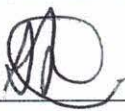




IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) **REPORTABLE: YES / NO**
(2) **OF INTEREST TO OTHER JUDGES: YES / NO**
(3) **REVISED**
4/9/2023
DATE

SIGNATURE

CASE NUMBER: 64408/2022

J D GUIAMBA

Applicant

and

**CITY OF TSHWANE METROPOLITAN COUNCIL
Applicant/Respondent
THOMAS MAGWAI
NATIONAL DIRECTOR OF PUBLIC PROSECUTION
MINISTER OF POLICE
WARRANT OFFICER H KGANYAGO
CAPTAIN D J RACHEKHU
CAPTAIN M A MALULEKA
WARRANT OFFICER KOKA**

First

**Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent
Seventh Respondent
Eighth Respondent**

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulating to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of hand-down is deemed to be the 4 September 2023

JUDGMENT

**MAKAMU AJ
INTRODUCTION**

[1] The Applicant brought an application for leave to appeal the judgment handed down on the 13th of June 2023. The application was argued on the 4th of August 2023. where the Applicant brought an application for condonation for failing to serve the notice to Certain Organs of State in terms of section 3 (1)(a) of Act 40 of 2002.

[2] The Applicant was offended by the two specific orders by this court:-

1. That the Applicant should pay costs security amount as will be determined by the Registrar of this court
2. That the notice of bar against the First Respondent be lifted as an irregular step.

[3] The other orders became moot as the Applicant delivered the documents in terms of the First Respondent notice in terms of Rule 35 (12) and Rule 35 (14). The Parties agreed that the order became moot and only academic.

APPLICABLE LAW ON LEAVE TO APPEAL

[4] Section 17(1) of the Superior Court Act, 10 of 2013; " 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 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.

MERIT

[5] The Applicant in their opening line of their application for leave to appeal stated that they appeal against the whole judgment but later indicated that it is only the orders reflected on paragraph 3 above that they were appealing against.

[6] The Main question is whether there are any prospects of success in their appeal? I gave an order that the Applicant should provide security for costs as will be determined by the Registrar of this court. I advanced reasons why I had to make such an order , not only that the Applicant was a peregrinus but he is hardly stable in the Republic of South Africa and if costs are awarded against him in respect of First Respondent, is he going to be

able to provide such costs when one look at the prospects of success as well in the main action against First Respondent.

[7] In regard to order 6 in my judgment, the Applicant as correctly argued by the First Respondent, the Applicant issued Notice of Bar before he could comply or react to Rule 35(12) and Rule 35(14) so it is an irregular step, hence he also replied at a later stage.

[8] When it comes to the costs it is only fair not to award costs at this stage hence I decided to order that costs be costs in the cause on both main application for condonation and counter- application for security of costs.

CONCLUSION

[9] The test for leave to appeal is whether the appeal would have a reasonable prospects of success; or whether there is some other compelling reason why the appeal should be heard.

[10] The order does not have the effect of stalling the process of litigation but to enhance the speed and bring back the proceedings to alignment to proceed.

[11] In these circumstances, the following order is made:

1. The application for leave to appeal is dismissed
2. The applicants for leave to appeal to pay the costs.



M.S MAKAMU
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPERANCES

Applicants' counsel:	Adv T Kwindu
Applicants' attorneys:	Sello Makhafola Incorporated
Respondent's counsel:	Adv J Van der Merwe
1 st Respondent's attorneys:	Prinsloos Attorneys

