



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

2024-06-19

DATE

SIGNATURE

Case Number: 70305/2018

In the matter between:

SIBUSISO KOOS MASILELA

First Applicant

ELIZABETH KGELESWANE MASILELA

Second Applicant

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Third Applicant

and

LINDI RONSY MASILELA

First Respondent

GERALD MASILELA

Second Respondent

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 19 June 2024.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

POTTERILL J

[1] The applicant is seeking leave to appeal against the judgment granted on 19 January 2024. The application is to be brought in terms of section 17 of Superior Courts Act 10 of 2013 which reads 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.”

[2] The case law had made it clear that this section has by using the word “only” indicated a more stringent test for leave to appeal to be granted. This is supported by the word “would” versus “could” in this section.

[3] The application is seeking condonation because it wanted to obtain further documentation from the Municipality to strengthen its case. It is trite that such investigation should have been done before the matter was referred to and heard on oral evidence. No further evidence was obtained and no application is sought to adduce new evidence before a court of appeal.

[4] Even, if the court should grant condonation on the basis of the interests of justice, there is no rational and sound basis for doing so as there are no reasonable prospects of success.

The application for leave to appeal is dismissed with costs.

A solid black rectangular box used to redact the signature of the judge.

S. POTTERILL

JUDGE OF THE HIGH COURT

CASE NO: 70305/2018

HEARD ON: 18 June 2024

FOR THE APPLICANTS: MR. T. PILLAY

INSTRUCTED BY: Pillay Thesigan Inc.

FOR THE RESPONDENTS: MS. M. MAZIBUKO

INSTRUCTED BY: MaMyeni Mazibuko Attorneys

DATE OF JUDGMENT: 19 June 2024