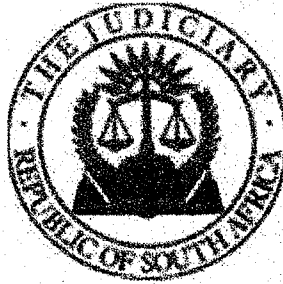
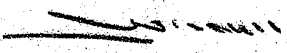


REPUBLIC OF SOUTH AFRICA



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

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
	
SIGNATURE	DATE 05.10.18

CASE NUMBER: 2017/38126

In the matter between:

THE BODY CORPORATE OF ANNPER HEIGHTS

Applicant

And

CITY OF JOHANNESBURG

Respondent

JUDGMENT

WINDELL, J:

INTRODUCTION

[1] This is an application for leave to appeal to the Full Court of the Gauteng Local Division, alternatively to the Supreme Court of Appeal against the dismissal of an application for the statement and debatement of an account. The grounds of appeal are set out in the application for leave to appeal filed on 28 September 2018.

[2] The test for when leave to appeal should be granted is set out in section 17 (1)(a) of the Superior Courts Act 10 of 2013 which provides as follows:

"Leave to appeal may only be given where the judge or judges concerned are of the opinion that:-

- (i) The appeal would have reasonable prospect success; or*
- (ii) There is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration."*

[3] The applicant contends that the appeal has reasonable prospects of success and that there is a compelling reason why the appeal should be heard as there are conflicting judgments on this issue in this division. I was informed during the hearing of the application for leave to appeal that the conflicting judgment is currently the subject of a petition to the SCA.

[4] The applicant launched an application against the respondent for the statement and debatement of its municipal account. In the notice of motion the applicant sought an order firstly directing the respondent to render a full and precise statement of amounts owing by the applicant to the respondent and secondly the debatement of such account.

[5] Relying on *Absa Bank BPK v Janse van Rensburg* 2002 (3) SA 701 (SCA) and *Moila v City of Tshwane Metropolitan Municipality* [2017] SA 701 (SCA), the respondent raised a point *in limine* namely that the applicant failed to plead the nature of the relationship between the applicant and the respondent which would entitle the applicant to the statement and debatement of its account.

[6] In the *Absa* judgment, Brand JA held that in order to succeed in a claim for delivery and debatement of an account, a party would have to prove either one of the following categories of relationships: (1) the existence of a fiduciary relationship between the parties; (2) a contractual obligation to do so; and (3) the existence of a statutory duty obliging the other party to deliver and debate an account. The applicant *in casu* failed to plead the existence of a fiduciary relationship or a contractual obligation. At best for the applicant it can be said that it attempted to plead the existence of a statutory duty by referring to section 95 (d) and (e) of the Local Government Municipal Systems Act 32 of 2000 ("the Act"). At paragraph [3.4] of its founding affidavit the applicant pleaded that the respondent has the power and duty in terms of s 95 (d) to take reasonable steps to ensure that the consumption by individual users of electricity is measured through accurate and verifiable metering systems and in terms of s 95 (e) to ensure that persons liable for payments, receive regular and accurate accounts that indicate the basis for calculating the amounts due.

[7] The reliance on s 95 (d) and (e) of the Act as proof of the existence of a statutory duty entitling it to the debatement of an account is misplaced. The *Moila* decision which the respondent relied upon and which I referred to in my judgment is in point. In *Moila* the SCA dealt with s 95 of the Act and found that s 95 of the Act does not entitle a ratepayer to the debatement of a municipal account. At par [10] the court held as follows:

"The right to debate an account is not be confused with the right to receive the same. The two are not coextensive. The rights of those who are liable for the payment of municipal services to receive accounts from the relevant municipality is made clear in sections 95 and 102 of the Local Government Municipal Systems Act 32 of 2000 (the LGMS).

And at [11]

....Section 95(f) provides for public law rights for a person liable for the payment of accounts for municipal services to receive 'prompt redress for inaccurate accounts', not for any 'debate' thereof; s 95(g) for a right to 'prompt replies' to complaints and to 'corrective action' but also no right to a debate of accounts.

[8] The applicant raised as a ground of appeal that this court did not consider that the effect of its finding, that the applicant was not entitled to a debatement, effectively closed the door of the court to the applicant. I disagree. Section 95 and 102 of the Act provides for mechanisms to dispute a municipal account. In *Moila* at par [12] the court referred to it and stated as follows:

[12] The court a quo usefully referred to those provisions of ss 95(f) and (g) of the LGMS, which provide for 'accessible mechanisms' respectively to 'query or verify accounts', 'appeal procedures' and the 'dealing with complaints', together with 'corrective action'. Much that could be in dispute is governed by municipal by-laws. As that court noted, the deceased would not have been without equitable remedies if he had wished to resort to them. His remedy would have been to avail of his rights under s 95 of the LGMS

[10] In *S v Smith* 2012 (1) SACR 567 (SCA) the court held that the test to be applied in an application for leave to appeal is as follows:

"What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere

possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal."

[11] In my judgment I make reference to both the *Absa* and *Molia* judgments and applied the principles enunciated upon. There was no reason to find that these two cases were wrongly decided.

[12] I am satisfied that there are no prospects of success on appeal and that there is no compelling reason to grant leave. The application for leave to appeal is dismissed with costs.



L WINDELL

JUDGE OF THE HIGH COURT OF THE REPUBLIC OF SOUTH AFRICA

Attorney for applicant:	Arnold Joseph Attorneys
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Attorney for respondent:	Selolo Ramashilo Attorneys
Counsel for respondent:	Advocate P.J. Kok
Date matter heard:	24 October 2018
Judgment date:	25 October 2018