



**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE DIVISION, GQEBERHA)**

**CASE NO: 2452/2022**

In the matter between:

**NELSON MANDELA BAY MUNICIPALITY**

First Applicant

**CITY MANAGER OF THE NELSON MANDELA  
BAY MUNICIPALITY**

Second Applicant

and

**GARY STANTON VAN NIEKERK**

First Respondent

**JOHN MERVYN MITCHELL**

Second Respondent

**BEVAN BROWN**

Third Respondent

**NORTHERN ALLIANCE**

Fourth Respondent

**INDEPENDENT ELECTORAL COMMISSION**

Fifth Respondent

**NEVILLE STANLEY**

Sixth Respondent

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
.....	.....
DATE	SIGNATURE

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## JUDGMENT

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### POTGIETER J

[1] This is an application for leave to appeal against the urgent order that I issued in favour of the First, Second and Third Respondents (“the Respondents”) on 30 August 2022 and which was varied on 2 September 2022.

[2] The present Applicants were the First and Second Respondents in the matter.

[3] The relief granted allowed the present Respondents to attend a meeting of the municipal Council scheduled for 10h00 on 30 August 2022. The agenda of that meeting could not be finalised on 30 August 2022 and the meeting was adjourned to 7 September 2022. In view of the fact that the Respondents could not obtain an undertaking by the Second Applicant that they would not be hindered in attending the adjourned meeting, they launched a further urgent application to vary the original order so as to allow them to attend the meeting until its conclusion. This relief was granted in their favour on 2 September 2022. The adjourned meeting did not continue as scheduled and a new date has yet to be set for the meeting to continue.

[4] The Applicants filed an application for leave to appeal on 7 September 2022. This had the effect of suspending the operation of the order, as varied, and had the potential of excluding the Respondents from the adjourned meeting. The application for leave to

appeal was brought to my attention on 8 September 2022 when I saw counsel for the parties in Chambers. Counsel for the Respondents prevailed upon me to deal with the application for leave to appeal expeditiously. I enrolled the application for hearing the next morning when argument was presented by Mr Moorhouse on behalf of the Applicants and by Mr Mullins SC on behalf of the Respondents. I was referred in the course of his argument to a number of authorities by Mr Moorhouse who undertook to provide me with a bundle of authorities in the course of the afternoon which he duly did. Under those circumstances I reserved the judgement to allow me an opportunity to consider the arguments and the bundle of authorities.

[5] The grounds for the application in effect re-state the arguments advanced on behalf of the Applicants in opposing both applications.

[6] The test applicable to applications for leave to appeal is set out in section 17(1) of the Superior Courts Act, 10 of 2013. This entails that the court should be of the opinion, *inter-alia*, that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard.

[7] I have dealt with all of the issues raised in the present application in the reasons, filed simultaneously herewith, for granting the original order and its subsequent variation. One of the grounds heavily relied upon by the Applicants is that neither of the applications was urgent and that I erred in finding to the contrary instead of dismissing the matters or striking them from the roll for a lack of urgency. I expressed my reservations to counsel that a ruling of this nature is appealable at all. Unsurprisingly, Mr Moorhouse submitted that the ruling is appealable while Mr Mullins SC contended to the contrary. In my view, a decision (ruling) to dispose of a matter on an urgent basis in terms of Rule 6(12)(a) is nothing more than a determination of how the matter should be conducted. It does not bear any of the hallmarks of court orders proper. It is neither final nor definitive of the rights of the parties and it does not dispose of at least a substantial portion of the relief claimed (*Zweni v Minister of Law & Order 1993(1) SA 523 (A) at 536B*). I agree with the conclusion in *Lubambo v Presbyterian Church of Africa 1994(3)*

SA 241 (SECLD) at 242H & 243G-H that the exercise of a judicial discretion to allow a case to be heard as a matter of urgency, is not appealable. If this were the only ground for the application, I would have dismissed it on this basis alone. In any event, even if the determination of urgency were appealable, I am not persuaded that there is any reasonable prospect that a court of appeal would come to a different conclusion. I should add that I have considered the authorities referred to in this regard by Mr Moorhouse and do not find any of them to militate against my conclusion in the present matter [*Caledon Street Restaurants CC v D'Aviera* [1998] JOL 1832 (SE); *NUMSA & Another v Bumatech Calcium Aluminates* [2016] JOL 36594 (LC); *Schweizer Reneke Vleis (Edms) Bpk v Minister van Landbou & Andere* 1971(1) PH F11 (T)]. Clearly each case must be considered on its own peculiar facts and circumstances.

[8] There are further grounds relied upon by the Applicants relating to the merits of the applications and the failure to serve the papers on the present Sixth Respondent. I have fully dealt with these issues in the reasons for granting and varying the order. As indicated, the application for leave to appeal does not raise any further issues apart from those that were dealt with at the hearings.

[9] Having considered the matter and the arguments advanced on behalf of the parties, the appeal would in my opinion not have a reasonable prospect of success. There is also no other compelling reason why the appeal should be heard.

[10] In the result the application for leave to appeal is dismissed with costs.

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**D.O. POTGIETER**

**JUDGE OF THE HIGH COURT**

**APPEARANCE**

Counsel for the applicants: Adv A Moorhouse, instructed by Kuban Chetty Inc,  
163 Cape Road, Mill Park, Gqeberha

For the respondents: Adv N Mullins SC, instructed by Boqwana Burns, 84  
6<sup>th</sup> Avenue, Newton Park, Gqeberha

Date of hearing: 09 September 2022

Date of delivery of judgment: 15 September 2022