



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No. **2024-054854**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED
SIGNATURE 01 NOVEMBER 2024 DATE

In the matter between:

THE MINISTER: CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	First Applicant
THE DIRECTOR GENERAL: CO-OPERATIVE GOVERNANCE	Second Applicant
ACTING DDG: COMMUNITY WORKS PROGRAMME	Third Applicant
THE CHIEF DIRECTOR: CWP FINANCE CO- ORDINATOR	Fourth Applicant

**THE DIRECTOR: CWP IMPLEMENTATION FOR
KWAZULU NATAL**

Fifth Applicant

and

INSIKA FOUNDATION NPC

Respondent

This matter was heard virtually (Ms teams) and disposed of in terms of the directives issued by the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

JUDGMENT

KUBUSHI J

[1] The applicants seek an order to be granted leave to appeal to the full court of the Gauteng Division of the High Court, Pretoria, alternatively to the Supreme Court of Appeal, against the Order handed down by this court, on 12 July 2024.

[2] The application for leave to appeal (“the application”) emanates from the urgent application that was launched by the respondent in which the respondent sought an order declaring unlawful the decision of the first applicant refusing to pay the invoices submitted to it by the respondent for project management fees for the month of April

2024, in terms of a Service Level Agreement (“the SLA”) entered into by the first applicant and the respondent. Apart, from the declarator, the respondent also sought an interim interdict to stop the first applicant from making payments directly to people who were not screened and recruited by the respondent, and some other ancillary relief was, also sought.

[3] The urgent application, that was opposed by the applicants, revolved around the SLA. The crux was the interpretation of Clause 6.13 of the SLA.

[4] Urgency became the first issue for determination by the court followed by the issues of whether the respondent was entitled to the declaratory and interdictory relief prayed for in the notice of motion. All these issues were determined in favour of the respondent. The applicants aggrieved by the decision taken in the urgent court have now instituted the application for leave to appeal.

[5] Numerous grounds have been raised by the applicants in support of the application. In oral submission in court, counsel for the applicants argued two pertinent grounds, without abandoning the other grounds as set out in the heads of argument.

[6] The first ground to be argued is that of urgency. The applicants’ contention is that there was no basis for urgency because the respondent failed in its founding affidavit to plead urgency and to provide the reasons why it would not in due course find substantial redress. It was argued that the averments that were required in terms

of rule 6(12), rendering the matter urgent, were not made out in the papers. Counsel for the applicants emphasised that the rules of court are there to guide the parties and are indirectly peremptory in nature and should always be observed. The contention in this regard being that the court misdirected itself in deciding the application on urgency in favour of the respondent when the respondent had not complied with the provisions of rule 6(12).

[7] Counsel further argued that the court ought to have considered that there was alternative remedy for the respondent in that the funds that the respondent was to use to pay the employees in question belonged to the first applicant and not the respondent, who was the implementing agent. According to counsel, the respondent could have paid the salaries of the employees and still have been able to proceed with the project. There would not have been any irreparable harm suffered by the respondent as the respondent would have been able to institute legal proceedings against the first applicant for damages, if any.

[8] Furthermore, counsel argued that the court should not have considered the duration of the contract as determinative of the urgency of the matter. The court ought to have instead taken into account that the SLA had a dispute resolution process which the respondent should have followed rather than running to court, and that by coming to court before following that process, the respondent brought the urgent application prematurely, which is a fact that was ignored by the court.

[9] Besides, so counsel argued, the matter had lost its urgency, if any existed previously, when the respondent removed the matter from the roll after the previous judge (Potteril J) had left the door open for the respondent to proceed with the matter on an urgent basis.

[10] The second point argued was that the court erred in concluding that Clause 6.13 of the SLA required no interpretation. The submission by the applicants' counsel was that the court ought to have found that Clause 6.13 properly interpreted meant that the respondent had to absorb the employees as the clause was included in the SLA in the spirit of trying to save jobs. The personnel in question were in fact the respondent's previous employees who were already on site and were brought in by the respondent. They were retained by the first applicant when the respondent's past agreement with the first applicant ended. The contention is that by coming in and refusing to absorb those employees was tantamount to dismissing them and the respondent would, in any event, not have been prejudiced if it had absorbed them.

[11] Section 17 of the Superior Courts Act, which regulates the granting of leave to appeal applications, provides that –

"17. Leave to Appeal

- (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.”

[18] The test for the granting of the application for leave to appeal based on section 17(1)(a) of the Superior Courts Act, is trite and need not be repeated in this judgment. Applying the test stated in section 17(1)(a) of the Superior Courts Act, when considering all the grounds raised by the applicants in this application, and for the reasons that follow hereunder, it is in this court’s opinion that there are no reasonable prospects that the appeal will succeed; and there are no compelling reasons, presented to this court, why the appeal should be heard.

[19] The issues raised by the applicants in this application were all dealt with in the main judgment of this court and there is, therefore, no need for the court to repeat them in this judgment. The issue of urgency, as the respondent’s counsel argued, is a matter for the discretion of the court. As decided in *Lubambo v Presbyterian Church of Africa*¹, a decision as to whether the case should be heard as a matter of urgency, amounts to the exercise of a judicial discretion. Such discretion arises from the wording of rule 6(12)(a), itself. It is trite law that an Appellant Tribunal will not generally interfere with the exercise of a judicial discretion, unless it is shown that the discretion was exercised capriciously or without grounds.

¹ 1994 (3) SA 241 (SE) at 243A - H

[20] The issue of urgency, in this matter, was dealt fully and comprehensively, in paragraphs 20 to 33 of the main judgment and in exercising its discretion the court decided to hear the application as a matter of urgency. All the arguments taken by the parties were fully dealt with by the court leaving no room of any suggestion that the court exercised its discretion capriciously or without any grounds.

[21] Over and above that, in coming to the conclusion it did on urgency, the court relied also on the decision taken in *Cekeshe and Others*,² where it was held that that it is

‘ . . . the substance of the affidavit, and not its form, which will weigh with a Court; if an affidavit sets out facts upon which a Court can decide that an applicant is entitled to relief in terms of the subrule, the Court will entertain the application. If the only reasonable inference from the facts set out in the affidavit is that the matter is one of urgency then the applicant would have complied with the requirements of the subrule, even though he does not make a specific averment that it is urgent.’

[22] Thus, the merits of the application weighed heavily with the court to conclude that the matter was inherently urgent.

[23] Further argument by the applicants’ counsel in this court, failed to deal with the elephant in the room, that is, the conduct of the first applicant which was found by the court to amount to self-help. This is so because, when submitting that the court erred in concluding that Clause 6.13 of the SLA required no interpretation, the applicants’

² *Cekeshe and Others v Premier, Eastern Cape, and Others* 1998 (4) SA 935 (Tk).

counsel failed to address the court's finding that the first applicant's conduct to withhold the funds was unlawful and amounted to self-help.

[24] In the circumstances the application is dismissed with costs including costs of counsel on scale C.

A handwritten signature in black ink, which appears to be 'KUBUSHI J', is written over a solid black rectangular redaction box.

KUBUSHI J

Judge of the High Court

Gauteng Division

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Date of argument: 22 October 2024

Date of judgment: 01 November 2024