

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

CASE NO: 38105/2017

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

In the matter between:

SHORELINE AUCTIONEERS CC

Applicant/Plaintiff

and

**THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

Respondent/Defendant

JUDGMENT

FLATELA J

1. This is an application for leave to appeal brought by the Applicant against the judgment granted by me on the 8 March 2023. The appeal is against the judgement and orders 1, 2 and 5.

2. The factual background is comprehensively captured in the main judgement, I do not intend to be as comprehensive here, but a brief background context will suffice.

3. The applicant brought an action against the defendant on 16 October 2017 for an order for payment as compensation R13 065 990.00 as the market value and ac-

tual financial loss as a result of expropriation in terms of section 12 of Expropriation Act 63 of 1975 as amended.

4. This amount was amended to R9 118 800.00 based on its expert witness's valuation report.

5. The defendant filed its own expert valuer report which opined that the market value of the property is R8 400 000.00.

6. On 22nd October 2022 the plaintiff amended its particulars of claim and claimed an amount of R8 400 000 as contended by the defendant's valuer.

7. This matter served before me for trial on 7 November 2022.

8. The parties filed a joint practice note which recorded that:

"10. Common Cause facts:

- 1) That the plaintiff was the registered owner of the property in question
- 2) The property was occupied by unlawful occupiers.
- 3) The plaintiff brought an eviction application in January 2009 in an attempt to evict the unlawful occupiers.
- 4) The defendant in this matter was cited as a respondent in the eviction application.
- 5) On 23 February 2015, the plaintiff obtained an eviction order.
- 6) On 16 May 2017, the defendant served a notice of expropriation on the plaintiff.
- 7) The defendant offered the plaintiff compensation in the sum of R2 000 000
- 8) The plaintiff rejected the defendant's offer.

Issues in dispute: ***The amount of compensation payable by the defendant to the plaintiff pursuant to the expropriation.***

Other: The Plaintiffs respective experts compiled a joint minute on 6 June 2021 and the essence of the joint minute was:

- a. The two valuers were less than 10% apart in their respective valuations and agreed that either evaluation could be correct.
- b. The valuation is relied on by the plaintiff's expert was R9,118,800 The Valuation done by the defendant's expert is R8,400,000
- c. The plaintiff has amended its particulars of claim to reflect the amount of R8,400,000 as the market value of the property (in line with the defendant's own expert)
- d. Given the content of the joint minute and the fact that plaintiff was will only seek the amount as contended for by the defendants own expert, it will be submitted that the market value of the property is now common cause.

12. Upon consideration of the issues, I issued directives to the parties to come prepared to run a trial as the amount of compensation was still in dispute.

13. On the day of the trial, the parties informed the court that the market value of the property is now common cause. The plaintiff's counsel presented me with a draft court order to be made an order of court.

14. Mr. Dlamini, the Defendant's counsel agreed with the plaintiff counsel that the market value was now common cause between the parties but he stated that he had no instructions to agree with the terms of the order.

15. The draft order was neither an order by agreement between the parties nor a consent order.

16. Having considered the whether the compensation would be just and equitable in term of section 25(2) and (3) of the Constitution, I granted the following order:

- a) The Defendant's offer of R2 000 000 (Two Million Rands) as compensation to the plaintiff pursuant to the Expropriation is just and equitable.
- b) The Defendant is ordered to pay to the Plaintiff the remainder amount of R400 000, within 30 days from the date of this order.

- c) The Defendant is ordered to pay the plaintiff an amount of R55 000 as solatium;
- d) The Defendant must pay interest *temporae morae* from 16 May 2017 to the date of payment.
- e) Each party shall bear their own costs.

The test for appeal

17. The principles governing whether leave to appeal should be granted are well established, but I summarise them for convenience.

18. The test for the granting of leave to appeal pertinent to the present matter is set out in section 17(1) of the Superior Courts Act 10 of 2013 which provides that:

“(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”*

19. Section 17(1) of the Superior Courts Act read 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 of success or that there is a compelling reason to entertain the appeal. 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 indi-

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

cates a measure of certainty that another Court will differ from the Court whose judgment is sought to be appealed against.”

20. 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.”

21. I have considered the grounds of appeal, the submissions made by counsel for the applicant and on behalf of the respondents. Relying on *Legal Aid South Africa v Magidawana and Others*³ and on *The Road Accident Fund v Taylor and Others*⁴, the Applicant contends that the court had no jurisdiction to deal with this matter in terms of section 25(2) and section 25(3) of the Constitution because the parties had reached a compromise in respect of the market value of the property and there was nothing for the court to determine. I disagree. The draft order that was handed to court was neither by agreement nor consent.

22. The second ground of appeal is that when embarking on an enquiry in terms of section 25(3) the court relied on the pleadings, the discovered documents and experts report from various potential witnesses which did not constitute any evidence before the court. The Applicant contends that only the common cause factor should

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

³ 2015(2)SA 568 SCA at paragraph 22

⁴ The Road Accident Fund v Taylor and Others 2023 ZASC 64 (8 MAY 2023)

have been considered to determine the interest to be paid on the market value. I have considered this ground of appeal and I am of the opinion that there is a reasonable prospect of success on appeal.

23. Consequently, I shall grant leave to appeal to the Full Bench court of this Division. The matter does not fall within the ambit of section 17(6)(a)(i) or (ii) of the Superior Courts Act.

24. In the circumstances, I make the following order:

1. Leave to appeal is granted to the Full Bench of this Division against the judgment and order 1, 2 and 5.
2. Costs of the application for leave to appeal are costs in the appeal.

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JUDGE OF THE HIGH COURT

This matter has been heard in terms of the Directives of the Judge President of this Division dated 25 March 2020, 24 April 2020, and 11 May 2020. The judgment and order are accordingly published and distributed electronically. The date and time of hand-down is deemed to be 8 May 2024.

Appearances

Counsel for Applicant/Plaintiff:	:Adv B. Gradidge
Instructed by	:Howard S Woolf Attorneys
Counsel for Respondent/Defendant	: Adv E Mokutu SC with K Mashile
Instructed by	: Popela Maake Incorporated
Date of hearing	: 11 April 2024
Date of Judgement	: 8 May 2024

