

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

DATE 11/10/2024

SIGNATURE... 

CASE NO: 10379/2023

In the matter between:

BELA-BELA MUNICIPALITY
THE MUNICIPAL MANAGER:
BELA-BELA MUNICIPALITY
BELA-BELA MUNICIPAL COUNCIL

First Applicant

Second Applicant

Third Applicant

and

BELA BELA VTS (PTY) LTD
MEC OF LIMPOPO DEPARTMENT OF
TRANSPORT AND COMMUNITY SAFETY

First Respondent

Second Respondent

In re:

BELA BELA VTS (PTY) LTD

Applicant

and

BELA-BELA MUNICIPALITY

First Respondent

THE MUNICIPAL MANAGER:

BELA-BELA MUNICIPALITY

Second Respondent

BELA-BELA MUNICIPAL COUNCIL

Third Respondent

**MEC OF LIMPOPO DEPARTMENT OF
TRANSPORT AND COMMUNITY SAFETY**

Fourth Respondent

JUDGEMENT

Gaisa AJ

INTRODUCTION

[1] This is an application for leave to appeal against the judgment and order I granted on 10 September 2024. The applicants seek leave to appeal to the Full Bench of this Court, alternatively to the Supreme Court of Appeal.

[2] The main judgment reviewed and set aside a decision by the Bela-Bela Municipality not to support the first respondent's application to establish a vehicle testing station. The matter was remitted to the municipality for reconsideration within specified parameters.

[3] The test for granting leave to appeal, as per section 17(1) of the Superior Courts Act 10 of 2013, is whether "*the appeal would have a reasonable prospect of success*". This standard has replaced the previous test, which considered whether there was a reasonable prospect that another court may come to a different conclusion.

GROUND OF APPEAL

[4] The applicants have presented multiple grounds for appeal. I will systematically address each of these grounds in turn, providing a concise summary and analysis of each:

4.1. Reviewability of the 3 August 2023 letter:

4.1.1. The applicants contend that I erred in finding that the Municipal Manager's letter of 3 August 2023 constituted reviewable administrative action under PAJA.

4.1.2. They argue that the letter did not have a direct, external legal effect as required by the definition of administrative action in PAJA.

4.1.3. I remain of the view that the letter, which clearly communicated a decision not to support the first respondent's application at that stage, had a direct and immediate impact on the first respondent's ability to progress its licence application. The fact that the ultimate licensing decision rests with the MEC does not negate the practical and legal effect of the municipality's stance.

4.1.4. While there may be room for debate on this point, I am not persuaded that there are reasonable prospects that another court would come to a different conclusion on this issue.

4.2. Limitation on factors to be considered:

4.2.1. The applicants argue that I erred in limiting the factors the municipality could consider to only those within its constitutional competence.

- 4.2.2. They contend this unduly restricts their discretion and conflicts with principles of cooperative governance.
- 4.2.3. Upon careful reconsideration, I maintain that my interpretation accurately reflects the constitutional division of powers among different spheres of government as it pertains to this case. It is imperative to contextualize the municipality's role within the framework of its constitutional mandate and prescribed competencies.
- 4.2.4. While I stand by my interpretation, I recognize that this case involves sophisticated interplay between regulatory interpretation and established principles of cooperative governance. The nuanced nature of these legal and constitutional considerations leaves room for judicial discretion. Consequently, there exists a reasonable prospect that an appellate court, in exercising its own judgment, might arrive at a different conclusion regarding the permissible scope of factors a municipality may consider in this context.

4.3. Procedural fairness:

4.3.1. The applicants contest my finding regarding procedural unfairness, which was predicated on the extensive delays in the process and the apparent lack of opportunity for representations. They contend that the delays were adequately explained, and that the first respondent did not explicitly raise concerns about insufficient opportunities to make representations.

4.3.2. Upon thorough reflection, I maintain that the substantial delay in this matter raises legitimate fairness concerns, as temporal factors can significantly impact administrative justice. However, I recognize that the nexus between delay and procedural unfairness is nuanced and context dependent.

4.3.3. While my initial analysis highlighted important procedural issues, I acknowledge that there is scope for judicial discretion in determining whether these circumstances constitute reviewable procedural unfairness.

4.3.4. Another court, applying the same legal principles but potentially weighing the factors differently, could conceivably reach an alternative conclusion on this point.

4.4. Error of law and rationality:

4.4.1. The applicants have raised objections to my findings concerning error of law and rationality, with particular emphasis on the consideration of market saturation. Their contention is that such economic factors fall within the ambit of relevant considerations for the municipality's decision-making process.

4.4.2. After careful consideration, I maintain my position that market saturation considerations extend beyond the proper scope of the municipality's mandate in this specific context. This view is grounded in a detailed analysis of the relevant legislative framework and the constitutional division of powers between different spheres of government.

4.4.3. Nonetheless, I recognize that the demarcation between pertinent local considerations and matters reserved for the licensing authority involves nuanced legal interpretation.

The interplay between municipal planning powers and provincial licensing authority in this domain is complex and subject to evolving jurisprudence.

4.4.4. Given these intricacies, I am of the opinion that another court should be afforded the opportunity to consider this issue.

CONCLUSION

[5] Upon thorough reflection and rigorous analysis, I maintain my conviction in the soundness of my original judgment. However, I acknowledge that certain aspects of this case—particularly those concerning the scope of municipal discretion and the application of the Promotion of Administrative Justice Act (PAJA) in this context—involve nuanced legal considerations. Given the multifaceted nature of these issues, Given the multifaceted nature of these issues, there is a possibility for potentially differing interpretations, which may justify consideration by another court.

[6] Furthermore, the legal questions raised in this matter transcend the immediate case, touching upon issues of broader public importance. They necessitate careful examination of the proper interpretation of regulatory frameworks and the delicate balance of powers between different spheres of government.

[7] The resolution of these questions has potential implications for administrative law jurisprudence and the practical implementation of cooperative governance principles.

ORDER

[8] In the result, I make the following order:

1. Leave to appeal to the Full Bench of this Court is granted.
2. The costs of this application shall be costs in the appeal.



N. GAISA
ACTING JUDGE OF THE HIGH
COURT, POLOKWANE; LIMPOPO
DIVISION

APPEARANCES

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DATE OF HEARING : 11October 2024

DATE OF JUDGEMENT : 11 October 2024

This judgment is handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 11 OCTOBER 2024.

POLOKWANE HIGH COURT