



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

**CASE NO: 80277/2019**

|                    |                                                                                   |
|--------------------|-----------------------------------------------------------------------------------|
| (1)                | REPORTABLE: <b>NO</b>                                                             |
| (2)                | OF INTEREST TO OTHER JUDGES: <b>NO</b>                                            |
| (3)                | REVISED.                                                                          |
| <u>30 MAY 2024</u> |  |
| DATE               | SIGNATURE                                                                         |

In the matter between:

**MACDONALD, IAN**

Applicant

And

**THE MINISTER OF HUMAN SETTLEMENT,  
WATER AND SANITATION**

Respondent

In re:

**THE MINISTER OF HUMAN SETTLEMENT,  
WATER AND SANITATION**

Applicant

And

**THE PUBLIC PROTECTOR OF SOUTH AFRICA**

First Respondent

**MACDONALD, IAN**

Second Respondent

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## JUDGMENT

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**MBONGWE J:**

### **INTRODUCTION**

- [1] This is an application for leave to appeal against the whole judgment and orders of this court in terms of which the findings and remedial action indicated by the erstwhile Public Protector, Advocate Mkhwebane, against the Minister of Human Settlements, Water and Sanitation (the respondent) were reviewed and set aside.
- [2] The applicant for leave to appeal is not the Public Protector, but the party who stood to benefit from the remedial action that has been set aside. The Applicant has not addressed the question of his *locus standi* to bring this application, save to state that he seeks to pursue the implementation of the remedial action.
- [3] The court found that Advocate Mkhwebane's findings were premised on an improper re-visitation and interrogation of matters that had been resolved in a legislative mediation process which culminated in the conclusion of a Settlement Agreement between the Minister and the Applicant. By her conduct, the then Public Protector had not only impermissibly disregarded the impact of the Settlement Agreement by making damning findings on aspects which occurred between 2002 and 20 March 2013 when the Settlement Agreement was concluded, and in that way acting outside the authority of her

empowering statutory provisions, being sections 6(9) and section 7(9) of the Public Protector Act 23 of 1994. Inter alia, the Public Protector had failed to make a finding of exceptional circumstances that entitled her to engage in the aged matter between the Applicant and the Minister.

## **THE ADDENDUM TO THE SETTLEMENT AGREEMENT**

- [4] The addendum to the Settlement Agreement sought to place the parties on a new platform or station. It in effect the addendum maintained the validity of the Applicant's application for a water licence and the continuation of its processing by the Respondent. Poignantly, the addendum stipulated a period of forty-five days within which the processing of the application should be completed and states that the Applicant shall furnish the Respondent with outstanding information or send communication to the Respondent that he will not be providing any further information and that, upon receipt of the required information or communication that no further information would be provided, the Respondent shall process the application in terms of the provisions of the law in force as at the date the application was submitted in 2002.
- [5] The Applicant's engagement with the Respondent following the conclusion of the Addendum is succinctly set out in paras 22, 23, 24, 25 and 26 of the judgment. The facts in these paras are well within the knowledge of the Applicant and refute Advocate Mkhwebane's finding of failure by the Respondent to implement the terms of Addendum to the Settlement Agreement. Leave to appeal must consequently be refused for:

- 5.1 Applicant's lack of locus standi to bring this application;
- 5.2 The setting aside of Advocate Mkhwebane's findings and remedial action rendered none existent any right that may have accrued to the Applicant flowing from the remedial action indicated.

## **ORDER**

[6] Resulting from the findings in this judgment, the following order is made:

1. The application for leave to appeal is dismissed.

  
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**MPN MBONGWE**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

## **APPEARANCES:**

For the Applicant:

Adv A. Molver

Instructed by:

Charl Naudé Attorneys

For the Respondent:

Adv Z Matebese SC; Adv P Loselo

Instructed by:

The State Attorney, Pretoria

**THIS JUDGMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES' LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINES ON 30 MAY 2024.**