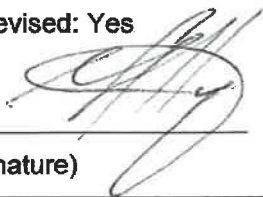




IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2018/20079

1. Reportable: No
2. Of interest to other judges: No
3. Revised: Yes


(Signature)

17 September 2021

In the matter between:

MOTSUMI THOMAS ITUMELENG

First Applicant

MOTSUMI DAVID RAMAREKI

Second Applicant

and

MONGOLOA PETER

First Respondent

MARIA MMAMORUAKGOMO SEFAKO

Second Respondent

ABSA BANK LIMITED

Third Respondent

E ZULU PROP INVESTORS (PTY) LTD

Fourth Respondent

LERATO VIRGINIA GWALA	Fifth Respondent
LAWRENCE GWALA	Sixth Respondent
KING GORDON NKOSI	Seventh Respondent
MERCANTILE BANK LTD	Eighth Respondent
GREENLIGHT PROPERTY SERVICES	Ninth Respondent
(PREVIOUSLY KNOWN AS GAKHULU REAL ESTATE CC)	
WILFRED SEME	Tenth Respondent
PULSE AFFORDABLE HOUSING	Eleventh Respondent
THE EXECUTOR IN THE ESTATE OF THE LATE	Twelfth Respondent
KELEBETSE PATRICIA LEGOLA	
STANDARD BANK LIMITED	Thirteenth Respondent
FIRST NATIONAL BANK	Fourteenth Respondent
THE DIRECTOR-GENERAL: GAUTENG	Fifteenth Respondent
DEPARTMENT OF HUMAN SETTLEMENTS	
THE MEC OF THE DEPARTMENT OF	Sixteenth Respondent
HUMAN SETTLEMENTS	
THE CITY OF JOHANNESBURG	Seventeenth Respondent
METROPOLITAN MUNICIPALITY	
REGISTRAR OF DEEDS (JOHANNESBURG)	Eighteenth Respondent

JUDGMENT

ALLY AJ

INTRODUCTION

1. This is an application for leave to appeal the whole of my judgment dated 26 May 2021.
2. The application is opposed by the third and eighth respondents.
3. The Applicants have repeated their submissions made during the hearing of this matter.

EVALUATION AND ANALYSIS

4. The law and principles regarding applications for leave to appeal in terms of Section 16 and 17 of the Superior Courts Act¹ have now become settled.² Essentially, the bar has been raised in considering whether to grant an application for leave to appeal or not. In this regard I agree with the principles as set out in *H & A Manufacturing & Another v Bower & Others*:

*Section 17 makes provision for leave to appeal to be granted where the presiding judge is of the opinion that either the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard, including whether or not there are conflicting judgments on the matter under consideration.*³

¹ Act 10 of 2013

² *The Mont Chevaux Trust v Tina Goosen* 3 November 2014 (Unreported judgment LCC Case No: LCC14R/2014; *The Acting National Director of Public Prosecution v Democratic Alliance* (unreported Case No: 19577/09 dated 24 June 2016); *First Reality (Pty) Ltd v Mitchell & Others* 2021 ZALCC 21 dated 23 August 2021 @ para 2

³ *H & A Manufacturing & Another v Bower & Others* 2020 KZNDHC at para 5

5. The test has changed and the threshold is higher and more stringent as outlined above. Therefore, the Applicants in this matter must convince this Court that there is a reasonable possibility that another Court *would* come to a different conclusion.
6. When Counsel for the Applicants was questioned as to why the Applicants did not approach the Master of the High Court to determine the Executor or Administrator of the Estate of his grandparents, Counsel submitted that the Department of Human Settlements advised the Applicants to approach the Court. This is indeed so, however, this does not entitle a litigant to approach the Court without establishing its *locus standi* to launch the proceedings. The onus continues to rest on an Applicant to establish his/her *locus standi* to launch proceedings.
7. Counsel furthermore raised the issue of costs and relied on in the Biowatch case⁴ principle for the Applicants not being saddled with costs. It is my view that the Applicants did not raise the issue of constitutionality in their founding affidavit but only during argument which in my view presents as an afterthought. The normal principle of costs following the result, accordingly, has not been displaced by any factors raised by the Applicants. Accordingly there are no reasonable prospects that another Court would find differently than this Court and the application on this ground should also fail.
8. Without delving into each ground for leave to appeal for the reason, as stated above, the Applicants have repeated their submissions made during the hearing, I remain unconvinced that another Court on the facts *would* come to a different conclusion and find that there are reasonable prospects of success in this matter. For clarity, I also find no compelling reason why leave to appeal should be granted.

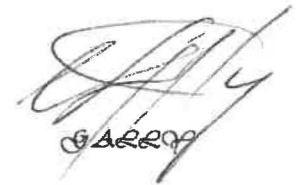
⁴ Biowatch Trust v Registrar Genetic Resources & Others 2009 (6) SA 232 CC

CONCLUSION

9. In the circumstances and what has been stated above, the application for leave to appeal must fail and the Applicants must pay the costs of this application.

The following order shall issue:

- a) The application for leave to appeal is dismissed with costs.



ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG

Electronically submitted therefore unsigned

Delivered: This judgement 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 hand-down is deemed to be 20 September 2021.

Date of hearing: 14 September 2021

Date of judgment: 17 September 2021

Appearances:

Applicant

:

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Eighth Respondent :

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