IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: 13035/2009

DATE: 21 MAY 2010

In the matter between:

DESMOND WHITE Applicant

and

THE CITY OF CAPE TOWN Respondent

JUDGMENT

Application for Leave to Appeal

THRING, J:

This is an application in terms of section 20(4)(b) of the Supreme Court Act, No. 59 of 1959 for leave to appeal against the order which was made by me in this matter on the 31st March, 2010. The applicant for leave is the unsuccessful applicant in the principal application, Mr White. The respondent opposes the application for leave to appeal.

The respondent's water tariff undoubtedly differentiates between categories of

consumers of water, inasmuch as consumers who fall into some categories have to pay more per litre of water consumed by them than do consumers who fall into other categories, depending, *inter alia,* on the quantities of water concerned. The applicant contends that this differentiation discriminates unfairly and inequitably against consumers who reside in flats, and is in contravention of section 74(2) and (3) of the Local Government Municipal Systems Act, No. 32 of 2000.

I continue to be of the view that the applicant's contentions in this regard are unfounded, and nothing that has been said today in this Court has altered my view. However, the prospect that another Court might reach a different conclusion is not, in my view, so remote that it can be said to be beyond the bounds of reasonableness. In my earlier judgment I expressed the view that several of the arguments which the applicant had advanced in this Court were not entirely without merit. I remain of that view.

Mr Paschke, who appears again for the respondent, argues that the matter is not of sufficiently substantial importance to the applicant, or to both him and the respondent, to justify leave to appeal being granted. He correctly points out that if the applicant were to succeed, the resultant reduction in his monthly water bill would be only some R4,59, which is minimal.

However, I decided this matter on the basis of an assumption which I made in the applicant's favour that he enjoyed *locus standi* inasmuch as these proceedings could just possibly be regarded as falling somewhere within the ambit of section 38(c) or (d) of the Constitution, namely that they could possibly be regarded as a

class action or as an application brought by the applicant in the public interest. In making that assumption I was influenced to some extent by the attitude adopted by the respondent in not pursuing the issue of *locus standi* and in leaving this aspect of the matter in the hands of the Court. If my assumption is correct, the fact that the applicant may stand to gain very little himself in this litigation is not in itself an insuperable obstacle for him, inasmuch as there may be numerous other persons to whom his success may bring greater benefits. It follows, in my view, that the leave sought by the applicant must be granted.

That leaves the question as to what Court should hear the appeal. The issue raised in this matter may well be of considerable potential interest and importance to a large number of the inhabitants of this city. I therefore think that it is deserving of consideration by the Supreme Court of Appeal rather than by a Full Bench of this Court. Accordingly, in my view the appeal should be entertained by the former Court rather than by the latter.

For these reasons I make the following order:

1. Leave is granted to the applicant to appeal to the Supreme Court of Appeal against the whole of the order made by this Court on the 31st March, 2010 on the grounds set out in his application for leave to appeal.

2. The costs of this application shall be costs in the appeal.

THRING, J