

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG, PRETORIA)

CASE NO: 5252/2013

|              |                                                  |
|--------------|--------------------------------------------------|
| (1)          | REPORTABLE: <del>YES</del> / NO                  |
| (2)          | OF INTEREST TO OTHER JUDGES: <del>YES</del> / NO |
| 18 June 2013 | <i>E. M. Kubushi</i>                             |
| DATE         | SIGNATURE                                        |

18/6/2013

In the matter between:

PETROPORT MOUNTAIN VIEW (PTY) LTD  
(REG NUMBER: 2002/011868/07)

APPLICANT

and

SOUTH AFRICAN NATIONAL ROAD AGENCY LTD  
(REG NUMBER: 1998/009584/06)

1<sup>ST</sup> RESPONDENT

N3 TOLL CONCESSION (PTY) LTD  
(REG NUMBER: 1998/020534/07)

2<sup>ND</sup> RESPONDENT

TOTAL SOUTH AFRICA (PTY) LTD  
(REG NUMBER: 1954/003325/07)

3<sup>RD</sup> RESPONDENT

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J U D G M E N T

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KUBUSHI, J

- [1] The applicant in this matter seeks leave to appeal against the whole of the judgment and cost order I delivered on the 19 April 2013 under case 5252/2013.

- [2] The applicant is also seeking an order directing that the Supreme Court of Appeal hear the appeal.
- [3] The application was for the interim relief pending a review application for the setting aside of the decision by the 1<sup>st</sup> respondent to change a road barrier/signage on the N3 National Road at the turnoff to the premises on which the applicant operates business.
- [4] I found in favour of the 1<sup>st</sup> respondent and dismissed the application with costs.
- [5] The applicant filed its appeal out of time. At the hearing of the application for leave to appeal the applicant brought an application for the condonation of the late filing of the appeal. The respondent did not oppose the condonation application and in the interest of justice I granted the condonation.
- [6] The applicant seeks leave to appeal the judgment on various grounds as stated in its application for leave to appeal. The applicant's counsel submitted at the hearing of the application that the various grounds raised by the applicant in the application for leave to appeal be regarded as

having been read into the record. He then proceeded to address me on the salient points in respect of those grounds.

- [7] The 1<sup>st</sup> respondent's counsel opposed the application on the ground that I have reasoned out my judgment very well and there are no prospects that another court may come to a different conclusion.
- [8] The test for granting an application for leave to appeal is whether there are reasonable prospects that another court may come to a different conclusion.
- [9] I had dealt in depth with all the issues raised by the applicant in its application for leave to appeal in my judgment. However, after reading the application for leave to appeal and having listened to the submissions advanced by counsel for and against the application I reconsidered the judgment afresh. Based on the ground raised by the applicant, I am of the view that there are reasonable prospects that another court may come to a different conclusion. Leave to appeal should therefore be granted.

[10] I have been persuaded that another court may come to a different conclusion in respect of amongst others:

- a. that the purpose of the interim interdict was not only to preserve the *status quo* but also to correct an illegality committed by a public official. And that it was possible to correct the decision of the 1<sup>st</sup> respondent if one looked at the photographs depicting the barrier.
- b. that there is a clear case of irreparable harm against the applicant because its financials show that the applicant suffered irreparable harm and is on the verge of being shut down. It also does not have an alternative remedy in that it is in dire straits.
- c. that the balance of convenience favours the applicant in that the public interest in this matter is not of such a magnitude so as to outweigh the individual interest.
- d. that a departure from rule 53 of the Uniform Rules of Court was required in the circumstances of this case.

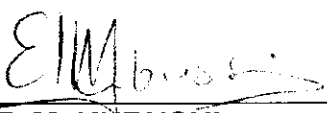
[11] The applicant raised grounds of appeal based on points of law consequently the appeal should be to the Supreme Court of Appeal on all of the grounds mentioned in the applicant's notice.

[12] Costs in the application for leave to appeal are normally cost in the application.

[13] Accordingly I make the following order:

13.1 Leave to appeal to the Supreme Court of Appeal is granted on all of the grounds mentioned in the application for leave to appeal.

13.2 The costs of this application are to be costs in the appeal.

  
 E. M. KUBUSHI  
 JUDGE OF THE HIGH COURT

**Appearances:**

|                                       |                                         |
|---------------------------------------|-----------------------------------------|
| HEARD ON THE                          | :12 JUNE 2013                           |
| DATE OF JUDGMENT                      | : <sup>13</sup> 14 JUNE 2013 <i>Em</i>  |
| APPLICANT'S COUNSEL                   | : ADV I. BREDENKEMP SC                  |
| APPLICANT'S ATTORNEY                  | : WEYER WALDICK & WILLEMSE<br>ATTORNEYS |
| 1 <sup>ST</sup> RESPONDENT'S COUNSEL  | : ADV A.J. RALL SC                      |
| 1 <sup>ST</sup> RESPONDENT'S ATTORNEY | : PKX INCORPORATED                      |