



**IN THE HIGH COURT OF SOUTH AFRICA,**  
**FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 6192/2023

In the matter between:

<b>THE ACTING MUNICIPAL MANAGER OF THE METSIMAHOLO LOCAL MUNICIPALITY</b>	1 <sup>st</sup> Applicant
<b>FUSI JOHN MOTLOUNG</b>	2 <sup>nd</sup> Applicant
<b>HELGARDT MULLER N.O.</b>	3 <sup>rd</sup> Applicant
<b>EHEILA MARTINA HENDRIKA MULLER N.O.</b>	4 <sup>th</sup> Applicant
<b>HELGARDT MULLER N.O.</b>	5 <sup>th</sup> Applicant
<b>CHANTE GAIL COETZEE N.O.</b>	6 <sup>th</sup> Applicant
<b>CORRIE PLOOS VAN AMSTEL N.O.</b>	7 <sup>th</sup> Applicant
<b>EXECUTIVE MAYOR OF THE METSIMAHOLO LOCAL MUNICIPALITY</b>	8 <sup>th</sup> Applicant
<b>COUNCIL OF THE METSIMAHOLO LOCAL MUNICIPALITY</b>	9 <sup>th</sup> Applicant
<b>THE SPEAKER OF THE COUNCIL OF THE METSIMAHOLO LOCAL MUNICIPALITY</b>	10 <sup>th</sup> Applicant
<b>THE METSIMAHOLO LOCAL MUNICIPALITY</b>	11 <sup>th</sup> Applicant
<b>LUCAS FISCHER</b>	12 <sup>th</sup> Applicant

and

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**DEMOCRATIC ALLIANCE**

Respondent

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**CORAM:** LOUBSER, J

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**HEARD ON:** 9 FEBRUARY 2024

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**JUDGEMENT BY:** LOUBSER, J

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**DELIVERED ON:** 15 FEBRUARY 2024

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- [1] This is an application for leave to appeal against an order handed down by this Court restraining the Applicants from making any further payments to the Lizelle Sake Trust (the 3<sup>rd</sup> to 6<sup>th</sup> Applicants) pending the final adjudication of a review application launched by the Respondent. The said Trust was also ordered to return to the Metsimaholo Local Municipality the full quantum of any funds already received from the Municipality, pending the final outcome of the review proceedings. The majority of the Applicants for leave are the Municipality and its relevant functionaries. The 7<sup>th</sup> Applicant is the arbitrator in arbitration proceedings that were held between the Trust and the Municipality, and he is not applying for leave to appeal.
- [2] When the application for leave came before the Court, the Court expressed its concern whether leave should be granted in instances, like the present, where the intended appeal is directed against an interim order that was handed down pending the final outcome of a future review. Counsel appearing for the respective parties were consequently requested to address the Court on this issue, and many submissions were made in the process on behalf of the parties.
- [3] Now generally, Courts are reluctant to hear appeals against interim orders that have no final effect and that are, in any event, susceptible to reconsideration by

a Court when the final relief is determined.<sup>1</sup> That, however, is not an inflexible rule. What best serves the interest of justice dictates whether an appeal against an interim order should be entertained. In the instances where leave to appeal in relation to interim orders were in fact granted, it was made clear that the operative standard is the interest of justice.<sup>2</sup>

- [4] In their grounds of appeal, the Applicants do not pertinently rely on the interests of justice, although this aspect was raised on their behalf when submissions were made at the hearing of the application.
- [5] I am not persuaded that it would be in the interests of justice to grant leave to appeal at this stage, simply because the appeal would only result in the piecemeal appellate disposal of the issues in question.<sup>3</sup> The interim order did not even dispose of a portion of the relief claimed in the review. The issues will be finally adjudicated in the review proceedings, and either party will then have the right of appeal again. This is so since the present order does not finally dispose of any relief claimed by the Respondent.
- [6] It was submitted on behalf of the Trust that the order directing it to pay back the funds to the Municipality, is final in its effect and therefore appealable. I do not agree with this submission. This order was also made pending the review, and in any event, should the review be adjudicated in favour of the Trust, the Municipality will have to pay the funds back to the Trust.
- [7] On behalf of the Municipality and its functionaries it was submitted that leave to appeal should be granted because this Court had, *inter alia*, ignored the principles pertaining to the separation of powers when it determined the merits of the interim relief sought. This is one of the reasons why granting leave would be in the interest of justice, it was argued. Again, I do not agree with this submission, because that very point will certainly be raised in the review proceedings. To grant leave now, will only offend against the jurisprudence of

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<sup>1</sup>National Treasury and Others v Opposition to Urban Tolling Alliance 2012(6) SA 223 (CC), par 24.

<sup>2</sup>Ibid par 25, also Economic Freedom Fighters v Gordhan 2020(6) SA 325 (CC) at para 50

<sup>3</sup>Cilliers N.O. and Others v Ellis [2017] ZASCA 13 at paras 11 to 19

the courts, in that it would result in a piecemeal disposal of the issues on appeal.

[8] Section 17(1)(a) of the Superior Courts Act<sup>4</sup> provides that leave to appeal may only be granted where the appeal would have a reasonable prospect of success or where there is some other compelling reason why the appeal should be heard. In **Ramakatsa and Others v African National Congress and Others**<sup>5</sup> the Supreme Court of Appeal indicated that compelling reasons to entertain an appeal would include an important question of law or a discreet issue of public importance that will have an effect on future disputes. In the present application for leave, the appeal would certainly not involve an issue of public importance that will have an effect on future disputes.

[9] In the premises, I am not persuaded that leave to appeal should be granted. As for costs, I find no compelling reasons why a punitive costs order should be made. I make the following order:

1. The application for leave to appeal is dismissed with costs, including the costs of two counsel.

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P. J. LOUBSER, J

For the 1<sup>st</sup>, 2<sup>nd</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Applicants:

Adv. M. Koza SC, with him Adv. R. M. Mahlatsi

Instructed by:

Raphela Attorneys Inc. Santon

c/o Fixane Attorneys, Bloemfontein

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<sup>4</sup>Act 10 of 2013

<sup>5</sup>[2021] ZASCA 31

For the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Applicants:

Adv. J. G. Smit

Instructed by:

NLA Legal Inc. Santon

c/o E.G. Cooper Majiedt Inc. Bloemfontein

For the Respondent:

Adv. A. Stein SC, with Adv. D. Sive

Instructed by:

Minde Schapiro & Smith Inc., Belville

c/o Symington & De Kok, Bloemfontein