

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2024-041425

- 1) REPORTABLE: **NO**
2) OF INTEREST TO OTHER JUDGES: **NO**
3) REVISED.

SIGNATURE

18 September 2025
DATE

In the matter between:

ALPHEUS LANGWANE MASHABA

1st Applicant

MEMBERS LISTED IN SCHEDULE A

2nd Applicant

And

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Respondent

JUDGMENT: LEAVE TO APPEAL

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 10:00 on 18 September 2025.

MOJAPELO AJ

INTRODUCTION

1. This is an application for leave to appeal against the judgment delivered on 16 April 2025. In that judgment I dismissed the applicants' claim that their fixed-term employment contracts with the respondent entitled them to permanent employment and associated benefits after the lapse of three months.
2. The applicants persist that this Court misdirected itself on both fact and law. They argue that the contracts, properly interpreted, envisaged permanent insourcing; that no lawful reliance could be placed on a collective agreement process; and that their continued service to the respondent since 2021 demonstrates permanency.
3. Due to various removals from the roll of this application for leave to appeal, mainly due to the availability of the applicants' counsel, this leave to appeal will be decided on paper.

THE LEGAL FRAMEWORK

4. Applications for leave to appeal are governed by section 17(1) of the Superior Courts Act 10 of 2013, which provides:

"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 is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration."*

5. The wording of the provision is significant. The use of "would" in section 17(1)(a)(i) signals a deliberate raising of the bar. As was explained in **Mont Chevaux Trust v Tina Goosen and 18 Others 2014 JDR 2325 (LCC)**, the

legislature did not intend the test to remain the same as under the common law, where a mere possibility of success sufficed. The threshold is now higher: there must be a measure of certainty that an appeal court will differ from the trial court's conclusions.

6. Section 17(1)(a)(ii) also recognises that in rare cases, "*some other compelling reason*" may justify an appeal, even absent prospects. Examples include where conflicting judgments require clarification, where constitutional rights are implicated, or where questions of public importance arise. See ***MEC for Health, Eastern Cape v Mkhitha 2016 (6) SA 182 (SCA)***.

APPLICANTS' GROUNDS

7. The applicants seek leave to appeal the judgment on several bases. Those are summarised hereinbelow:
 - 7.1. Contractual interpretation: They argue I erred in finding that their employment contracts were strictly fixed-term and excluded permanency. They contend the first paragraph envisaged two routes to permanence: (i) expiry of three months; or (ii) conclusion of a collective agreement.
 - 7.2. Collective agreement: They argue this Court exaggerated its role; in their submission, there was in fact nothing to ratify.
 - 7.3. Continued service: They stress that they have remained in employment for more than three years, allegedly evidencing that their true relationship is permanent.
 - 7.4. Contradictions: They contend the judgment was contradictory by simultaneously finding that the contracts did not create permanent rights while recognising that a collective agreement could have resulted in permanency.

- 7.5. Legitimate expectation: They claim that by insourcing security functions, the respondent created a legitimate expectation of absorption into the permanent workforce.

ANALYSIS

8. Interpretation requires consideration of text, context, and purpose in a unitary manner: ***Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA); University of Johannesburg v Auckland Park Theological Seminary 2021 (6) SA 1 (CC)***.
9. The contracts expressly identify themselves as fixed-term contracts not exceeding three months. They stipulate that upon acceptance, the incumbents acquire no expectation of permanence. The trigger for permanent absorption was never the mere expiry of three months, it was the conclusion of a collective agreement ratified by the South African Local Government Bargaining Council (SALGBC). That event never materialised.
10. The applicants' interpretation simply cannot be reconciled with the clear language of the concluding provisions. To adopt their meaning would be tantamount to rewriting the contract. The parties are bound by their contracts and courts cannot create obligations not agreed upon.
11. Continued service on a month-to-month basis after expiry does not retrospectively convert a time-limited agreement into one of permanence. Once a fixed-term contract lapses, continued employment without a new agreement cannot, of itself, create permanent employment absent statutory intervention.
12. Applicants' ongoing engagement arises from subsequent arrangements, but that does not resuscitate the 2021 contracts, nor does it create "existing, future, or contingent rights" under those expired documents, which is a necessary jurisdictional predicate for declaratory relief.

13. To the extent the applicants rely on legitimate expectation, they misdirect themselves. Legitimate expectation is a concept arising from administrative law, not contractual interpretation. Even within administrative law, it requires a lawful basis beyond subjective hope. The express disclaimer against expectation of permanency in the contracts precludes reliance on such doctrine.

SECTION 17(1) EVALUATION

14. Having considered the applicants' submissions, I find:
 - 14.1. They disclose no reasonable prospect that another court would find that the contracts conferred permanent rights after three months. Their interpretation is strained and contrary to clear wording.
 - 14.2. The contracts, properly construed, expired in July 2021 without creating enforceable rights.
 - 14.3. Their reliance on equitable considerations cannot convert judicial discretion into contract drafting. Equity cannot override contractual terms.
15. The applicants have not identified any compelling reasons under section 17(1)(a)(ii). There are no conflicting judgments requiring appellate resolution. No constitutional issue of general public importance arises; the matter concerns a particular set of contracts between defined parties.

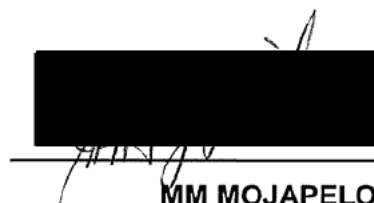
CONCLUSION

16. The applicants' grounds do not reach the threshold introduced by section 17(1) of the Superior Courts Act. They amount to a re-litigation of their contractual dispute on grounds already fully ventilated and rejected.

17. I am therefore not persuaded that another Court would reasonably come to a different conclusion, nor that any other compelling reason exists to warrant appellate interference.
18. In relation to costs, I revert to the same reasons set out in the main judgment, which is that the applicants' precarious employment circumstances warrant sympathy, though not the relief they seek.

ORDER

1. The application for leave to appeal is dismissed.
2. No order as to costs is made.



MM MOJAPELO
ACTING JUDGE

HIGH COURT GAUTENG DIVISION, PRETORIA

Counsel for the Applicant	:	Adv. Z Feni
Attorney for the Applicant	:	Xabendlini Attorneys & Associates
Counsel for the Respondent	:	Adv. K Ramarumo
Attorneys for the Respondent	:	Marivate Attorneys Inc
Date of Leave of Appeal Judgement	:	18 September 2025