

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

CASE NO: 34752/2019

1. REPORTABLE: No
2. OF INTEREST TO OTHER JUDGES: No
3. REVISED: No
DATE: 8 May 2024
SIGNATURE:

In the matter between:

SUPALUCK INVESTMENTS (PTY) Ltd.

Applicant

and

**THE VALUATIONS APPEALS BOARD:
CITY OF JOHANNESBURG**

First Respondent

**CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

Second Respondent

LEAVE TO APPEAL JUDGMENT

FLATELA J

Introduction

[1] This is an application for leave to appeal against my judgement of 28 February 2023.

Brief Facts

[2] The applicant launched a review application in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) seeking *inter alia* an order to set aside a decision taken by the First Respondent on 26th November 2015, to increase the property value of the remainder portion of 1 of erf 2[...] of Sandhurst (“the property”) from R13 500 000 (thirteen million, five hundred thousand) to R26 000 000 (twenty-six million rands). Furthermore, the Applicant sought an order that the Second Respondent be ordered immediately to desist from recovering the increased rates erroneously levied on the property based on its decision.

[3] The Applicant conceded that an application for judicial review must be instituted without unreasonable delay and within 180-days after the Applicant became aware of the decision and reasons of the decision. That 180-days period commenced on 13th July 2016 when the Applicant received the VAB’s decision.

[4] The reasons advanced by the Applicant for delaying launching the review application was that it was negotiating with the respondents to reconsider its decision without resorting to costly legal proceedings. In the judgement, I found the explanation given to be unreasonable regard being had to the principle of *functus officio*.

[5] The Applicant sought “to the extent that it is necessary”, a condonation in terms of section 9(2) of PAJA for its delay in instituting the review, in this regard, the Applicant contended that that it would be in the interests of justice to grant an application for condonation as the respondents would not suffer prejudice if the application were to be permitted. The Applicant submitted that the adjudication of the application may also disclose irregular and inefficient administrative action within the City, and the review will help the City (and specifically the VAB) to discharge its duties in a lawful way.

[6] The applicant argued that the review application concerns the fundamental right to fair administrative action. It is also in the public interest.

[7] Having concluded that the delay was unreasonable, I then considered whether it was in the interest of justice to condone the delay. Having considered all relevant factors including the nature of the relief sought, the extent of the delay, its effect on the administration of justice and other litigant, the explanation for the delay which cover the whole period of the delay, the importance of the issues to be raised and the prospects of success. I found no merit in the Applicant's submissions that it was in the interest of justice to grant condonation application, I dismissed the application with costs including the costs of two counsel.

The test for Leave to Appeal

[8] An application for leave to appeal is regulated by section 17 of the Superior Courts Act 10 of 2013 which provides:

“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.”

[9] Section 17(1) of the Superior Courts Act is to be read holistically with section 17(1)(a)(i) which provides that a Court *may only* grant leave to appeal where it is satisfied that the Applicant has shown reasonable prospects or that there is a compelling reason to entertain the appeal.

[10] In *Mont Chevaux Trust v Tina Goosen & 18 Others*¹ Bertelsmann J held as follows:

“It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new act. The former test whether leave to appeal should be granted was a reasonable prospect that another Court might come to a different conclusion. See *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 342H. The use of the word “would” in the new statutes indicates a measure of certainty that another Court will differ from the Court whose judgment is sought to be appealed against.”

[11] Plasket AJA, as he then was, in *Smith v S*² explained the test for reasonable prospects of success as follows:

“What the test of reasonable prospects of success postulates is a dispassionate decision, based on facts and the law that the Court of Appeal could reasonably arrive at the 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.”

[12] In the present application, the applicant is appealing against several findings in my judgement. It is trite that appeal lies against the order, not the reasons, of the court *a quo*.³

[13] In paragraph 5 of the notice appeal the applicant contends that my conclusion in dismissing the application for condonation ignored my earlier

¹ *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2335 (LCC) at para 6.

² *S v Smith* 2012 (1) SACR 567, 570 at para 7.

³ *Tavakoli and another v Bantry Hills (Pty) Ltd* 2019 (3) SA 163 (SCA) at para 3.

findings in paragraph 31- 36 of the judgement where I found that the VAB decision was irrational and stand to be set aside.

[14] There is no merit in this contention. What is recorded in paragraphs 31-36 of my judgement are not my findings but is the applicant's grounds of appeal as stated in paragraphs 93, 94, 101 and 102 of its founding affidavits.

[15] In addition, the Applicant states that I incorrectly interpreted the application of the interest of justice test where the prospects of success are strong. The Applicant failed to advance the reasons for its conclusion that I have wrongly applied the interest of justice in as far as it relates to its case. This ground is meritless.

[16] In paragraph 7 of its notice of appeal, the Applicant contends that there are other compelling grounds to entertain the appeal in that the matter involves the interpretation of sections 51, 52, 73 and 75 of the Rates Act and that the matter raises novel points of law, which have not been previously been decided and which are of significant importance to the public and finally that it is in the interest of justice that the leave be granted. I disagree. This matter does not raise any novel points of law.

[17] It seems to me that the interpretation issue was raised for the first time on appeal. This ground I will not entertain in the absence of the reasons why the court should deal with the new issue on appeal.

[18] I am therefore not persuaded that there are reasonable prospects of success on appeal or that there is some other compelling reason why leave to appeal should be granted.

[19] In the circumstances, I make the following order:

1. The application for leave to appeal is refused.
2. The applicant is ordered to pay the costs of this application.

L FLATELA
JUDGE OF THE HIGH COURT

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on 8 May 2024

Date of Hearing: 18 April 2024

Date of Judgment: 8 May 2024

Counsel for Applicant: J Brewer

Instructed by: Boshoff Inc

Counsel for 2nd Respondent: MK Mathipa

Instructed by: Malebye Motaung Mtembu Inc