



IN THE KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG
REPUBLIC OF SOUTH AFRICA

Case No.5653/10

In the matter between:

JDJ PROPERTIES CC
DOUBLE DIAMOND CC

First Applicant
Second Applicant

and

UMGENI LOCAL MUNICIPALITY
TRIUMPH BROKERS (PTY) LTD

First Respondent
Second Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

SEGOBIN J

[1] This is an application for leave to appeal against the whole of my judgement delivered on 7 June 2011. Although the application was opposed by the first and second respondents, counsel were agreed that if I was disposed to granting the applicants leave to appeal, such appeal should lie before the Supreme Court of Appeal.

[2] The application was based on the following grounds:

- “1. The court erred in finding that the First Respondent’s decisions do not adversely affect the Applicants’ rights.
2. The court ought to have found that as the owner and lessee of immovable property subject to the same town planning scheme as the Second Respondent’s property, the Applicants had the right to challenge decisions made by the First Respondent in terms of the Town Planning Scheme, and that the Applicants did not have to prove prejudice in the nature of damages.
3. The court ought to have found that a failure to properly apply the provisions of the Town Planning Scheme constituted a sufficient invasion of the rights of the Applicants, for the Applicants to be entitled to challenge the First Respondent’s decisions.
4. The court ought therefore to have found that the decisions of the First Respondent which the Applicants challenged, were administrative action.
5. The court ought to have found that the ordinary meaning of the words “any other building regulation” in Section 9 (1) (c) of Act 103 of 1977 does not include a town planning scheme, and that there are no reasons why there should be any departure from this ordinary meaning.
6. The court ought therefore to have found that the Applicants had no right of appeal in terms of Section 9 (1) (c) of Act 103 of 1977 and therefore that they were not precluded by Section 7 of the Promotion of Administrative Justice Act, 3 of 2000 from approaching the court on review.
7. The court ought to have found that the applicants had made out a case for the relief sought by them.”

[3] There were several legal issues that were raised in this matter and in respect of which I found against the applicants. In particular I took a different view from that of Davis J in *Van Der Westhuizen and Others v Butler and Others* 2009(6)

SA 174 (6) which found favour with the applicants in the present matter. I also took the view that since the applicants had failed to exhaust their internal or domestic remedies provided for in section 9 of the Building Act, they were precluded from seeking a review at this stage.

[4] It is arguable that another court constituted differently may well come to a different conclusion from the one that I have. For these reasons I am disposed to granting leave to the applicants to appeal against the whole of my judgement delivered on 7 June 2011.

[5] I accordingly grant the following order:

- a) Leave is hereby granted to the applicants to appeal to the Supreme Court of Appeal against the whole of the judgement delivered on 7 June 2011.
- b) The costs of the application for leave to appeal will be costs in the appeal.

Date of Hearing : 14 November 2011

Date of Judgment : 18 November 2011

Counsel for Applicant : Adv. Rall SC

Instructed by : Christopher Richard Lee Attorneys
c/o J. Leslie Smith & Co. (Pmb)

Counsel for 1st Respondent: Adv. R Van Rooyen

Instructed by : PKX Attorneys

Counsel for 2nd Respondent: Adv. A Dickson SC

Instructed by : Jasat & Jasat Attorneys