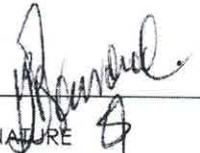


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
<u>12/8/20</u>	
DATE	SIGNATURE

Case No: 71913/2018

In the matter between:

**SOUTH AFRICAN ASSOCIATION
FOR WATER USERS ASSOCIATIONS**

First Applicant

EAGLE'S NEST INVESTMENTS 3 CC

Second Applicant

THUSANO EMPOWERMENT FARM (PTY) LTD

Third Applicant

and

MINISTER OF WATER AND SANITATION

First Respondent

**DIRECTOR GENERAL: DEPARTMENT OF WATER
AND SANITATION**

Second Respondent

SIFISO MKHIZE N.O.

Third Respondent

SIFISO MKHIZE N.O.	Third Respondent
DEPUTY DIRECTOR GENERAL: WATER SECTOR REGULATION, DEPARTMENT OF WATER AND SANITATION	Fourth Respondent
DEPUTY DIRECTOR GENERAL: SPECIAL PROJECTS Respondent DEPARTMENT OF WATER AND SANITATION	Fifth

Case No: 42072/2018

In the matter between:

CASPER JACOBUS LOTTER N.O.	First Applicant
JACOBUS ANDREAS DU PLESSIS N.O.	Second Applicant
JOHANNES CORNELIUS HEUNIS N.O. (THE TRUSTEES FOR THE TIME BEING OF THE DOORNKRAAL BESIGHEIDTRUST IT844/2003 (E))	Third Applicant

and

THE MINISTER OF WATER AND SANITATION	First Respondent
THE MINISTER OF ENVIRONMENTAL AFFAIRS	Second Respondent
DIRECTOR GENERAL: DEPARTMENT OF WATER AND SANITATION	Third Respondent
BRITZKRAAL (PTY) LTD	Fourth Respondent

Case No: 90498/2018

In the matter between:

FRANCOIS GERHARDUS JOHANNES WIID	First Applicant
TORQHOFF BOERDERY (PTY) LTD	Second Applicant
FRANCOIS GERHARDUS JOHANNES WIID N.O.	Third Applicant

REINETTE JEPPE WIID N.O.

Fourth Respondent

CAREL JACOBUS VAN PLETZEN N.O.

Fifth Applicant

(THE THIRD, FOURTH AND FIFTH APPLICANTS BEING TRUSTEES FOR THE TIME BEING OF DE KALK TRUST IT51/2008/K)

and

THE MINISTER OF WATER AND SANITATION
Respondent

First

THE MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS
Respondent

Second

THE DIRECTOR GENERAL: DEPARTMENT OF WATER AND SANITATION
Respondent

Third

GABRIEL PETRUS VILJOEN N.O.

Fourth Respondent

ANTON ANDRE STRYDOM N.O.
Respondent

Fifth

ANTON STEPHANUS VILJOEN N.O.
Respondent

Sixth

(THE FOURTH, FIFTH AND SIXTH RESPONDENTS ARE THE TRUSTEES FOR THE TIME BEING OF THE GP VILJOEN TRUST IT3917/94)

Delivered. This judgment was handed down electronically by circulation to the parties' representatives by email and will be released on SAFLII. The date and time for hand down is deemed to be 10h00 12th August 2020.

JUDGMENT

RANCHOD J:

[1] Pursuant to handing down judgment in the above matters dismissing their applications with costs after hearing the matters together, the applicants in all three matters have applied for leave to appeal the judgment and orders of this Court.

[2] In view of the Covid-19 pandemic, it was determined that the applications will be determined on the papers unless there were cogent reasons for oral hearings to be held. The parties have made their submissions in writing.

[3] The main reason the applicants seek leave to appeal, they submit, is that this Court erred in its conclusion on the correct interpretation of section 25 of the National Water Act No. 36 of 1998 (the Act) and therefore there are reasonable prospects that another court will come to a different conclusion, more so, as there are conflicting judgments on this issue. It therefore raises a substantial and important point of law. It is also of considerable importance not only to the parties but also to the public at large.

[4] Section 17(1) of the Superior Courts Act 10 of 2013 provides as follows:

“Leave to appeal.- (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;
- (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.”

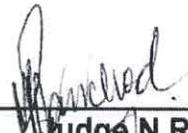
[5] It is common cause that the present matter does not fall within the ambit of section 16(2)(a) and will not dispose of all the issues in the case, as contemplated in sections 17(1)(b) and (c).

[6] The question in the present application for leave to appeal is thus whether the Applicants have shown that the appeal would have reasonable prospects of success or there is some other compelling reason (including conflicting judgments) why the appeal should be heard. Since subsections (i) and (ii) of section 17(1)(a) are separated by ‘or’, it is clear that if either of these two grounds are shown, leave to appeal may be granted.

[7] Although the respondents oppose the application on the basis that the appeal does not have reasonable prospects of success, they concede that the correct interpretation of s25 of the Act does raise a substantial and important point of law and it

[8] Having considered the submissions of the parties this Court is of the view that there are compelling reasons why leave to appeal to the Supreme Court of Appeal should be granted in that the matter does raise a substantial and important point of law; it is of considerable importance not only to the parties but also to the public at large and the fact that there are conflicting decisions on the correct interpretation of s25 of the Act.

[9] In the circumstances, leave to appeal to the Supreme Court of Appeal is granted with costs of the application to be costs in the appeal.



Judge N Ranchod
Judge of the High Court
Gauteng Division, Pretoria

I agree



Judge NM Mavundla
Judge of the High Court
Gauteng Division, Pretoria

I agree



Judge SP Mothle
Judge of the High Court
Gauteng Division, Pretoria