

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 3399/2022

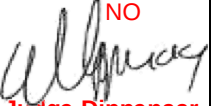
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1.REPORTABLE: NO

2.OF INTEREST TO OTHER JUDGES: NO

3.REVISED NO

22/03/2022


Judge Dippenaar

In the matter between:

A LERATO MOELA

1st Applicant

LEHLOHONOLO PEEGA

2nd Applicant

AND

**VICE CHANCELLOR:
UNIVERSITY OF THE WITWATERSDAND**

1st Respondent

**DIRECTOR OF RESIDENCE LIFE:
UNIVERSITY OF THE WITWATERSDAND**

2nd Respondent

ACTING CLUSTER MANAGER, WEST CAMPUS:

UNIVERSITY OF THE WITWATERSDAND

3rd Respondent

**DIRECTOR OF PROTECTION SERVICES:
UNIVERSITY OF THE WITWATERSDAND**

4th Respondent

**DEAN OF STUDENTS:
UNIVERSITY OF THE WITWATERSDAND**

5th Respondent

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on the 22nd of March 2022.

DIPPENAAR J:

[1] The applicants apply for leave to appeal against the whole of the judgment and order granted by me on 07 February 2022 in terms of which I dismissed the urgent application for declaratory and spoliatory relief with costs, including the costs of two counsel. For ease of reference the parties will be referred to as in the urgent application and the respondents collectively referred to as "the University". It remains unclear whether the second applicant is actively pursuing this application but for present purposes I shall accept that both applicants seek leave to appeal.

[2] The applicants contend that it has been demonstrated that there are reasonable prospects of success or that there are compelling reasons why leave to appeal should be granted as envisaged by s 17(1)(a) of the Superior Courts Act¹ ("the Act").

[3] Central to these arguments are the applicants' contentions that there are misdirections in the judgment as to: (i) the effect of Adv Lennox's ruling; (ii) reliance by the University on paragraph 1(b) of the conditions of accommodation which was not

¹ 10 of 2013n

specifically relied on when eviction was effected²; (iii) the interpretation of paragraph 1(b) of the accommodation rules against the purpose of well-established spoliation principles; (iv) dispossession of applicants' movables which were not returned immediately but only after launching of the application, thus justifying the granting of the declaratory order sought; and (v) the granting of the costs of two counsel.

[4] In support of the contention that there are compelling reasons to grant leave to appeal it was argued that there are conflicting judgments as my judgment conflicts with *Midvaal Local Municipality v Meyerton Golf Club*³.

[5] It is well established that in considering whether there are compelling reasons, the merits remain vitally important and are often decisive⁴.

[6] My judgment is comprehensive and I stand by the reasons set out therein.

[7] It must be considered whether there is a sound and rational basis for the conclusion that there are prospects of success on appeal⁵, considering the higher threshold test⁶ envisaged by s17(i)(a) of the Act and whether a reasonable prospect exists that another court would grant a different order and come to a different finding.

[8] I have considered the papers filed of record and the grounds set out in the application for leave to appeal as well as the parties' extensive arguments for and against the granting of leave to appeal. I have further considered the submissions made in their respective heads of argument and the authorities referred to by the respective parties.

² Relying on *Liebenberg NO & Others v Bergrivier Municipality* [2013] ZACC 16, 2013 (5) SA 246 (CC) para [93]

³ (A3038/14_ [2014] ZAGPJHC 235 para [13]

⁴ *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31 (31 March 2021) para [10] and the authority cited therein

⁵ *Four Wheel Drive Accessory Distributors CC v Rattan NO* 2019 (3) SA 451 (SCA) at para 34

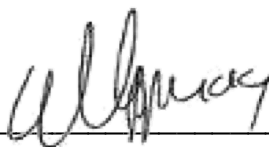
⁶ *Acting National Director Public Prosecutions and Others v Democratic Alliance* [2016] ZAGPPH 489 (24 June 2016) at para 25; *Ramakatsa* fn 4 supra.

[9] In applying the relevant principles to the facts and each of the grounds advanced in the notice of leave to appeal, I conclude that the appeal would not have a reasonable prospect of success as contemplated in s 17(1)(a)(i) of the Act. I am further not persuaded that there are any compelling reasons to grant leave to appeal as contemplated in s17(1)(a)(ii) of the Act.

[10] It follows that the application must fail. There is no reason to deviate from the normal principle that costs follow the result.

[11] I grant the following order:

The application for leave to appeal is dismissed with costs, including the costs of two counsel where so employed.



**EF DIPPENAAR
JUDGE OF THE HIGH COURT
JOHANNESBURG**

APPEARANCES

DATE OF HEARING	: 15 March 2022
DATE OF JUDGMENT	: 22 March 2022
APPLICANTS' COUNSEL	: Adv. L. Moele
APPLICANT'S ATTORNEYS	: First respondent, in Person
RESPONDENTS' COUNSEL	: Adv. S Budlender SC Adv S Budlender SC and Adv M Musandiwa drafted the heads of argument
RESPONDENTS' ATTORNEYS	: Vermaak and Partners