



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

CASE NO:34523./2017

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

26 June 2019

EJ Francis

In the matter between:

AFRIBUSINESS NPC

Applicant

and

THE MINISTER OF FINANCE

Respondent

JUDGMENT

FRANCIS J

1. This is an application for leave to appeal to the Supreme Court of Appeal by the applicant against the whole of my judgment and costs orders made on 23 November 2018 after I had dismissed the applicant's application with costs.
2. The applicant had applied for the following relief in its application:
 - 2.1 That the promulgation and adoption of the Preferential Procurement Regulations 2017 (the 2017 Regulations) by the respondent (the Minister of Finance) is reviewed and set aside;

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2.2 That the adoption of the 2017 Regulations be declared invalid;

2.3 The respondent be ordered to pay the costs of the application.

2. The applicant has raised 3 grounds for leave to appeal which are contained in its application for leave to appeal. I do not deem it necessary to repeat those grounds for leave to appeal.
3. It is trite that the traditional test in deciding whether leave to appeal should be granted is whether there is a reasonable prospect that another court may come to a different conclusion to that reached by me in my judgment or in terms of Section 17 of the Superior Courts Act that there is some compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration.
4. It was contended on behalf of the applicant that there are two conflicting judgments dealing with the same issues at hand. The first is that of *Grinaker v Tender Baord (Mpumalanga)* [2002] 3 ALL SA 336 T. The second matter is that of *Rainbow Civils CC v Minister of Transport* (21158/2012) [2013] ZAWCHC 3 (6 February 2013). I have re-read both judgments which in my view do not address the issues at hand and are clearly distinguishable. They both dealt with the award of tenders.
5. I have reconsidered the matter, and the arguments raised for and against leave to appeal and am not persuaded that there is a reasonable possibility that

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another court will come to a different conclusion to that reached by me. There is further no other compelling reason why the appeal should be heard and there are no conflicting judgments on the matter under consideration. The application for leave to appeal does not raise new issues that were not considered by me in my judgment.

6. The application for leave to appeal stands to be dismissed with costs.

7. In the circumstances I make the following order:

7.1 The application for leave to appeal is dismissed with costs.



FRANCIS J
HIGH COURT JUDGE
GAUTENG LOCAL DIVISION

FOR APPLICANT	:	J G BERGENTHUIJN SC INSTRUCTED BY HURTER SPIES ATTORNEYS
FOR RESPONDENT	:	M D STUBBS INSTRUCTED BY STATE ATTORNEY
DATE OF HEARING	:	26 JUNE 2019
DATE OF JUDGMENT	:	27 JUNE 2019