

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 18024/2022

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

.....  
DATE  
SIGNATURE

In the matter between:

**EMFULENI LOCAL MUNICIPALITY**

**1<sup>ST</sup> APPLICANT**

**EXECUTIVE MAYOR, EMFULENI  
MUNICIPALITY: SIPHO RADEBE N.O.**

**2<sup>ND</sup> APPLICANT**

**MUNICIPAL MANAGER, EMFULENI  
MUNICIPAL: LUCKY LESEANE N.O.**

**3<sup>RD</sup> APPLICANT**

And

**SAMS TISSUE PRODUCTS (PTY) LTD**

**RESPONDENT**

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**JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL**

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**MAKUME J:**

[1] The Applicants who were the Respondents in this application seek leave to appeal against prayer four of the order I handed down on the 6<sup>th</sup> July 2022.

[2] That prayer 4 reads as follows:

“This order does not prevent the Respondents from exercising their legal rights in terms of the revenue and debt collection by laws in respect of any actual indebtedness owed by the Applicants to the Respondent arising after 29<sup>th</sup> June 2022.”

[3] The Applicants argue that this order means that the Municipality is prevented from exercising its legal right in terms of its revenue and debt collection by laws, including instituting any legal proceedings in respect of Sam Tissue Products indebtedness prior to 29 June 2022.

[4] It is that interpretation that the Applicant says should go on appeal to the full bench of this Court alternatively the Supreme Court of Appeal.

[5] The Applicants interpretation of the order in paragraph 4 is clearly wrong. There is nowhere in the judgment nor in the order in which this Court barred Emfuleni from instituting action against the Respondent for recovery of debts due to it. All that the order says is that if there is actual debt not estimated debt they can proceed to institute action.

[6] It must be recalled that the interdict came about because Emfuleni threatened to cut off electricity supplies on a disputed claim based on

estimates. It is that matter for which Emfuleni is now been sued as directed in paragraphs 2 and 3 of the order.

[7] The order in paragraph 4 is directed at preventing threats to cut off based on estimates which may result in further interdicts.

[8] The Applicants unfounded fear that it will be faced with a plea of prescription or some form of special plea has been put to bed by Counsel for the Respondent who indicated before this Court that Sams Tissue has no intention of relying on such pleas and actually invited the Applicants to file their counterclaim.

[9] The test to be applied in deciding whether or not leave should be granted is governed by the provisions of Section 17(1) of Act 10 of 2013 which provides as follows:

“Leave to appeal may only be given where the judge or judges concerned are of the opinion that:

- a) (i) the appeal would have a reasonable prospect of success or
- (ii) there is some other compelling reason why the appeal should be heard including conflicting judgments.”

[10] I am not persuaded that the appeal would have a reasonable prospects of success.

ORDER:

1. The application for leave to appeal is dismissed.
2. The Applicants are ordered to pay costs of this application.

DATED at JOHANNESBURG this the 01<sup>st</sup> day of DECEMBER 2022.

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**M A MAKUME  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, JOHANNESBURG**

DATE OF HEARING	:	01 DECEMBER 2022
DATE OF JUDGMENT	:	01 DECEMBER 2022
FOR APPLICANTS	:	ADV MATHOPO
INSTRUCTED BY	:	MAJAVU INCORPORATED
FOR RESPONDENT	:	ADV KHAN
INSTRUCTED BY	:	SHAHEED DOLLIE ATTORNEYS