

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

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

.....
DATE
SIGNATURE

Case no.: **2021/42636**

In the matter between:

**THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Appellant

And

SPECITRIM (PTY) LTD

First Respondent

EDMANET (PTY) LTD

Second Respondent

NOSKOP 1 (PTY) LTD

Third Respondent

UNLOCKED PROPERTIES 23 (PTY) LTD

Fourth Respondent

UNLOCKED PROPERTIES 5 (PTY) LTD

Fifth Respondent

LIMOWARE (PTY) LTD

Sixth Respondent

LISACRAFT (PTY) LTD

Seventh Respondent

Coram: Dlamini J

Date of hearing: 12 October 2022 – in a ‘virtual Hearing’ during a videoconference on Microsoft Teams digital platform.

Date of delivery of Judgment: 07 December 2022

This Judgment is deemed to have been delivered electronically by circulation to the parties’ representatives via email and shall be uploaded onto the caselines system.

JUDGMENT
[LEAVE TO APPEAL]

DLAMINI J

[1] This is an application for leave to appeal an order that I handed down on 18 January 2022.

[2] The appellant is the City of Johannesburg Metropolitan Municipality (CoJ).

- [3] The respondents are the owners of various immovable properties falling within the municipal jurisdiction of the CoJ, the appellant in its capacity as the Local Governing Municipality.
- [4] The numb of the issue is whether the appellant has correctly charged the respondents using the correct tariff for services the CoJ delivered to the respondents.
- [5] The effect of my order was that the appellants are directed to engage and interrogate the respondent's various municipal accounts to ensure that the respondents have been correctly billed.
- [6] The test for granting leave to appeal is now a higher one.
- [7] The trial court may now only grant leave to appeal if it is of the opinion that the appeal would have a realistic chance of success and not may have a reasonable prospect of success. The legislator's use of the would in section 17(1)(a)(i) of the Superior Court Act imposes a most stringent and vigorous threshold.
- [8] This concept was captured thus by the court in **Member of the Executive Council of Health Eastern Cape v Mikhita and another**¹ where the court held that a court may now only grant leave to appeal if it is of the opinion that the appeal would have a realistic chance of success not may have a reasonable chance of success. A mere possibility of success or even an arguable case is not enough.
- [9] Having read the applicant's reasons to appeal and heard both Counsels during argument, I am of the view that no court will come to a different conclusion that the one that I have reached.
- [10] No other Court would give a contrary decision from the order which I granted on 18 January 2022.

¹ 1221/2015 [2016] ZASCA 176 (25 NOVEMBER 2016 at 16)

In all the above circumstances the applicant has failed to make out its case.

ORDER

1. The application for leave to appeal is dismissed with costs.

DLAMINI J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing: 12 October 2022

Delivered: 07 December 2022

For the Appellant:

Adv Emmanuel Sithole

Email:

esithole@law.co.za

Instructed by:

Mr Hugo Baloyi (Madlopa & Thenga Inc.)

Email:

hugo@madlopathenga.co.za

For the Respondents:

Adv T Paige-Green

Email:

tpaigegr@clubadvocates.co.za

Instructed by:

Mr Graig Green (Schindler attorneys)

Email:

Green@schindlers.co.za