTEREST TO OTHER JUDGES: NO.  
(3) REVISED 01/12/2017

DATE

SIGNATURE *Jelg*

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA PRIVATE BAG/PRIVAATSAK X67 PRETORIA 0001
2017 -12- 01
JUDGE'S SECRETARY REGTERS KLERK GRIFFIER VAN DIE HOE HOF VAN SUID AFRIKA GAUTENG AFDELING, PRETORIA

In the matter between

FORUM FOR SERVICE DELIVERY  
KATLEGO MOTLAGODISA  
INDEPENDENT ELECTORAL COMMISSION (IEC)  
THE MUNICIPAL COUNCIL: LEKWA TEEMANE  
LOCAL MUNICIPALITY  
LEGABE, LENYATSO DANIEL  
MMETSENG, GADIMPEE MMETSENG

And

MODISE, PAKISO GODFREY  
MOSELANE, MODISAOTSILE JACOB

Coram: HUGHES J

1<sup>ST</sup> APPLICANT  
2<sup>ND</sup> APPLICANT  
3<sup>RD</sup> APPLICANT  
4<sup>TH</sup> APPLICANT  
  
5<sup>TH</sup> APPLICANT  
6<sup>TH</sup> APPLICANT

1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT

REASONS

HUGHES J

[1] This is an application for leave to appeal against the whole of my reasons and order handed down on 22 November 2017.

[2] The legislation dealing which deals with the circumstances upon which leave to appeal may be granted is set out in section 17 (1) of the Superior Courts Act 10 of 2013 (the Superior Courts Act). What is specifically relevant in this case, is section 17 (1) (a). I set out section 17 (1) in its entirety below:

"Section 17(1)

(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;

(b) the decision sought on appeal does not fall within the ambit of section 16 (2)

(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties." [My emphasis]

[3] The test which was applied previously in applications of this nature was whether there were reasonable prospects that another court may come to a different conclusion. See **Commissioner of Inland Revenue v Tuck 1989 (4) SA 888 (T) at 890B**. What emerges from section 17 (1) is that the threshold to grant a party leave to appeal has been raised. It is now only granted in the circumstances set out and is deduced from the words 'only' used in the said section. See **The Mont Chevaux Trust v Tina Goosen & 18 Others 2014 JDR 2325 (LCC) at para [6]**, 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." [My emphasis].

[4] The grounds for leave to appeal are to a large extent factual asserting that this court's reasoning was erroneous and that I failed to take into consideration or give sufficient weight to other factors. What I do not propose to do is to set out the exhaustive grounds of appeal again or repeat that which is set out in my judgment, in as much as that which was relevant was dealt with in the judgment. I am mindful of the fact that an appeal is solely aimed at an order of a court and not its reasoning.

[5] The applicants argue that in terms of section 17 (1) (a) they should be granted leave to appeal on the grounds set out in their notice for leave to appeal as their appeal 'would have a reasonable prospect of success' in another court.

[5] In **S v Smith v S 2012 (1) SACR 567 (SCA) 570 at para [7]** Plasket AJA had the opportunity to consider what constitute reasonable prospects of success and he held as follows:

"[7] What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational

basis for the conclusion that there are prospects of success on appeal." [My emphasis]

[7] From the out state that the applicant sought leave the appeal my order without having been furnished with my reasons for the order made. When the application for leave to appeal was considered, the leave to appeal application was adjourned pending the provision of my reasons. My reasons were provided and the applicant did not amend its grounds for leave to appeal at all having considered the reasons I had provided.

[8] The respondents thus argue that the reasons as such stand as they are not challenged in the grounds for leave to appeal. Those challenges that appear in the application are not premised on the reason I advanced as the grounds were submitted before the reasons were handed down.

[9] It is trite that the provision of reasons is an integral part of the appeal process as was stated in the Constitutional Court judgment of *Strategic Liquor Services v Mvumbi* 2010 (2) SA 92 at para [13]:

*"This Court has recently dealt with a matter where the Labour Appeal Court delivered judgment more than two and a half years after oral argument was concluded before it,<sup>1</sup> and the comments of the Supreme Court of Appeal must be endorsed."*

[10] Likewise, it is well to remember that an appeal is primarily as regards the order made than the reasons or judgment. However, to get to this appeal process one need to show that the reasoning of the presiding office is such that another court would come to a different conclusion. This cannot be demonstrated by the applicant in this matter as the ground where submitted before the reasons were provided. I agree that the reasons for the order I have made stand and are not challenged.

[11] In the circumstances, the applicant has failed to comply with section 17(1) of the Superior Courts Act. In the result the application stands to be dismissed.

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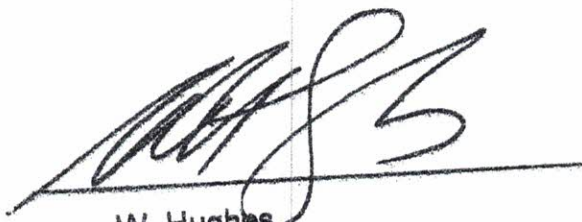
<sup>1</sup> *Netherburn Engineering CC t/a Netherburn Ceramics v Mudau and Others* [2009] ZACC 10, as yet unreported.



[12] The respondent sought a punitive costs order against the applicant for failure to adhere and comply with the Rules of Court. I am of the view that this costs order is not warranted in these circumstances and is only so warranted if the applicant was vexatious, proceeded frivolously, maliciously, fraudulently and the like but never so where party had a choice of procedures to choose from and that party decided to follow a specific procedure. That party cannot in my view be penalised for doing so.

[13] Consequently the order made is that:

[13.1] The application for leave to appeal is dismissed with costs.

A handwritten signature in black ink, appearing to be 'W. Hughes', written over a horizontal line.

W. Hughes

Judge of the High Court Gauteng,

Pretoria