REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2023-10531

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

03.11-2025 [redacted]
DATE SIGNATURE

In the matter between:

DILUCULO PROPERTIES (PTY) LIMITED
(Registration Number 2006/011702/07] Applicant

and

CITY OF JOHANNESBURG First Respondent

MADUKA N.O. BRYNE Second Respondent

MADUKA BRYNE Third Respondent

This judgment was handed down electronically by circulation to the parties and/or the parties' representatives by e-mail and by being uploaded onto CaseLines. The date and time for hand-down is deemed to be 3 November 2025.

JUDGMENT : LEAVE TO APPEAL

PUTTER AJ

[1] The application for leave to appeal arises from a judgment of this Court against City of Johannesburg ("**the City**") which was delivered on 15 May 2025. The leave to appeal was filed out of time which resulted in a condonation application by the City. Although Diluculo Properties (Pty) Limited ("**Diluculo**") opposes the application for leave to appeal, in the application which gave rise to my judgment which is now challenged by the City, the condonation application was not opposed.

[2] Condonation is hereby granted to the City for the late filing of the application for leave to appeal and no costs order is made in this regard.

[3] I do not repeat the factual findings in my judgment.

[4] It is trite that leave to appeal launched in terms of section 17(1)(a) of the Superior Courts Act, 10 of 2013, can only be granted if there is a reasonable prospect that another court will come to a different conclusion or if there is some compelling reason for an appeal to be heard.

[5] The threshold for an application for leave to appeal is deliberately high. The City contends that the judgment presents "*many novel points of law*" and is a "*conflicting judgment*" which must be settled by a higher Court.

[6] The City has, however, failed to make specific reference to what is referred to in the application for leave to appeal as "*novel points of law*". The main attack on the judgment relates to the fact that the so-called "dispute" that has been ring-fenced under section 102(2) of the Local Government : Municipal Systems Act, No. 23 of 2000 ("**the Systems Act**") resulting in prescription as specified in the Prescription Act, 68 of 1969 ("**the Prescription Act**") could not commence to run as the City is precluded thereunder from claiming the disputed amount.

[7] This contention is clearly wrong as was defined in a recent judgment of this Court (20 October 2025) in *BIR Investments (Pty) Ltd v City of Johannesburg* under No. 2023/049538 ("***BIR Investments***").

[8] The City could not have been in any doubt that a dispute relating to water consumption charges had existed for a substantial period of time as set out in my Judgment. It failed, however, to resolve the dispute in a rational and responsible manner.

[9] As pointed out in *BIR Investments,* in the matter of *Euphorbia (Pty) Ltd t/a Gallagher Estates v City of Johannesburg* [2017] ZAGPPHC 548 (17 June 2016) ("*Euphorbia")* at paras 10-17, the City is saddled with the onus of proving the correctness of its meters, measurement of water consumption and statements of account rendered pursuant thereto.

[10] Insofar as prescription is concerned, consumption of water charges are not taxes. It is an ordinary debt that extinctively prescribes after three years. It is common cause that the City did not institute any action to recover any of the amounts disputed by the applicant.

[11] Similarly, as in *BIR Investments*, the City contends in its leave to appeal application that it was prohibited in terms of the Systems Act to institute action for the recovery of disputed amounts until a resolution of those disputes had occurred.

[12] The Court correctly found in *BIR Investments* that section 102(2) of the Systems Act does not have the effect of either preventing prescription from running or delaying the completion of prescription. This argument was also rejected in the matter of *Tarica and Another v City of Johannesburg* (unreported judgment of Mahon AJ, handed down on 27 January 2025, ZAGPGHC 1261). Accordingly, the City's reliance on *Tarica* in its application for leave to appeal is misplaced.

[13] The City's contention that the Court did not have jurisdiction to determine the dispute in respect of prescription between the City and Diluculo, has also been correctly rejected in *BIR Investments.*

[14] The calculation of the three-year prescription period in respect of consumption of services was also followed in the *BIR Investments* matter. It follows that the charges in respect of water consumption were incurred three years prior to the date of the Order.

[15] In respect of the calculation, the City's contention that the water consumption and charges together with Value Added Tax, interest and ancillary charges raised thereon cannot be determined by the City was, for rational reasons, also rejected in *BIR Investments*, relying on *Euphorbia.*

[16] In the light hereof, the application for leave to appeal by the City is without merit and failed to meet the elevated bar required by section 17(1) of the Superior Courts Act, 10 of 2013.

[17] Consequently, the application for leave to appeal is dismissed, with costs, such costs to include the costs of Diluculo's counsel where so employed on scale C.

[redacted]

L PUTTER
JUDGE OF THE HIGH COURT
JOHANNESBURG