



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

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED NO
DATE:..... 18 JANUARY 2023
SIGNATURE:.....

Case No. 17554/2021

In the matter between:

**SOUTH DURBAN COMMUNITY ENVIRONMENTAL
ALLIANCE**

First Applicant

THE TRUSTEES OF THE GROUNDWORK TRUST

Second Applicant

And

**MINISTER OF FORESTRY, FISHERIES AND THE
ENVIRONMENT**

First Respondent

CHIEF DIRECTOR: INTERGRATED ENVIRONMENTAL

Second Respondent

**AUTHORISATIONS, DEPARTMENT OF ENVIRONMENTAL
AFFAIRS**

ESKOM HOLDINGS SOC LTD

Third Respondent

Coram: Millar J

Heard on: 17 January 2023

Delivered: 18 January 2023 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 12H30 on 18 January 2023.

Summary: Application for leave to appeal – no prospect that another court would come to a different conclusion or other compelling reason that leave should be granted – application dismissed.

JUDGMENT

MILLAR J

1. On 6 October 2022 an order was granted by this court dismissing an application for the review by the applicants of the granting of an Environmental Authorisation (EA) by the second respondent and the dismissal of an appeal to

the first respondent against that decision. Ancillary orders were also granted in regard to notification to the public of the granting of the EA in question and all future linked and ancillary applications for EA's linked to it together with a costs order in favour of the applicants.

2. The applicants have applied for leave to appeal. The grounds upon which the application is brought are comprehensive and represent a challenge to every finding made in the judgment save in respect of the ancillary orders and costs. The applicants also raise legal issues.
3. The test for the granting of leave to appeal pertinent to the present matter is set out in section 17(1) of the Superior Courts Act¹ 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
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;”

4. Besides taking issue with the findings in respect of the individual grounds of review², it was also argued that the judgment was novel in respects and conflicted with the decision in *Earthlife Africa Johannesburg v Minister of Environmental Affairs (Earthlife)*³. It was argued that on this basis leave to appeal should also be granted.⁴

¹ 10 of 2013

² Within the ambit of Section 17(1)(a)(i)

³ 2017 2 ALL SA 519 (GP)

⁴ Within the ambit of Section 17(1)(a)(ii)

5. I do not intend to deal with each ground of appeal in this judgment. I have considered all the grounds and the reasons given by me in the judgment and am of the view that another court would not come to a different conclusion.
6. There are however two grounds raised that require comment. The first is that *ipso facto* the granting of the ancillary directory relief relating to notice to the public I ought as a precursor to have upheld the review. The argument presented was that such relief could only be properly granted pursuant to a finding that the refusal of the appeal by the first respondent was reviewable.
7. Section 8 of the Promotion of Administrative Justice Act⁵ permits the granting of “just and equitable” relief and is not qualified by limiting the granting of such an order only in cases where the review has been granted⁶. The granting of the ancillary directory relief is not irreconcilable with the dismissal of the review.
8. The second ground is that the judgment in the present matter conflicts with that in *Earthlife*. I disagree – the facts in the present matter are distinguishable from those in *Earthlife* and it was on that basis that it was distinguished. There is in my view no conflict which would require settling by an appeal court.
9. On the question of costs, the applicants argued that if I were to dismiss the application then there should be no order for costs. It was argued that for the reasons given in the judgment and the granting of a costs order in favour of the applicants there, that they were reasonably entitled to bring the present application and should not be mulcted with costs. The respondent argued that the costs should follow the result.

⁵ 3 of 2000

⁶ *Minister of Health and Another NO v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as Amici Curiae)* 2006 (2) SA 311 (CC) at 344E – 345A. See also Section 8 of PAJA.

10. In the circumstances it is ordered:

10.1 The application for leave to appeal is dismissed.

10.2 Each of the parties is ordered to bear its own costs.

A MILLAR

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

HEARD ON:

17 JANUARY 2023

JUDGMENT DELIVERED ON:

18 JANUARY 2023

COUNSEL FOR THE FIRST AND SECOND

APPLICANTS:

ADV. A GABRIEL SC

ADV. I LEARMOTH

INSTRUCTED BY:

JACOBSON & LEVY INCORPORATED

REFERENCE:

MR J LEVY

COUNSEL FOR THE FIRST AND SECOND

RESPONDENTS:

ADV. C ERASMUS SC

ADV. M VIMBI

INSTRUCTED BY:

THE STATE ATTORNEY PRETORIA

REFERENCE:

MR LT CHOKWE

COUNSEL FOR THIRD RESPONDENT

ADV. P JARA

INSTRUCTED BY:

RENQE FY INCORPORATED

REFERENCE:

MS RENQE