



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

(1)	REPORTABLE:
(2)	OF INTEREST TO OTHER JUDGES:
(3)	REVISED.
_____	_____
DATE	SIGNATURE

CASE NO: 26992/2020

In the matter between:

J R 209 INVESTMENTS (PTY) LTD
Applicant

And

**THE NATIONAL MINISTER OF AGRICULTURE,
LAND REFORM AND RURAL DEVELOPMENT**
Respondent First

THE DELEGATE OF THE MINISTER OF AGRICULTURE,

LAND REFORM AND RURAL DEVELOPMENT
Respondent

Second

THE REGISTRAR OF DEEDS, PRETORIA
Respondent

Third

THE EKURHULENI METROPOLITAN MUNICIPALITY
Respondent

Fourth

JUDGMENT

MBONGWE J:

INTRODUCTION

- [1] The applicant has brought this application for leave to appeal against the whole of the judgment and order of this court dated 11 February 2022 in terms of which the applicant's earlier application was dismissed. In that application the applicant had sought the following relief:
- (a) a declaratory order that certain immovable properties described below and owned by the applicant do not fall within the definition of agricultural land as set out in section 1 of the Subdivision of Agricultural Land Act 70 of 1970 ("SALA"), or alternatively and in the event that it be found that the properties concerned constitute agricultural land -
 - (b) a review of the decisions of the second respondent refusing the applicant's request for the consent of the first respondent to the subdivision and development of the land concerned, and
 - (c) a review of the first respondent's decision refusing the applicant's appeal against the decision of the second respondent.

ABRIDGED FACTUAL MATRIX

- [2] The applicant is the registered owner of some four immovable properties known as the Remainder of the farm Hartebeesfontein 17

- JR , Remainder of Portion 50 of the farm Olifantsfontein 402 - JR , Portion 8 of the farm Hartebeesfontein 17 - IR and part of the Remainder of Portion 2 of the farm Witfontein 16 - R , situated in Ekurhuleni Metropolitan Municipality, Gauteng Province ("the subject properties").

- [3] The applicant intends to develop parts of the above properties in a manner that amount to a conversion of the particular land from agricultural land. Section 4 of the Subdivision of Agricultural Land Act explicitly prohibits the subdivision of agricultural land to prevent its conversion into uneconomical small units that would interfere with agricultural activities and threaten food security. On the basis of its contention that these properties do not fall within the definition of agricultural land and the refusal of the first respondent to grant consent for the conversion of the properties, the applicant approached the court seeking the aforementioned relief.

FINDINGS OF THE COURT

- [4] At para [31] of the main judgment this court found that the main relief sought, being a declaratory that the properties concerned do not constitute agricultural land, was incompetent. This court found that these properties do not fall amongst the exclusions from the definition of agricultural land in the provisions of section 1 of SALA. The granting of the declaratory sought would undermine the doctrine of the separation of powers in the circumstances. For this reason alone, the application stood to be dismissed.
- [5] Following the above finding, this court found that the respondents, particularly the first respondent had, by her refusal to grant the consent requested by the applicant, discharged her legislative obligation, being to prevent the conversion of agricultural land into uneconomic small units. The decision to not grant consent was well grounded on statutory provisions and not unlawfully or unfairly taken. The application for the review of the decisions of the respondents had, therefore, to fail.

CRITERIA FOR GRANTING LEAVE TO APPEAL

- [6] The criteria for granting leave to appeal are contained in the provisions of sections 17(1) and 16(2)(a)(i) of the Superior Courts Act 10 of 2013, ('the Act'). In terms of section 17(1) the court may only grant leave to appeal where it is convinced that:

(a) the appeal would have a reasonable prospect of success; or

- (b) there is some other compelling reason why the appeal should be heard, including the existence of conflicting decision on the matter under consideration; or
- (c) the decision on appeal will still have practical effect (section 16(2)(a)(i), and
- (d) where the decision appealed against does not dispose of all the issues in the case, and the appeal would lead to a just and prompt resolution of all the issues between the parties.

[7] In considering an application for leave to appeal, the court hearing the application must be convinced that the appeal itself would have prospects of success. Absent the prospects of success of the appeal, leave to appeal should not be granted. In *Zuma v Democratic Alliance* [2021] ZASCA 39 (13 April 2021) the court held that the success of an application for leave to appeal depends on the prospect of the eventual success of the appeal itself. The applicant in the present matter does not challenge the substance and application of the legislative provisions underpinning the conclusions of the court, but merely raises arguments. In *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] ZASCA 176 (25 November 2016) the court stated the principle in the following terms:

“An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be sound, rational basis to conclude that there is a reasonable prospect of success on appeal.”

[8] In *The Mont Chevaux Trust v Tina Goosen and Others* 2014 JDR 2325 LCC the court held that section 17(1)(a)(i) requires that there be a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against before leave to appeal is granted

[9] The raising of arguments, even if valid, on the dicta in the judgment of the court is not an indication of the measure of success of the appeal envisioned in section 17(1)(a)(i) nor does a dictum form a ground for leave to appeal. In fact section 16 of the Act prohibits the granting of leave to appeal merely for the presentation of argument that does not address the substantive issues in the matter.

APPEAL TO THE SUPREME COURT

[10] Counsel for the applicant sought leave to appeal to the Supreme Court of Appeal contending that the decision of this court is in conflict with other decisions. He was, however, not able to demonstrate the conflict. Section 17(6)(a) of the Act makes it mandatory for a judge granting leave to appeal to direct that the appeal be heard by the full bench of the particular division the matter was heard in. Leave to appeal to the Supreme Court of Appeal may only be granted if the decision appealed against entails an important question of law or a decision of the Supreme Court of Appeal is necessary to resolve differences or conflicting decisions, or the administration of justice necessitates a decision by the Supreme Court of Appeal. None of these considerations has been shown to exist *in casu* to justify leave to appeal to the Supreme Court of appeal.

CONCLUSION

[11] In light of the findings stated in paragraphs [4] and [5] above, the applicant's appeal has no prospects of success and does not warrant the granting of leave to appeal under any of the criteria stipulated in section 17 of Act 10 of 2013. Leave to appeal must therefore be refused.

ORDER

[12] Resulting from the findings in this judgment, the following order is made:

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

M P N MBONGWE

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES

For the appellants

Adv A Subel SC

with him:

Adv M Majozi

Instructed by

Ivan Pauw & Parterns Attorneys

448C Sussex Avenue

Cnr Rodericks Rd & Sussex Avenue

Lynwood. Pretoria

Tel: 012 369 9180

For 1st and 2nd Respondent

Adv Z Z Matebese SC

with him:

Adv H L Kelaotswe

Instructed by

The State attorney

Ground floor, Salu Building

316 Thabo Sehume Str

Cnr Francis Baard Str

Pretoria

Tel: 012 309 1627

THIS JUDGMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES ON
..... MARCH 2023