



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

DELETE WHICHEVER IS NOT APPLICABLE

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

1 March 2024
DATE

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SIGNATURE

CASE NO: 2023-102560

In the matter between:

1BUHLE WASTE (PTY) LIMITED

Applicant

and

THE MEC OF HEALTH GAUTENG PROVINCE

First Respondent

**HEAD OF THE DEPARTMENT OF HEALTH
FOR THE GAUTENG PROVINCE**

Second Respondent

THE MEC OF FINANCE: GAUTENG PROVINCE

Third Respondent

**CHAIRPERSON OF THE BID ADJUDICATION
COMMITTEE**

Fourth Respondent

CHAIRPERSON OF THE BID EVALUATION COMMITTEE	Fifth Respondent
CHAIRPERSON OF THE GAUTENG BID APPEAL TRIBUNAL	Sixth Respondent
MAMPURU WASTE MANAGEMENT	Seventh Respondent
ECOCYCLE WASTE SOLUTIONS JV VIKELA AFRIKA WASTE CARE	Eighth Respondent
AVERDA SOUTH AFRICA (PTY) LTD	Ninth Respondent
TSHENOLO WASTE (PTY) LTD	Tenth Respondent
MAHLABANA WASTE JV NT CC4 WASTE	Eleventh Respondent
THUMA WASTE CC	Twelfth Respondent
MAKHATHINI MEDICAL WASTE (PTY) LTD	Thirteenth Respondent
COMPASS MEDICAL WASTE SERVICES (PTY) LTD	Fourteenth Respondent
PHUTING MEDICAL WASTE MANAGEMENT (PTY) LTD	Fifteenth Respondent
BASMED XPRESS	Sixteenth Respondent
PLEASANT MAPHOKA (PTY) LTD	Seventeenth Respondent
A-THERMAL ENVIROPRO JV	Eighteenth Respondent
ADDITY WASTE CO (PTY) LTD	Nineteenth Respondent
HEALTHCARE WASTE SERVICES (PTY) LTD	Twentieth Respondent

JUDGEMENT

CAJEE AJ

1. This is an application for leave to appeal in terms of section 17 of the Superior Courts Act 10 of 2013 against an order I granted on the 30th of November 2023 and the subsequent judgment dated the 4th of December 2023 in which I gave reasons for the order. Simultaneously I also heard an application in terms of section 18(1) and section 18(3) of the same Superior Courts Act to execute the order pending the determination of the appeal should I grant leave to appeal.
2. The applicants for leave to appeal are the first, second, fourth and fifth Respondents as well as the tenth Respondent (which has filed a separate application for leave to appeal) in the main application, in which the Applicant in the main application is the Respondent. The Applicant in the section 18(1) and section 18(3) application, which is opposed by the Applicants for leave to appeal, is the Applicant in the main application. For the sake of convenience I will refer to the parties as they were in the Main application.

The Application for Leave to Appeal

3. I will first deal with the application for leave to appeal.

4. Adv. Mokhare SC represented the first, second, fourth and fifth Respondents while Adv. Tsatsawane SC represented the tenth Respondent. Adv. Premhid represented the Applicant. All these counsel filed heads of argument, assisted by junior counsel save for Tsatswane SC, as well as appeared at the hearing before me on the 16th of February 2024.
5. The test for whether a court should grant leave to appeal is governed by section 17 of the Superior Courts Act 10 of 2013.
6. Section 17(1) reads as follows:
 - (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; or
 - (a)(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
 - (b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.

7. Section 16(2)(a) reads as follows:

(2)(a)(i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.

8. An applicant for leave to appeal needs to inter alia satisfy a court that the appeal has a reasonable prospect of success.

9. Having considered the heads of argument and the arguments presented at the hearing of the matter I am of the opinion that the Applicants for leave to appeal have made out a case for leave to appeal to the Supreme Court of Appeal.

10. While it is true that the Applicant did seek in the application that served before me, as an alternative relief, that the tender be set aside because it had lapsed and no valid extension had occurred, it did so mainly based on different allegations than the fact that no valid extension had occurred extending the initial deadline of 17th November 2022. However, as argued

by Adv. Premhid, the issue pertaining to the 17th November 2022 extension were fully ventilated in the papers.

