




IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHERS JUDGES: No
(3) REVISED: NO
(4) DATE: 18 February 2025
(5) SIGNATURE: 

Case Number: 33425/2016

In the matter between:

GOVAN MBEKI MUNICIPALITY

Applicant

and

BOSCH MUNITECH (PTY) LTD

Respondent

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 18 February 2025.

JUDGMENT

COLLIS J:

INTRODUCTION

1. This is an application for leave to appeal against the judgment and order of this Court delivered on 6 June 2024.¹

2. In its judgment, the Court found in favour of the plaintiff, Bosch Munitech (Pty) Ltd ("Bosch") and dismissed the counterclaim of the defendant, Govan Mbeki Municipality (the "Municipality").²

¹ Caselines 28-1: Notice of Application for Leave to Appeal.

² Caselines 0069: Order per Judgment.

3. Bosch Munitech (Pty) Ltd, instituted proceedings against the Municipality, Govan Mbeki Municipality, seeking payment for services allegedly rendered under a contract for the refurbishment of the eMbalenhle Water Works. Bosch claimed an amount of R16,996,144.69, together with interest. As mentioned, Bosch also instituted a claim for loss of profits in the sum of R8 785 710,8, however it abandoned this claim during the proceedings.

4. The Municipality's defence before this Court, was that no valid contract existed between the parties, as the tender validity period had expired, and the necessary formalities for contract formation were not complied with. Additionally, the Municipality raised a counter-claim for amounts paid to Bosch, which it contended were made in error and without legal cause.

5. The Municipality in its Application for Leave to Appeal raised several grounds of appeal. On its behalf it was contended that there are reasonable prospects of success on appeal, as contemplated in section 17(1)(a)(i) of the Superior Courts Act 10 of 2013.

6. In addition, the Municipality also contends that the matter raises compelling legal and public interest issues warranting appellate consideration under section 17(1)(a)(ii). The implications of the High Court's findings for the principle of legality, accountability and fair administrative action in municipal governance extend beyond this case and thus demand careful review.

7. The Applicant further contends that this appeal also raises issues of national importance, particularly the necessity for adherence to tender validity periods, the role of competitive bidding in ensuring fairness, transparency, and accountability, and the limitations of doctrines like estoppel and ostensible authority when applied to organs of state. It is therefore contended that the issues at the heart of this case transcend the immediate interests of the parties and have broader implications for the public procurement framework in South Africa.

8. The Respondent opposes the Application for leave to appeal. On behalf of the Respondent, it was submitted that the grounds of appeal advanced in the Applicant's Notice of Intention to Apply for Leave to Appeal are, in the

main, aimed at establishing that the legality challenge launched by the Defendant has substance.

9. The grounds of appeal however do not deal with is the crux of the Court's decision viz that whatever the merits of the legality challenge might be, the challenge cannot be entertained due to undue delay and a failure to adduce any evidence with a view to explain same.

10. Section 17(1) of the Superior Court Act provide that "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;"

The use of the word "would" have been found to have raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted.³

³ Erasmus, *ibid*, footnote 3 in which the unreported decisions in the Land Court and in *The Acting National Director of Public Prosecution v Democratic Alliance GP Case No. 19577/2009* dated 24 June 2016 at par 25 are referred to. Vide also *Notshokovu v S*, unreported, SCA Case No. 157/2015 dated 7 September 2016, where it was held (at par 2) that an Appellant faces a higher and stringent threshold in terms of section 17(1) of the Superior Courts Act than was the case in terms of the repealed Supreme Court Act, Act 59 of 1959.

11. Leave to appeal should therefore only be granted when there is “a sound, rational basis for the conclusion that there are prospects of success on appeal”.⁴

12. The Applicant having failed to adduce any evidence to explain such prima facie undue delay before this Court, I cannot conclude, that the appeal would have a reasonable prospect of success.

13. Consequently, the application for leave to appeal is refused with costs, including costs of senior counsel on scale C.

⁴ Four Wheel Drive Accessory Distributors CC v Rattan N.O. 2019 (3) 451 (SCA), p. 463, [34].



COLLIS J

JUDGE OF THE HIGH COURT,

GAUTENG DIVISION, PRETORIA

APPEARANCES:

Counsel for the Applicant: Adv. F.W. BOTES SC

Adv. E. VAN AS

Instructing Attorney: CRONJÉ DE WAAL-SKOSANA INC

Counsel for the Respondent: T.A.L.L. POTGIETER SC

Instructing Attorney: FRIEDLAND HART SOLOMON AND NICHOLS

Date of Hearing: 29 November 2024

Date of Judgment: 18 February 2025

