

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 069077/2023

DATE: 24-11-2023

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 04 December 2023

SIGNATURE

In the matter between

CHRISTINA FUNDISWA KHUMALO

Applicant

and

TOBAGO BODY CORPORATE

Respondent

**J U D G M E N T**

**LEAVE TO APPEAL**

**YACOOB, J:** This is an application for leave to appeal. This matter came to me in the urgent court on 16 August 2023. It was set down irregularly on a Monday for a Wednesday. I found that the applicant had not established the degree of urgency imposed and struck the matter from the roll.

The applicant, rather than setting the matter down

with a lesser degree of urgency or on the ordinary roll, has now applied for leave to appeal on the basis that my finding on urgency was wrong and that because I put the respondent on terms to file an answering affidavit, thus acknowledging a degree of urgency, the matter must have been urgent.

The application for leave to appeal makes reference to continuing prejudice as a result of my finding, but although the applicant was offered dates closer to the time the application for leave was instituted, the applicant chose a date months later for the hearing of this application for leave.

At the hearing it was clarified that the applicant now acknowledges that the matter is not urgent at this precise moment in time. The question is whether it was urgent at the time it was heard, and that is the thing that needed to be corrected.

The applicant also seeks leave to appeal the costs order made in the respondent's favour, because, according to her, at that point the application was not properly opposed as no notice of intention to oppose had yet been filed.

In my view this application belies the applicant's fundamental failure to comprehend the nature of urgent proceedings and the question of degrees of urgency. It also

shows a lack of appreciation of when an order is appealable.

The question of urgency, when the matter is no longer urgent, does not require further court resources to deal with it as it does not deal with any of the issues in the case nor is it likely to lead to resolution of the issues between the parties.

In addition, it will have no practical effect or result, and so that it falls squarely within the ambit of section 16(2) (a)(1) of the Superior Courts Act. There is the argument that there is a matter of principle involved, as the question of how urgent matters are dealt with is relevant to future court processes. In those circumstances the applicant would be entitled to leave if it were demonstrated that the court had not applied its discretion judicially. I am not satisfied that the applicant has demonstrated that. The reasoning behind the finding remains valid, in my view.

Costs orders are not usually appealable on their own, unless they involve a matter of principle. The applicant's ground of appeal against the cost order, that the matter was not, at the time I granted the order, formally opposed, does not take into account the nature of the urgent court, in which opposition often manifests simply by appearance, particularly when time is short. There is no merit in the applicant's attempt to appeal the costs order.

I cannot see that there is any other reason which makes it in the interests of justice for this particular application for leave to be granted. The order that I made was not final in any way. It does not dispose of the matter. It does not bind any other court. This is vital since it did not prevent the applicant from approaching another court on an urgent basis but with a lesser degree of urgency; once the papers had been filed, and also properly setting it down on a Thursday for a Tuesday.

For these reasons the application for leave to appeal is dismissed with costs.

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**YACOOB, J**

**JUDGE OF THE HIGH COURT**

**DATE: 04 December 2023**