11. I can further find no valid reason why the Applicant didn't challenge the invalidly extended tender after the 17th of November 2022 within at least the one hundred and eighty days allowed by section 7(1) of the Promotion of Access to Justice Act 3 of 2000. All the documents it needed to do so were already in its possession. In fact, all indications are that a reasonable period to bring such a review would have been even shorter. However, as pointed out in my main judgment, the Applicant was happy to participate in the invalidly extended tender because it inter alia continued providing services to the second Respondent and related entities during this extended period and this would probably explain why it did not challenge the extension earlier.
12. I am of the view that the Supreme Court of Appeal could reasonably find that despite the fact that the original tender ended on the 17th of November 2022 without being validly extended, that on the facts of this case too long a period had elapsed and too much had occurred subsequently in the furtherance of the tender to justify the order that I granted. To this end, the SCA may reasonably find that the fact that the invalid extension of the tender period after the 17th of November 2022 was not challenged timeously to be a critical factor in this regard.

13. Advocate Mokhari SC makes the argument in his heads of argument that apart from the reasonable prospect of success requirement in section 17(1)(a)(i) of the Superior Courts Act, that the Respondents have also satisfied the alternative requirements set out in section 17(1)(a)(ii), namely that there are other compelling reasons why this appeal should be heard. There may be merit in this contention as well. In light of the fact that I am of the view that the Respondents have satisfied the requirements of section 17(1)(a)(i), I will not make any definitive finding in this regard.
14. None of the parties argued that section 16(2)(a) of the Superior Courts Act is applicable in this matter, even though Adv. Premhid did argue that given the relatively short duration of the contract awarded to the tenth Respondent (36 months), that the Applicant would not be afforded substantial redress in due course. I disagree. There are a number of options open to the Applicant, including seeking an appropriate order from the SCA should the appeal fail and pursuing a possible damages action against the Respondents if it is so advised.
15. I will not decide whether section 17(1)(c) of the Superior Courts Act set out additional or alternative requirements that need to be satisfied before leave to appeal can be granted. I could not find any express judicial pronouncements on the issue save to state that leave to appeal has often been decided on and granted by our courts without any reference to or

reliance on this section. Suffice it to say that I am of the view that in so far as the decision sought to be appealed does not dispose of all the issues in this case, given the many disputes identified and traversed in the main application, the appeal would probably lead to a just and prompt resolution of the real issues between the parties.

16. In the premises I grant the application for leave to appeal to the Supreme Court of Appeals, with costs to be in the appeal.

The Application in terms of Section 18(1) and 18(3)

17. I am not convinced that any exceptional circumstances contemplated in section 18(1) of the Superior Courts Act exist to justify an order that the original order should be executed despite the pending appeal. Nor has the applicant demonstrated on a balance of probabilities that it will suffer irreparable harm as required by section 18(3). To the contrary, the tenth Respondent will probably be severely prejudiced should the application be granted and in due course the appeal is upheld. The facts of this case are clearly distinguishable from the plethora of cases referred to by Adv. Premhid in his heads of argument and uploaded to caselines.
18. In my opinion, very strong factors exist which justify the suspension of my order until such time as the SCA decides on the merits of the appeal. The period from date of this order to the date that the SCA hears the matter

and hands down its judgment will probably have the practical effect of extending the period of suspension in my order. This, in my view, cannot of itself be said to be prejudicial to any of the parties nor for that matter the public itself. If anything, it would probably be the best way forward until the appeal is finalised. Expeditionary execution of the appeal would have the effect of shortening this period. In my view the expedition of the appeal process would be in the interests of all the parties involved if for nothing else than for legal certainty and their respective rights and interests in the matter.

19. In the premises I dismiss the application in terms of section 18(1) and section 18(3) of the Superior Courts Act with costs, including the costs of two counsel where so employed.

CAJEE AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION
JOHANNESBURG

DATE OF HEARING: 16th February 2024
DATE OF JUDGMENT: 1st March 2024

LEGAL REPRESENTATIVES OF PARTIES

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