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

Case No: 35234/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

SIGNATURE

DATE: 14/04/25

In the matter between:

**Sunset Ridge Homeowners
Association**

Applicant

and

Johannes Hendrik van Deventer N.O

1st Respondent

**BIANCA SANDERSON N.O.
Respondent**

2nd

**CITY OF TSHWANE METROPOLITAN
Respondent
MUNICIPALITY**

3rd

MEMBER OF THE EXECUTIVE COUNCIL

4th Respondent

**GAUTENG DEPARTMENT OF HUMAN
SETTLEMENTS**

THE MINISTER OF HUMAN SETTLEMENTS

5th Respondent

LEAVE TO APPEAL - JUDGMENT

MOGALE AJ

INTRODUCTION

[1] This is an unopposed application for leave to appeal the judgment and order of this court dated 05 February 2024.

[2] The court made the following order:

2.1. The application declaring that the occupants of the Jobica Property (collectively cited as the sixth respondent) illegally and unlawfully occupiers of Portion 25 of Farm 375 Rietfontein held the title deed T35132/2002 and 8.5653 HA is refused.

2.2. The relief sought by the applicant to compel the third respondent to provide basic services to Jobica Property is refused.

2.3. The first and the second respondents are directed within 90 (ninety) days from the date of this order to take steps, either directly or indirectly remediate the nuisance on Jobica Property, Portion 25 of Farm 375 Rietfontein, Gauteng Province, with the title deed T35132/2002 and 8.5653 HA which is interfering with use and enjoyment of Sunset Ridge Estate ("the Estate") with the registered address at 2[...] D[...] Street, Rietfontein, Agricultural Holdings, Mooikloof, Pretoria, Gauteng Province.

2.4. The first and the second respondents must furnish a written report to the applicant within 30 (thirty) days of steps taken to remedy the situation.

2.5. The remediation is directed to reasonable compliance with the applicable health and safety legislation and to ensure that the use and occupation of the occupiers of Jobica Property do not pose a threat to the

safety and well-being of the occupiers of Sunset Ridge Estate and their property.

2.6. The first and the second respondents are directed to take reasonable steps to prevent the nuisance stated in the notice of motion from reoccurring in the future.

2.7. The applicant is granted leave to approach this Court on the same papers, supplemented insofar as it may be necessary, for the orders declaring the first and the second respondents to be in contempt of the orders as per paragraphs 3 to 6 of this order.

2.8. The first and the second respondents are to pay the costs of this application, jointly and severally, the one paying, the other to be absolved.

[3] The application for leave to appeal was filed on 24 February 2024. This application is brought in terms of section 17(1)(a) and (ii)¹, to wit, that the appeal would have a reasonable prospect of success and/or there are some compelling reasons why the appeal should be heard.

[4] The applicant conceded and acknowledged that this court was correct in determining that it could not grant the declaratory relief requested by the applicant, specifically that the sixth respondent be declared as follows:

4.1. They are illegally and unlawfully occupying the Jobica property.

4.2. That they occupy the Jobica property without the consent of the Jobica Trust.

4.3. That they occupy the property without the consent of the third respondent.

[5] They are not entitled to the relief requested in paragraph six of the notice of motion, wherein the applicant seeks a writ of mandamus directed at the third

¹ Superior Court Act 10 of 2013

respondent to initiate eviction proceedings against the sixth respondent from the Jobica property.

[6] The applicant raised a preliminary issue as grounds for appeal, specifically asserting that the court committed errors in fact and/ or law as outlined in paragraphs 55 to 57 of its judgment, which states that the applicant requests the Municipality to provide services to the Jobica property.

[7] The court made an error by failing to consider the applicant's request to compel the third respondent to develop an action plan aimed at addressing the contravention of its town planning scheme, as delineated in prayers 3, 4, and 5 of the notice of motion, which are as follows:

7.1. Prayer 3 proposes an order that the municipality be ordered to investigate the unlawful and nuisance- causing activities occurring at the Jobica property.

7.2. Prayer 4 requests that the municipality develop an action plan to prevent the continuance of illegal conduct and nuisance-causing activities.

7.3. Prayer 5 provides for an order that the municipality reports to this court on what it has done and intends to do to regularise the affairs at the subject property.

[8] The applicant further contended that the sixth respondent's conduct as occupiers of the Jobica property, outlined in the founding affidavit, contravened the property's zoning and the third respondent's town planning scheme. Therefore, the applicant is entitled to an order compelling the municipality to enforce its town planning scheme.

[9] The applicant cited the Supreme Court of Appeal's decision in *JDJ Properties CC and Another v Umngeni Local Municipality and Another*², which enumerated specific prerequisites for compelling the third respondent to execute its obligations and enforce the town planning scheme.

² 2013 (2) SA 396 (SCA)

[10] The application for leave to appeal is regulated by s 17(1)(a) (i) and (ii) of the Act, which states that:

(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 are some other compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration.

[11] It is apparent that our courts have consistently applied the test on whether leave to appeal should be granted or not. The liberal approach to granting leave by courts is discouraged as inconsistent with s17 of the Act. For instance, in *Mothule Inc Attorneys v The Law Society of the Northern Provinces and Another*³, the Supreme Court of Appeal stated as follows regarding the trial court's liberal approach to granting leave to appeal

"It is important to mention my dissatisfaction with the court a quo's granting of leave to appeal to this court. The test is whether there are any reasonable prospects of success in an appeal. It is not whether a litigant has an arguable case or mere possibility of success."

[12] After considering the applicant's submission, I am of the opinion that the appeal has a reasonable prospect of success. For this reason, I am persuaded that leave to appeal should be granted.

[13] In the premises, the following order is made:

- a. The applicant is granted leave to appeal to the full bench of the Gauteng High Court Pretoria
- b. The costs of the application for leave to appeal will be costs in the appeal

³ 9213/160 [2017] ZASCA 17 (22 MARCH 2017)

**K MOGALE,
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, PRETORIA**

Electronically submitted.

Delivered: This Judgment was prepared and authored by the Judges whose names are reflected and is handed down electronically by circulation to the parties/their legal representatives by email and uploading to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 14 March 2025

Date of hearing: The matter was heard in an open court. The matter may be determined accordingly. The matter was set down for a court date on 25 March 2025.

Date of Judgment: 14 April 2025

APPEARANCES

Applicant council: Mr Hadebe

Instructed by: Hadebe Attorneys

Respondent: Advocate S W DAVIES

Instructed by: Loock Du Pisane, Inc