

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,
PRETORIA

REPORTABLE: **NO**/YES
OF INTEREST TO OTHER JUDGES: **NO**/YES
REVISED.

.....**06 APRIL 2023**.....
SIGNATURE **DATE**

CASE NO:
27673/2022

In the matter of:

THE MALKI'S INVESTMENT TRUST

APPLICANT

and

ALI HASHI

FIRST RESPONDENT

DAVID MOETI

SECOND RESPONDENT

THE CITY OF TSHWANE METROPOLITAN
MUNICIPALITY

THIRD RESPONDENT

RULING ON APPLICATION FOR LEAVE TO APPEAL

A. Introduction

1. This is an opposed application for leave to appeal the order made by this court on 6 March 2023, evicting the respondents from the applicant's property. The respondents represented themselves during the proceedings of 3 March. However, they were represented by counsel during the proceedings dealing with their application for leave to appeal.
2. The respondents' grounds of appeal are set out in their notice of application for leave to appeal. I will briefly refer to them. For now, it is necessary to record that the respondents contend that their application is premised on both subsections (i) and (ii) of section 17 (1) (a) of the Superior Courts Act 10 of 2013¹. I set out here below the respondents' grounds:

B. Reasonable prospects of success

3. The respondents say that the court erred in finding that they do not have a valid defence in law and in not taking into account the plight of the nine school children.

¹ Superior Courts Act 10 of 2013.

C. Special reasons why leave to appeal must be granted

4. The respondents further state that there are special reasons why leave to appeal must be granted. They cite, *inter alia*, the following as special reasons:

(i) The first and second respondents have made an application to this court to declare the title deed of the applicant invalid;

(ii) There is a debt owed to the City of Tshwane in the amount of R 391 000 since 2011. They query how the property was transferred with such a huge debt without a rates clearance certificate.

(iii) The City of Tshwane was not cited in the eviction application and it did not make submissions. Given that the City was not cited, the respondents complain that they would not have alternative accommodation.

(iv) Renovations were made to the property.

(v) There are nine school children and they need to be considered before eviction is granted, especially by a purchaser who finds it difficult to produce proof of purchase.

5. Purely from reading the respondents' grounds of appeal, there is neither a prospect that another court may come to a different finding nor are there special circumstances that would warrant that leave to appeal be granted.

6. A brief background is necessary. There is not even an opposing affidavit on file. The papers that the respondents presented in November 2022 were not commissioned. Leaving aside the failure to file commissioned papers, the respondents raised no triable issues in their four paged opposing papers. A cursory glance at what the respondents call special circumstances are vague allegations suggestive of some questioning both the process of transfer and the applicant's title to the property. But these cannot be valid defences for the respondents who, by their own version, claim no interest in the property.

7. The respondents further argue that the City of Tshwane was not cited in the main application. This is incorrect. The respondents themselves have altered the original heading on a number of occasions. On the question of the nine school children, the respondents do not make a claim that these are their children or that they run a shelter for the homeless or some school. They cannot even provide details of the nine children, their origins and why they must remain in the applicant's property. A mere perusal of all the papers filed by the respondents in this matter demonstrates clearly that their sole basis for opposing the application, including their filing of this application for leave to appeal, is to delay relief to the applicant. The application for leave to appeal has no basis in law and it falls to be dismissed.

D. Order

8. The application for leave to appeal is dismissed with costs.

NN BAM
JUDGE OF THE HIGH COURT,
PRETORIA

Appearances:

Applicant:

Adv N Mhlongo

Instructed by Aphane Attorneys

Pretoria

Respondents:

Adv P Moloto

A.J Masingi Attorneys

Pretoria

