

IN THE HIGH COURT OF SOUTH AFRICA



GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2023-064822

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED.
DATE	30/8/2024
	SIGNATURE [Redacted]

In the matter between:

DONATELLA WINGATE-PEARSE N.O.

First Applicant

**THE REMAINING APPLICANTS WHICH
ARE IDENTIFIED ON ANNEXURE "A"
TO THE NOTICE OF MOTION**

Second to Thirty-Third Applicants

and

DAYWINE PROPERTIES CC

First Respondent

MOIRA ALICE WINGATE-PEARSE

Second Respondent

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 30 August 2024.

JUDGMENT

Maenetje AJ:

- [1] The respondents have brought an application for leave to appeal against a judgment and order I granted against them on 13 June 2024. They rely mainly on two grounds of appeal. The first ground of appeal is that the deregistration of the ten applicants that was first raised in court on 13 June 2024 when the matter was argued meant that the first applicant lacked locus standi to bring the application for the orders sought in the notice of motion as they relate to the deregistered applicants. It was argued that she lacked a direct and substantial interest to obtain any documents related to the deregistered applicants. The second ground of appeal is that the court erred in granting a costs order against the respondents.
- [2] In oral argument, counsel for the respondents abandoned the ground of appeal based on the costs order granted against the respondents. This means that it is acknowledged that there are no prospects of success in an appeal based on this ground of appeal.
- [3] I also find that there are no prospects of success in the proposed appeal based on the first ground of appeal. There are two reasons for this. The first is that I am not persuaded that there are reasonable prospects of the appeal court finding that the court failed to exercise its discretion judicially in declining to determine the new defence raised for the first time in oral argument on 13 June 2024 based on the deregistration of the ten applicants. This is dealt with in paragraphs 12 to 17 of the judgment.

The appeal court will only interfere with this finding if this court failed to exercise its discretion judicially. The second is that the locus standi of the first applicant to bring the application and seek the orders sought in the notice of motion was common cause on the affidavits filed. Her locus standi was not placed in dispute. To properly place the first applicant's locus standi in dispute based on the deregistration of the ten applicants, the respondents ought to have applied for leave to file a further affidavit placing the evidence regarding the deregistration of the ten applicants before the court and properly disputing the first applicant's locus standi with regard to documents relating to the deregistered applicants. These are historical documents regarding the deregistered applicants' business activities. The respondents chose not to do this.

[21] In the circumstances, the application for leave to appeal is dismissed with costs.



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

Date of hearing : 19 August 2024

Date of judgment : 30 August 2024

For the applicants
/respondents in leave to appeal: Mr ARG Mundell SC

Instructed by Marie-Lou Bester Inc

For the respondents

/applicants in leave to appeal:

Mr Tsele

Instructed by KWA Attorneys