



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

**REPUBLIC OF SOUTH AFRICA**

**CASE NO: 39800/2020**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: NO  
DATE: 1 FEBRUARY 2023  
SIGNATURE: ***ML SENYATSI***

In the matter between:

**266 BREE STREET JOHANNESBURG (PTY) LTD**

First Applicant

**10 FIFE AVENUE BEREA (PTY) LIMITED**

Second Applicant

**28 ESSELEN STREET HILLBROW CC**

Third Applicant

**68 WOLMARANS STREET JOHANNESBURG (PTY)  
LTD**

Fourth Applicant

**HILLBROW CONSOLIDATED INVESTMENT CC**

Fifth Applicant

**MARK MORRIS FARBER**

Sixth Applicant

And

**TUHF LIMITED**

Respondent

***Delivered:*** By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered. The date for hand-down is deemed to be 1 February 2023.

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**JUDGMENT**

**(Leave to Appeal Application)**

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**SENYATSI J:**

- [1] This is an application to appeal the judgment handed down on 9 September 2022 in terms of which an enforcement of the cession of the rental agreement of tenants occupying an immovable property known as Metro Centre was given effect to and TUHF was authorised to collect the rental from the tenants.
- [2] The grounds raised for the appeal, amount to pleading the case again and for that reason, will not be repeated in this judgment.
- [3] The issue for determination is whether or not the appeal would have a prospect of success or whether it is in the interest of justice that the appeal should be heard.
- [4] Section 17(1)(a) of the Superior Courts Act No: 10 of 2013 provides as follows:

“17(1) 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;
- (ii) there is a compelling reason why the appeal should be

heard including conflicting judgments on the matter under consideration.”

[5] In fact the judgment was somewhat, overtaken by events. That is so given that the Principal Debtor was placed in business rescue and the business rescue and the business rescue practitioner and TUHF agreed that the rental to be collected would be put in the interest bearing account of an independent escrow pending the finalisation of the main action. That said, the issue then becomes what value does the leave to appeal add to this current litigation on which judgment handed down is being appealed against.

[6] Having regard to the history of this matter, the pending litigation on the main action and the agreement reached on rental collection between TUHF and the business rescue practitioner, I am of the view that there is no reasonable prospect that the appeal would succeed on the judgment.

[7] In so far as the other applicants are concerned leave to appeal is therefore academic as the main application need to be determined in the near future.

[8] Accordingly, the application for leave to appeal must fail.

### **ORDER**

[9] The application for leave to appeal the judgment handed down on 9 September 2022 is dismissed with costs

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**ML SENYATSI  
JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

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