




**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No: **51056/2021**

(1) REPORTABLE: No	
(2) OF INTEREST TO OTHER JUDGES: No	
(3) REVISED: Yes	
<div style="text-align: center;"> _____ SIGNATURE</div>	<div style="text-align: center;">16 MAY 2025 _____ DATE</div>

In the matter between:

KGOTSO LODGE (PTY) LTD

Applicant

and

**THE ACTING DEPUTY DIRECTOR: LAND MATTERS
DEPARTMENT OF WATER & SANITATION**

First Respondent

THE MINISTER OF WATER AND SANITATION

Second Respondent

EDWIN RICHARD VAN HEERDEN N.O.

Third Respondent

(In his capacity as the trustee of the EVH Trust)

This judgment is prepared and authored by the Judge whose name is reflected as such and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 16 May 2025.

JUDGMENT

RETIEF J

[1] The applicant applies for leave to appeal to the Full Court of this Division against the whole judgment and order of the 12 November 2024 in which this Court dismissed its administrative review application with costs.

[2] The nub of the grounds raised in the application for leave to appeal is the Court's finding that the impugned decision of the 3 September 2021 was not a decision taken by the first respondent, on the evidence, as against its duly submitted formal applications for both a lease agreement and/or application for a caretaker and grazing agreement [applications] in respect of the remaining extent of the farm Ferdinantsrust and remaining extent of the Farm Langtouw [property] under cover of letter 12 March 2020 by Erasmus De Klerk Incorporated [De Klerk], Mr Van Der Walt's attorney of record.

[3] The nub of the applicant's ground is that, on the admitted and common cause facts and, on the evidence, the impugned decision dated the 3 September 2021 was a decision taken in respect of the applicant's applications, justifying the relief it sought.

[4] However simplistic the applicant's reasoning and argument appear to be, in truth having regard to all the evidence it was not. Discord between some of the admitted facts and the evidence was apparent. Therefore, in justifying the relief sought, the Court considered all the evidence in its totality. The result of which was clear, as reasoned, that the informal application for a renewal of a lease agreement

by Mr Van Der Walt in his personal capacity in terms of paragraph 6.2 of the written lease agreement between himself and the Department of Water and Sanitation was the only application to renew a lease over the property which lawfully could have been applied for or requested. Furthermore, the applicant's applications under consideration related to formal submitted applications, absent an existing lease agreement. None of the applicants' formal applications as relied on, related to a request for renewal of an existing lease.

[5] The impugned decision dated the 30 September 2021 does not contain any indication that it relates to or deals with the applicant's formal applications. In fact, the impugned decision in the body thereof refers to an outcome of a decision taken in respect of "*-a request to renew the agreement-*" culminated with a decision pertaining to the request was a request by the first respondent that De Klerk's client must vacate the property. As reasoned in the judgment such a request to vacate was catered for in the lease agreement between Mr Van Der Walt, as the lessee and only authorised occupier of the property. In consequence the finding that the impugned decision was not a definite final decision relating to the applicant's formal applications to enter into a lease and obtain a grazing licence over the property, notwithstanding the pleaded facts on the evidence, was clear and, as such could not justify the relief sought.

[6] The Court accepts that the applicant appreciated the disconnect in that, at the date of the hearing, it requested the Court to make the inference that the impugned decision related to the formal applications vis-à-vis the applicant, inter alia, in the absence of any other written decision apparent from the filed record and, now in this application also relies on a ground stating that the Court erred by not holistically interpreting the decision letter of the 3 September 2021 with due regard to the context and the circumstances upon its coming into existence. In fact, the Court did just that. The applicant is reminded that because its applications were not the only applications, formal or otherwise, that were duly submitted by De Klerk pertaining to the property involving the Van Der Walt family's interest, another set of admitted facts was open to consider. Therefore, having regard to the decision, it is reasonable to accept that Mr van Der Walt's informal application letter in February 2020 should be considered. It too, was not placed in dispute. In considering the

context and al the circumstances the impugned decision's existence appears to have arose in respect of Mr Van Der Walt's request for renewal as he, was the only applicant who could lawfully have made a request to renew the lease as referred to in the impugned decision and who, in terms of the lease agreement could be asked to vacate the property due to a decision not to renew the lease agreement. The impugned decision holistically or otherwise does not translate into nor justify a finding that it is as against the applicant's formal applications.

[7] Therefore, having reconsidered the judgment as against the grounds raised and argued, the applicant has not met the threshold of section 17 of the Superior Courts Act, 10 of 2013 and this Court is of the opinion that the appeal will not have a reasonable prospect of success. In consequence the application must fail.

[8] The following order:

1. The application is dismissed with costs, including the costs of two Counsel if so employed, taxed on scale C for Senior Counsel and scale B in respect of Junior Counsel.



L.A. RETIEF

Judge of the High Court
Gauteng Division

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Date of hearing: 17 April 2025

Date of judgment: 16 May 2025