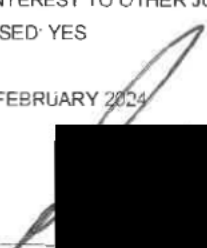




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 22046/22

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: YES
DATE: 8 FEBRUARY 2024




In the matter between:

THE GROUNDWORK TRUST

First Applicant

**SOUTH DURBAN COMMUNITY
ENVIRONMENTAL ALLIANCE**

Second Applicant

And

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

First Respondent

**CHIEF DIRECTOR: INTEGRATED
ENVIRONMENTAL AUTHORISATIONS
DEPARTMENT OF FORESTRY, FISHERIES
AND THE ENVIRONMENT**

Second Respondent

RICHARDS BAY GAS POWER 2 (PTY) LTD

Third Respondent

JUDGMENT

CILLIERS AJ

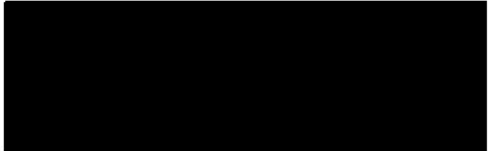
1. On the 16th of August 2023 this Court dismissed the Applicants' application to review and set aside the First Respondent's decision to dismiss Applicants' appeal against the Second Respondent's granting of an amended environmental authorisation to Third Respondent.
2. Applicants now approached this Court in terms of Section 17(1)(a)(i) and (ii) of the Superior Courts Act to seek leave to appeal the above order on the basis that Applicants have reasonable prospects of success on appeal and/or that there are compelling reasons why the appeal should be heard.
3. The compelling reasons relied on in the application for leave to appeal is explained on the basis that the order will have a resounding effect on the future of Constitutional and public interest litigation conducted by non-government organisations.
4. The basis for the dismissal of Applicants' initial application was the fact that I found that the Applicants delay in approaching the Court in terms of Section 7 of PAJA was unreasonable. I further concluded that I was not persuaded that it was in the interest of justice that an extension of time should be granted in terms of Section 9 of PAJA.

5. I should mention that, apart from the dismissal of the application on the issue relating to the delay, referred to above, I also expressed reservations relating to the merits of the application for the reasons set out in the judgment.
6. It was common cause between the parties that there was a material delay between the date when Applicants became aware of the First Respondent's dismissal of the internal appeal and the date that Applicants approached this Court to review and set aside the First Respondent's decision – approximately 8 months.
7. Counsel on behalf of the Applicants did not advance any new issue in the present application for leave to appeal that was not canvassed during the argument when the main application was heard, apart from the submission that there was an agreement between the parties to extend the time periods provided for in Sections 7 and 9 of PAJA.
8. Counsel on behalf of the Applicants now submitted, during argument in the application for leave to appeal, that there was an agreement between the parties providing for an extension of time to file the review application. This counsel explained to be based on the fact that the First and/or Second Respondents did not respond to a letter requesting extension of time shortly before the time lapsed.
9. I am of the view that there is no merit in the above submission for *inter alia* the following reasons:
 - 9.1. The Applicants did not rely on such alleged agreement in the application papers.

- 9.2. There can be no basis for a finding that there was an agreement solely on the premise that there was no response to a request – more in particular if one has regard to the wording of the relevant request.
- 9.3. The Third Respondent was not included in this correspondence, and I am of the view that Third Respondent should have been a party to any such agreement.
10. I am of the view that there is no reasonable prospect that another Court may find that I erred in finding that Applicants did not provide a reasonable explanation for the extraordinary delay in approaching Court in terms of Section 7 of PAJA.
11. No argument was advanced to persuade me that it was in the interest of justice that an extension of time in terms of Section 9 of PAJA should be granted. In fact, no facts were alleged in the application papers why the interest of justice should dictate such an extension of time be granted.
12. Absent such extension I have no authority to entertain the review application.¹
13. I am also not persuaded that there is any compelling reason to grant leave to appeal. I have to emphasise that the judgment in the main application will not have a resounding effect on future litigation, either as alleged or at all.
14. I am therefore not persuaded that leave to appeal should be granted to the Applicants. I therefore dismiss the application.
15. As far as costs are concerned I will follow the approach in the main application and order Applicants to pay the costs of the Third Respondent relating to the application

¹ Urban Tolling Alliance v SA National Roads Agency Ltd [2013] 4 ALL SA 639 (SCA)

for leave to appeal. No order of costs pertaining to the First and Second Respondent is made.


J G CILLIERS
Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing:	7 FEBRUARY 2024
Judgment delivered:	8 FEBRUARY 2024
Attorneys for Applicants:	Centre for Environmental Rights E-mail: gknott@cer.org.za / plado@cer.org.za C/O Gildenhuis Malatji Inc. E-mail: JSmalberger@gminc.co.za / GMochadibane@gminc.co.za
Counsel for Applicants:	Advocate L Zikalala E-mail: zikalala@group621.co.za With Advocate S Ntloko E-mail: yntloko@counsel.co.za
Attorneys for First and Second Respondents:	The State Attorney E-mail: TChokwe@justice.gov.za
Counsel for First and Second Respondents:	Advocate C Erasmus SC E-mail: Mce7@icloud.com / mce7@loftusadv.co.za With Advocate Vimbi Mthuthuzeli E-mail: advvimbi@gmail.com
Attorneys for Third Respondents:	Cliffe Dekker Hofmeyr Inc E-mail: Margo-Ann.Werner@cdhlegal.com / Jackwell.Feris@cdhlegal.com

C/O Asger Gani Attorneys
E-mail: ganasger@gmail.com

Counsel for Third Respondent

Advocate A Friedman
E-mail: friedman@group621.co.za