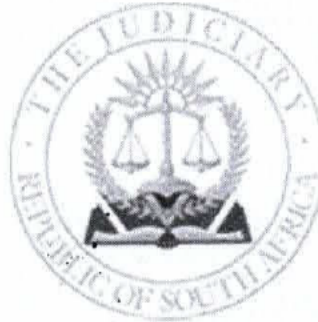
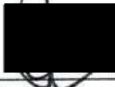


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

- | | |
|-----|--|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: NO |

Date: **23 January 2025** Signature: 

Case no.: **2017/07251**

In the matter between:

CITY OF JOHANNESBURG METROPOLITAN

1ST APPLICANT

**THE MUNICIPAL MANAGER OF THE CITY
OF JOHANNESBURG: MR FLOYD BRINK N.O.**

2ND APPLICANT

*(In his capacity as the Municipal Manager of the
1st Respondent)*

And

QUINTAL (PTY) LTD

RESPONDENT

Coram: Dlamini J

Date of hearing: 14 November 2024

Delivered: 23 January 2025 – This judgment was handed down electronically by circulation to the parties' representatives *via* email, uploaded to *CaseLines*, and released to SAFLII. The date and time for the hand-down is deemed to be 10:30 on 23 January 2025.

JUDGMENT

DLAMINI J

INTRODUCTION

- [1] The applicants seek leave to appeal against the judgment and order of this Court delivered on 31 January 2023.
- [2] The applicant relies on various grounds for leave to appeal as contained in the Notice of Leave to Appeal as well as the Heads of Argument and submission made by Counsel for both parties before this Court.
- [3] The applicant has launched this application for leave to appeal in terms of Section 17(1)(a) of the Superior Courts Act.¹
- [4] The test for granting leave to appeal is now higher. The legislator's use of the word in section 17(1) (a) (i) of the Superior Court Act imposes a most stringent and vigorous threshold.
- [5] This concept was captured thus by the Court in *Member of the MEC for Health, Eastern Cape v Mkhita and Another*,² as follows: that a court may

¹ Act 10 of 2013

² (1221/2015) [2016] ZASCA 176 (25 November 2016)

now only grant leave to appeal if it is of the opinion that the appeal would have a realistic chance of success not may have a reasonable chance of success. A mere possibility of success or even an arguable case is not enough.

GROUND OF APPEAL

- [6] The appellant's grounds of appeal, the party's heads of argument, this Court judgment, including the entire record of appeal, must be deemed to be incorporated in this judgment.
- [7] Broadly summarized, the applicant's grounds of appeal are as follows:-
- 7.1 Whether the Municipality was or is in willful and mala fide failure to comply with the judgment of Cowen AJ and
- 7.2 Whether the Municipal Manager was a party to the proceedings before Cowan AJ or in the contempt of Court application without the Municipal Manager being formally joined.

BACKGROUND FACTS

- [8] The respondent brought an application against the applicant seeking orders against the applicant in two parts. In Part A, the respondent sought an order to hold the applicants in contempt of the order of Cowen AJ of 6 May 2021, wherein Justice Cowen ordered the applicants to correct the respondent's water account by removing certain charges from the account which had prescribed.
- [9] In Part B, the respondents sought certain relief relating to the new irregularities on the same account.

NON-COMPLIANCE

- [10] The high watermark of the applicant's submission is the averment that they have fully complied with the order of Cowen AJ in light of the reversals of the amount and concession by the applicant that, indeed, there were corrections and reversals of the respondent's account.
- [11] In my view, I dealt extensively with this aspect in the main judgment and found that the Municipality simply made a bald submission and asserted that it had complied with Cowen AJ's order. No evidence was placed before this court that the applicant had removed all the charges levied against the respondent between October 2014 and June 2016 and of all the interest, penalties, and other debits related to the above charges. I am satisfied that another court will not find otherwise. The findings of this court stand.

JOINDER

- [12] Distilled to its core, the applicant submits that the Municipal Manager was not a party in the main action, and therefore, the argument goes the Municipal Manager could be held to be in contempt party as he was not the party in the main judgment. For this submission, the applicant seeks reliance amongst other judgments.³
- [13] The applicant's submission and reliance on the above authorities are misplaced. This is because first, the applicants in this application applied for the substitution of the second respondent with Mr Flyod Brink, the current municipal manager of the applicant. Upon being served of this application by the respondent, no notice to oppose and no answering affidavit has been filed by the applicant to oppose the substitution application. Absent any opposing affidavit, the substitution application is granted.

³ see *Spectrum (Pty) Ltd and Others v City of Johannesburg Metropolitan Municipality and Another* (28694/2020) [2024] ZAGP JHC 929, and *Molaa v Molaa and Others* 2023 JDR 1931 (FB)

[14] The principles of contempt are trite and have been set out in several of our court's decisions. The party alleging contempt must prove the following: the existence of the Order, service of the order, Non-compliance with the order, and lastly, the non-compliance must be wilful and *mala fides*.

[15] Having regard to all the circumstances of this matter I am satisfied that the respondents have complied with these requirements. The applicants have not opposed this substitution application and have not shown that its non-compliance willful or *mala fide*.

[16] Below, I shall, in turn, deal with the individual grounds of appeal, although others will be dealt with jointly as they appear to be relying on the same legal principles.

CONCLUSION

[17] In light of the above, based on section 17 of the Act and the facts of this matter, I am not persuaded that there are any reasons or extraordinary circumstances in this matter that warrant the grant of leave to appeal which would have reasonable prospects of success or that there are any other compelling reasons why the appeal should be heard, including conflicting Judgments on the matter under consideration.

[18] I am not convinced that the applicants have presented any facts demonstrating that it has any prospects of success on appeal. Therefore, it would not be in the interest of justice to grant leave to appeal to the applicant.

ORDER

1. The application for leave to appeal is dismissed costs.



J DLAMINI

Judge of the High Court

Gauteng Division, Johannesburg

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