

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 40135/2016

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>05 June 2025</u>	
DATE	SIGNATURE

In the matter between:

THE CITY OF JOHANNESBURG

Applicant

And

CHANGING TIDES 74 (PTY) LTD

Respondent

In re:

CHANGING TIDES 74 (PTY) LTD

Plaintiff

And

THE CITY OF JOHANNESBURG

Defendant

JUDGMENT
ON APPLICATION FOR LEAVE TO APPEAL

Mahosi, J

[1] This is an application brought by the City of Johannesburg (“the City”) for leave to appeal against the whole of this Court’s judgment and order handed down on 14 March 2025 to the Supreme Court of Appeal (SCA), alternatively, a Full Bench of this Court.

[2] The application is premised on the basis that the issues before this Court raises complex questions of law, and this Court erred in its approach to wrongfulness as an element of delictual liability and consequently conflated the test for wrongfulness and fault. The City also contended that the judgment sets a precedent for future delictual claims against local authorities who failed to provide emergency accommodation to evictees. According to the City, this is a matter of public interest that is likely to affect landowners and local authorities across the country. The City further submitted that as the judgment raises essential questions of constitutional rights and obligations, leave to appeal should be granted to the SCA.

[3] Another ancillary ground of appeal concerns the order this Court made that the City must pay *mora* interest on the amount of R12,374,993.00 from the date of summons to the date of final payment when, in terms of the agreement which had been reached between the parties respective expert witnesses, *mora* interest from date of summons to August 2024 was already included in the amount of damages calculated by them in respect of the two competing scenarios applicable in respect of

the deprivation period. Changing Tides does not oppose this relief as it was a patent error. This Court agrees with the parties that the *mora* interest ought to run from the date of judgment to the date of final payment.

[4] Changing Tides asserted that there are no reasonable prospects that another Court would come to a different conclusion to that reached by this Court and contended that the City advanced no compelling reasons why leave to appeal should be granted in terms of section 17(1)(a)(ii) of the Act.

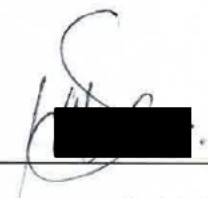
[5] The test for leave to appeal is, by now, trite and bears no repetition. Having had regard to both parties' submissions and arguments, this Court is persuaded that its judgment raises important questions of constitutional rights and obligations and is likely to impact local authorities and many landowners. It is, therefore, appropriate that leave to appeal be granted to the SCA.

[6] Accordingly, the following order is made:

1. Leave to appeal is granted to the Supreme Court of Appeal.
2. Paragraph 40.1 of this Court's judgment is hereby amended to read:

"The defendant must pay the plaintiff damages in the amount of R12,374,993.00 together with *mora interest* of 11.75% per annum (the current *mora* rate) on this amount from the date of judgment to the date of final payment."

3. Costs to be costs in the cause.



D. Mahosi J
Acting Judge of the High Court

Date of hearing: 05 June 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email and uploaded on Caseline. The date for hand-down is deemed to be 05 June 2025.

Appearances

For the applicant: Advocates A.W. Pullinger and L Mokwena

Instructed by: Kunene Ramapala Incorporated Attorneys

For the respondent: Advocates CHJ Badenhorst SC and P Bosman

Instructed by: Esthé Muller Incorporated Attorneys
c/o Couzyns Incorporated Attorneys