

IN THE HIGH COURT OF SOUTH AFRICA



GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2023-085256

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
<u>12/08/2024</u>	
DATE	SIGNATURE

In the matter between:

22 FRICKER ROAD (PTY) LTD

First Applicant

and

SNOWY OWL PROPERTIES 149 (PTY) LTD

Second Applicant

and

**THOSE UNITS LISTED IN ANNEXURE "A" TO THE
NOTICE OF MOTION**

First Respondents

**THOSE UNITS LISTED IN ANNEXURE "B" TO THE
NOTICE OF MOTION**

Second Respondents

**THOSE UNITS LISTED IN ANNEXURE "C" TO THE
NOTICE OF MOTION**

Third Respondents

**THOSE UNITS LISTED IN ANNEXURE "D" TO THE
NOTICE OF MOTION**

Fourth Respondents

Coram: Maenetje AJ

This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploading on Caselines. The date and time for handdown is deemed to be 10h00 on 12 August 2024.

JUDGMENT

Maenetje AJ:

[1] The applicants apply for leave to appeal against the judgment and order I handed down on 18 June 2024. I dismissed with costs an application by the applicants to authorise and direct them to disconnect the supply of electricity to units listed in annexures "A" to "D" to the applicants' notice of motion and to restrict the supply of water to those units to an amount of not less than 6 kilolitres per unit per month as per Regulation 3 under the Water Services Act, 108 of 1997. The respondents currently occupy these units. There are pending eviction proceedings in this Court that the applicants brought under the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (**the PIE Act**) to evict the respondents from the units. The applicants described the relief they sought as novel. The applicants' counsel made it clear that the applicants' claim is contractual. It is based on lease agreements concluded between them and the respondents.

[2] In dismissing the application, I found that the applicants had failed to allege any specific terms of the lease agreements that entitled them to the relief they sought. I also found that the respondents in Girton Court

alleged that they paid for electricity which is provided to them in their units through prepaid metres. I accepted these respondents' version based on the *Plascon Evans* rule. I further found that the relief the applicants sought would constitute indirect eviction in contravention of section 26(3) of the Constitution and the PIE Act if granted. Additionally, I found that the applicants had an alternative remedy, i.e., the pending eviction proceedings under the PIE Act.

- [3] The applicants contend that I erred on each of these findings and that there are reasonable prospects that another court would come to a different conclusion and not dismiss their application with costs. They contend further that the matter is of significant public importance in that the judgment has the effect of broadening the definition of “*eviction*” under the PIE Act. This has broad ranging consequences for the property market in general, and the rental housing market in particular. There are, therefore, other compelling reasons why leave to appeal should be granted. They ask that leave to appeal be granted to the SCA.
- [4] The respondents oppose the application for leave to appeal. One set of respondents has filed written submissions. I have considered these written submissions in coming to my conclusion.
- [5] I reviewed the judgment and the arguments presented to the Court in the main hearing. I take heed that I must bring a dispassionate mind to bear on the application for leave to appeal and determine whether, on the grounds advanced in the application for leave to appeal, there is a sound

rational basis for the contention that there are reasonable prospects of success on appeal.

[6] I find that there is a sound rational basis that another court may find that it was sufficient for the applicants to demonstrate that the lease agreements created reciprocal obligations between the applicants and the respondents, for the former to supply electricity and water, and the latter to pay for the supply. That where there is supply but no payment over a period of time, there may be a legal entitlement, subject to authorisation by the Court, to terminate the supply of electricity and reduce the amount of water supply. Further that such termination and limitation does not constitute indirect eviction and is open to a court, notwithstanding pending eviction proceedings, to authorise such termination and reduction of supply of electricity and water respectively. Furthermore, that pending eviction proceedings under the PIE Act do not constitute an alternative remedy for the applicants for purposes of the relief that they sought.

[7] In any event, these issues are fairly novel and of public importance and are likely to impact future cases not limited to the dispute between the applicants and the respondents. The issues raised also bear some prospects of success on appeal.

[8] For these reasons, I conclude that leave to appeal should be granted. I also believe that leave to appeal to the SCA is justified as clarity is required relatively sooner.

[9] Accordingly, I make the following order:

- a) Leave to appeal against the judgment and order of 18 June 2024 is granted to the SCA.
- b) The costs of the application for leave to appeal shall be costs in the appeal.


NH MAENETJE
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing : 2 August 2024

Date of judgment : 12 August 2024

For the applicants: A McKenzie

Instructed by Vermaak Marshall Wellbeloved Inc.

For the first and second respondents: No appearance

Instructed by Ezenwa Attorneys

For the third and fourth respondents: No appearance

Instructed by T.P Phalane Attorneys