IN THE HIGH COURT OF SOUTH AFRICA

[EASTERN CAPE DIVISION, MAKHANDA]

CASE NO.: 1323/2008

In the matter between:

ROGER RODNEY HATTON SMITH	Applicant
and	
BUFFALO CITY MUNICIPALITY	1st Respondent
CITY MANAGER FOR THE BUFFALO CITY METROPOLITAN MUNICIPALITY	2nd Respondent
THE REGISTRAR OF DEEDS (KWT)	3rd Respondent
GPR PROPERTIES (PTY) LTD	4th Respondent
(In her representative capacity as the Executrix in the estate late GJ van Niekerk)	
PETER ST MELIER WARREN	6th Respondent
RONNIE COETZEE	7th Respondent

JUDGMENT

JOLWANA J

[1] On 8 May 2025 I delivered a judgment in which I made an order that the settlement agreement concluded by and between the Mr Smith (the applicant) and the first respondent (the municipality) settled a related court case that had not

reached finality between the parties as appeal processes were still pending. And I made the said settlement agreement an order of court. I also granted an order of costs against the municipality. The municipality now seeks leave to appeal against the whole judgment and the orders made therein.

[2] The granting of an application for leave to appeal is specifically provided for in section 17(1)(a) of the Superior Courts Act 10 of 2013 which reads:

> "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;"

[3] In essence, the municipality's basis for the application for leave to appeal is that the property concerned is a capital asset and the settlement agreement reached by the parties implicated a transfer of a capital asset thus necessitating compliance with section 14(2)(b) of the Local Government: Municipality Finance Management Act 56 of 2003 (the Act). I had found section 14 of the Act not to be applicable. The municipality contends that in doing so, I erred.

[4] In the main application, the municipality specifically relied on section 14(2)(b) and section 14(5) of the Act. For context I consider it necessary to also include section 14(1). These three subsections read thus:

> "(1) A municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.
>
> (2) A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1) but only after the municipal council in a meeting open to the public –

> (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
>
> (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for that asset.
>
> (3) …
>
> (4) …
>
> (5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111."

[5] While section 14(5) of the Act was also relied on in the main application, it was made clear during submissions on the application for leave to appeal that only section 14(2)(b) was relied upon and that section 14(5) was not. In other words, the municipality's main gripe with the order making its own settlement agreement with the applicant an order of court is that its council did not consider the fair market value of the asset when it took a resolution authorising the settlement agreement at the recommendation of its Spatial Management Committee. This appears to be based on the fact that no specific reference is made to the fair market value of the property in the recommendation. This is notwithstanding a direct reference to and section 14 being fully set out in the recommendation and thus bringing it to the attention of council.

[6] It needs to be emphasized that it was not and it is still not the municipality's case that the settlement agreement was tainted with allegations of corruption or that the terms of the settlement agreement resulted in the municipality getting back an amount that is far less than that which it could have been offered had a fair market value of the property been considered. It was and is still not the municipality's case that the municipality, for whatever reason acted irrationally.

[7] The exclusive reliance on section 14(2)(b) seems to overlook the fact that subsection (5) makes specific reference to subsection (2). This makes the municipality's interpretation of section 14(2)(b) to the specific exclusion of subsection (5) very difficult to understand, if not downright insensible. Section 14 in general and subsection (2) in particular is concerned with the disposal of a capital asset that has been identified as not being needed for the provision of at least a minimum level of basic services to its community, essentially, a capital asset that is not needed for anything. That property so identified can only have its ownership transferred to a private sector party subject to a competitive bidding process in accordance with a municipality's supply chain management policy so as to achieve a fair market value. By definition, a fair market value is the value at which a knowledgeable willing buyer would buy, and a knowledgeable willing seller would sell the capital asset in an arm's length transaction[1].

[8] This is the very nub of the point I made in my judgment that section 14 of the MFMA is simply not implicated in this matter. This is so because section 14 of the MFMA is concerned with the ordinary transfer or disposal of a capital asset and has nothing to do with a wrongly expropriated property and a decision by the municipality that a related litigation be settled by restitution or restoration. The parties in this matter were concerned with the restitution or the restoration of ownership of the property to the applicant to settle a long-standing litigation that concerned with the manner in which the applicant lost his ownership of the property. They agreed to achieve this objective by cancelling the relevant sale agreement and resuscitating his original tittle deed in terms of section 6 of the Deeds Registries Act No. 47 of

[1]See definition in GNR.878 of 22 August 2008: Regulation 1 of the Municipal Asset Transfer Regulations published in Government Gazette No. 31346.

1937. In other words, the parties were concerned with the restoration of the *status quo ante* and not a disposal of a capital asset.

[9] The test for the granting of an application for leave to appeal was authoritatively restated by the Supreme Court of Appeal in *Ramakatsa*[2] by Dlodlo JA as follows:

> "… [L]eave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. This Court in *Caratco* concerning the provisions of s17(1)(a)(ii) of the SC Act pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that 'but here too the merits remain vitally important and are often decisive.' I am mindful of the decisions at high court level debating whether the use of the word 'would' as opposed to 'could' possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A rational basis for the conclusion that there are prospects of success must be shown to exist."

[10] In all the circumstances, I am not convinced that the municipality has established that the appeal would have a reasonable prospect of success. I can find no compelling reason why an appeal should, nevertheless, be heard. It follows that the application for leave to appeal must fail.

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[2] Ramakatsa and Other v African National Congress and Another (724/2029) [2021] ZASCA 31 (31 March 2021) at para 10.

[11] In the result the following order is issued:

1. The application for leave to appeal is dismissed.

2. The municipality is ordered to pay costs of the application for leave to appeal on scale C.

M.S. JOLWANA

JUDGE OF THE HIGH COURT

Appearances

Counsel for the applicant	: G. Solik
Instructed by	: Nolte Smit Attorneys Makhanda
Counsel for the respondent	: O.H. Ronaasen SC
Instructed by	: Le Roux Inc c/o Whitesides Attorneys Makhanda
Date heard	: 12 September 2025
Date delivered	: 23 September 2025