

REPUBLIC OF SOUTH AFRICA



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

Case No: 058814/2023

<u>DELETE WHICHEVER IS NOT APPLICABLE</u>	
(1)	REPORTABLE: / NO
(2)	OF INTEREST TO OTHER JUDGES: / NO
(3)	REVISED.
<u>7/8/25</u> DATE	 SIGNATURE

In the matter between:

**CITY OF TSHWANE METROPOLITAN
MUNICIPALITY**

Applicant

and

**JET A1 LUXURY TOUR CC
PADALANE CONSTRUCTION AND
PROJECTS CC**

First Respondent

Second Respondent

JUDGMENT ON LEAVE TO APPEAL

FRANCIS-SUBBIAH, J:

- [1] The applicant seeks leave to appeal against the dismissal of the application with costs on 11 March 2025.
- [2] In considering a leave to appeal there must be reasonable prospects that another court may come to a different conclusion.
- [3] The respondents oppose this application on the basis that the court had not erred in its findings and that there are no reasonable prospects that another court may come to a different conclusion. In particular there is no compelling reason why the appeal should be heard, taking into account conflicting judgments on the matter under consideration, such as a legitimate dispute on the law or a reasonable prospect that the factual matrix could receive a different treatment.

- [4] Having read the papers and having heard counsel, I had considered the issues raised by the applicant and respondents in coming to this decision on the leave to appeal. I have dealt with the reasons for dismissal of the application. I will, however, further elaborate on salient points raised in this application.
- [5] The applicant advances that the court erred in dismissing the application on the basis that the Municipality failed to serve an eviction notice on the respondents prior to instituting legal proceedings. Applicant relied on ***Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others*** (CCT 22/08) [2009] ZACC 16; 2009 (9) BCLR 847 (CC); 2010 (3) SA 454 (CC) where an eviction order was granted despite an eviction notice not being served. Applicant contends that the court was bound by this decision and failed to follow it. It is, however, clear that the facts in the present matter differ considerably with those in *Joe Slovo*, which the applicant fails to take into account.
- [6] The notion that the Constitutional Court granted an eviction order without notice is incorrect. There were negotiations between the authorised representatives of the community in Joe Slovo, the residents themselves and the authorities. In the present matter there were no negotiations with the respondents. It was advanced that the applicant had taken photographs without any explanations given or negotiations taking place.

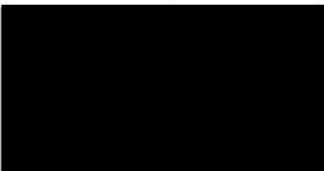
- [7] Further, no formal application for postponement was before the court. Applicant's counsel having accepted that no notice was provided to the Respondents, sought a postponement from the Bar. In the circumstances, the failure to give notice to the respondents is an acceptable part of the rule of law and is not curable by a postponement. Hereby suggesting a misdirection of the interests of justice having an impact on the Applicant's right to a fair hearing. I re-affirm that the Court is bound to vigorously protect its processes to ensure equity between parties and that a fair and just procedure is enforced. As a result, the applicant's right to a fair hearing was not violated in any manner.
- [8] A notice to vacate encourages voluntary departure and avoids legal costs. It is indicative of showing good faith and procedural fairness. Taken the history of this matter it gives the respondents an opportunity to explain their occupation through the ward councillor. Additionally, a further opportunity to comply with municipal policies and standing instructions, including days to vacate the property.
- [9] A further ground raised by the applicant is the court omitted to consider the requirements for a *rei vindicatio*. Having found no reason for a postponement and for the failure to provide notice to the defendants, the matter was not heard on the merits, particularly the eviction application, and there is no obligation on the court to provide reasons relating to the requirements for a *rei vindicatio* in the circumstances. The dictum by Madlanga ADCJ is precisely on point where in

Vodacom (Pty) Ltd v Makate and Another (CCT 51/24) [2025] ZACC 13 it was stated that:

“ [57] Of critical importance is that “there is no duty on a judge in giving . . . reasons to deal with every argument presented by counsel in support of [their] case”.⁴⁰ I say of “critical importance” because some litigants may find this statement of the law attractive for nitpickingly arguing that a court’s judgment failed to deal with this or that point and that, therefore, there was a breach of the right to a fair hearing. Let them be warned that they will not succeed. That is not what this statement of the law is about.”

[10] The prospect of success and *bona fide* defence is not a stand-alone enquiry but is contextually considered with all relevant factors.

[11] For the reasons explained above I am of the view that no other court will come to a different decision on the facts and arguments presented than what this court had arrived at. There are no conflicting judgments on the matter under consideration or a reasonable prospect that the factual matrix could receive a different treatment. There are no prospects of success on appeal. As a result, the application for leave to appeal is dismissed with costs.



R. Francis- Subbiah

Judge of the Gauteng High court

Pretoria

Counsel for the Applicant: Adv S Mbeki
Instructed by: Majang Attorneys Inc.
Counsel for the Respondents: Adv LR Modiba
Instructed by: Moche Attorneys Inc.

Date of Hearing: 20 May 2025

Date of Judgment: 7 August 2025

Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 16H00 on 07 August 2025