

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 67006/2010

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

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

(3) REVISED.

DATE: 25/7/2024

SIGNATURE

In the application for leave to appeal of:

RABBONI CENTRE MINISTRIES

Applicant

and

MULTISAND (PTY) LTD

First Respondent

MIDDELWATER EIENDOMME (PTY) LTD

Second Respondent

MIDDELWATER LANDFILLING (PTY) LTD

Third Respondent

**VIRILIO GOUVEIA DOS SANTOS AND
MARIA ISABELLE RODRIGUES DOS SANTOS**

Fourth Respondent

NTONJANA STEPHENS MPKWESANA

Fifth Respondent

GIDEON PETRUS DU PREEZ

Sixth Respondent

REGISTRAR OF DEEDS, PRETORIA

Seventh Respondent

**RODNEY NKIBE MOSUOE AND
SANNIE NTLHOKOMELENG MOSUOE**

Eighth Respondent

ROCCA INVESTMENTS (PTY) LTD

Ninth Respondent

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Tenth Respondent

THE PREMIER OF THE PROVINCE OF GAUTENG N.O.

Eleventh Respondent

**THE MEMBERS OF THE EXECUTIVE OF THE GAUTENG
PROVINCIAL PROVINCE RESPONSIBLE FOR THE
DEPARTMENT OF ROADS AND TRANSPORT N.O.**

Twelfth Respondent

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

LABUSCHAGNE AJ

[1] In an action that served before Prinsloo J in 2010, the first to third respondents sued for a right of way over property (Portion 2[...]), which now belongs to the applicant. At that time the applicant was a tenant. The purpose of the right of way was for the respondents to obtain access to tar road by traversing Portion 2[...]. After three days of evidence, the parties resolved their dispute in terms of a consent order that was made an order of the court. Paragraph 1 of the aforesaid court order reads as follows:

“1. A declaratory order is issued that the portion of the road traversing the properties of the first, second, fifth and sixth defendants as indicated on Annexure A, which specific portion is between the public road D980 and the Western boundary of Portion 2[...] of the farm Uitvalgrond Number 4[...], Registration Division JQ Gauteng (“Portion 24”) be declared a public road. The public road is indicated between the letters “X” and “E” on Annexure A.”

- [2] Some 8 years later the applicant, the owner of Portion 2[...], applied for the rescission of the aforesaid consent order. It did so *inter alia* on the basis that only a local authority can create and declare public roads.
- [3] On 3 May 2024 I delivered a judgment dismissing the rescission application with costs. This is an application for leave to appeal against that order.
- [4] The applicant contends that I erred in finding that a public road had been established by means of *vetustas* and that another court may find differently.
- [5] On a proper interpretation of my judgment, it is apparent that the reference to *vetustas* was to indicate that the common law provided for the creation of public roads or servitudes and that the matter was not solely governed by statute pertaining to local authorities, as contended by the applicant.
- [6] Further, as is apparent from this matter, the parties had by agreement crafted a consent order which provides for the creation of a public road over private property. This is an indication that the parties had agreed that the public may have access to the right of way over Portion 2[...]. At the time of that order, the City of Tshwane was a party to the proceedings but did not participate.
- [7] To my mind the applicant has misinterpreted the reference to *vetustas*. It was an example of a common law pathway to a public right of way. In my opinion, the creation of a public road, ie a road on private property, open to the public, by private treaty between the relevant property owners, is competent. The reference to “public road” in the Prinsloo J order is an indicator of the public being entitled to exercise a right of way over private property. This is what the parties intended and that is what the court order has ordered. It bears noting that the applicant had agreed to the aforesaid consent order.
- [8] As far as the other grounds for leave to appeal are concerned, I am satisfied that there is no reasonable prospect that another court would intervene. The

lengthy delay in bringing the rescission application has not been fully explained with reference to the entire period of the delay in a manner which places the court in a position to determine why the application was late. Further, the applicant formulated its application based on repealed legislation and, upon conceding this, did not plead empowering legislative provisions relevant to creation of public roads.

[9] During argument the applicant also contended that there are compelling reasons in terms of section 17(1)(a)(ii) as a basis for the leave to appeal. The sole ground advanced is that the applicant is a church open to the public. This in itself is not a compelling reason. In fact, the fact that the church is open to the public is an indicator that the access to the church was a right to be exercised by the public. It is rather an indicator against the rescission being granted.

[10] I remain unpersuaded that there is a reasonable prospect that another court would intervene on appeal, and in the absence of another compelling reason why the appeal should be heard, the application for leave to appeal must fail.

[11] In the premises I make the following order:

1. The application for leave to appeal is dismissed with costs on Scale C, the first, second and third respondents being represented by senior counsel.

LABUSCHAGNE AJ
ACTING JUDGE OF THE HIGH COURT