

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 15337/2022

DATE: 18-06-2024

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED.

DATE 8 July 2024

SIGNATURE

10 In the matter between

MOTLALEKGOMO GOGGY MMOPE

Plaintiff

and

MADIBENG LOCAL MUNICIPALITY

Defendant

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**J U D G M E N T**

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STRYDOM, J:

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20 This is an ex-tempore judgment. In the application for leave to appeal brought by the applicant in terms of Section 17 of the Supreme Court Act 10 of 2013, 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 the conflicting judgments on the matter under consideration."

The other subsections of this Section 17 are not applicable and would not be referred to.

I found that the decision to abandon the appointment process and to readvertise the position of municipal manager did not constitute administrative action as envisage in PAJA but fell under the exclusion in the  
10 definition of administrative action in Section 1 of PAJA. This subsection excludes the executive powers or functions of a municipal council.

As was pointed out in my judgment, some uncertainty still exists, what the legal position is in this regard as to the question whether the appointment by a municipal council of a municipal manger constitutes administrative action or not. In paragraph 41 of my judgment, I pointed out that the Constitutional court in the recent matter of *Member of the*  
20 *Executive Council for Cooperative Governance and Traditional Affairs, KwaZulu-Natal versus Nkandla Local Municipality and Other* 2001 ZACC 46, refrain from deciding whether appointment of municipal manager constituted administrative action as contemplated in PAJA.

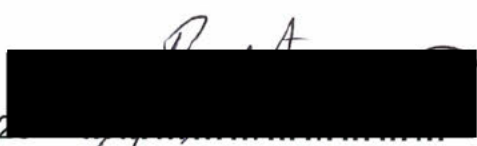
Accordingly, our apex court has not made a final

decision on this issue. In other courts findings were made that, the appointment does constitute administrative action whilst in others not. In my view this is a compelling reason why leave to appeal should be granted. A decision on this issue may affect my entire judgment, and for that reason leave to appeal should be granted against my whole judgment, excluding the cost order to the Supreme court of appeal.

The following order is made;

- 10           1     Leave to appeal is granted to the applicant to  
                  appeal against my order dismissing the  
                  application;
- 2     Leave to appeal is granted to the Supreme court  
                  of appeal;
- 3     Cost of this application for leave to appeal to be  
                  costs in the appeal.

That is the judgment.

  
STRYDOM, J

JUDGE OF THE HIGH COURT

DATE: .....