



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)
CASE NO: EL516/2025**

In the matter between:

RICARDO WALTERS

Applicant

And

BUFFALO METROPOLITAN MUNICIPALITY

1st Respondent

THE MUNICIPAL MANAGER:

BUFFALO CITY METROPOLITAN

MUNICIPALITY

2nd Respondent

**JUDGMENT
ON APPLICATION FOR LEAVE TO APPEAL**

Zono AJ:

Introduction

[1] This is an application for leave to appeal judgment delivered on 10th June 2025. In its application for leave to appeal the applicant sets out its grounds as follows:

- “1.1 This Honourable Court found that as a result of the opposition raised by the Respondents, that a dispute of fact is present on the versions proffered by the parties.*
- 1.2. This Honourable Court misdirected itself, with all due respect, in accepting the version of the Respondents that the purported notice was delivered in accordance with the by-laws. This Honourable Court failed to take into consideration that the by-laws read with the Municipal Systems Act prescribes a specific manner of service of the notice before accepting a notice had been delivered.*
- 1.3. Section 115(1) of the Municipal Systems Act clearly states that—
Any notice or other document that is served on a person in terms of this Act or by a municipality in terms of any other legislation is regarded as having been served, when ...*
- 1.4. The Respondents did not rely on any provision as governed by the Municipal Systems Act and as such, the Respondents failed to prove compliance with the provisions of the Municipal Systems Act, and by failing to do so, failed to show delivery of the notice.*
- 1.5. This Honourable Court incorrectly found that this constitutes a “dispute of fact”, but rather ought to have found that there is a legal issue for determination, in that the validity of Section 14(4)(c) is placed in question as it is in direct conflict with the Respondents very own by law and it is in conflict with Section 115(1) of the Municipal Systems Act.*
- 1.6. Furthermore, this Honourable Court has recently ruled in the matter of Babalwa Ntwanambi v Buffalo City Municipality and Another¹ that Yande Engineering did not have the necessary authority to deliver notices.*

- 1.7. *This Honourable Court also found in the Judgment of Ntwanambi that the notice, itself, did not contain the requisite required information to constitute a proper notice.*
- 1.8. *As a result, this Honourable Court ought to have accepted the version of the Applicant in that the Respondents have failed to show compliance with the Electricity Supply By-Laws read with the Municipal Systems Act”.*

Legal Principle

[2] An application for leave to appeal is governed by Section 17(1) of the Superior Court Act which provides as follows:

- “(1) 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;*
 - (b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and*
 - (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.”*

[3] In *Smith v S*¹ Plasket AJA (as he then was) held that:

- “7. What the test of reasonable prospects of success postulates is 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 order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”²*

¹ *Smith v S* 2012 (1) SACR 567 (SCA) Para 7.

² *S v Mabena & Another* 2007 (1) SACR 482 (SCA) Para 22.

- [4] These sentiments were shared by Schippers AJA (as he then was) in *Mkhitha*³ where the following was said:

“17. An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal”.

- [5] During the hearing of this application, Ms Ntsepe, Counsel for the respondent, upon enquiry, submitted that her instructions are that, the electricity supply was reconnected to the applicant’s house. Mr Du Plessis submitted that he had no instructions to that effect and promised to take instructions. Parties were humbly requested to furnish this court with their respective written submissions in this regard, especially in so far as it affects the applicability of section 17 (1) (b) read with section 16(2)(a) of the Superior Courts Act 10 of 2013. Both parties failed to file the requested written submissions and no reason or explanation has been furnished to this court for such failure.

- [6] For the sake of completion, Section 16(2)(a) of the Superior Courts Act provides thus:

“(a) when at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.”

In the light of the undisputed submission of Ms Ntsepe, Counsel for the respondent, that the applicant’s electricity supply was reinstated

³ *MEC for Health, Eastern Cape v Mkhitha and another* (1225) [2016] ZASCA 176 (25 November 2016) Para 17.

or reconnected, I find nothing to arrive at a conclusion that the decision herein and on appeal will have any practical result. I have not been directed to the nature of practical result that would follow or flow from a successful order of appeal, notwithstanding that I requested written submissions in this regard. This application can, accordingly, not succeed on this ground alone. It is therefore not necessary to consider any other ground set out in the applicant's application for leave to appeal.

[7] I, therefore, come to a conclusion that there is no reasonable, realistic chance of success on appeal. Accordingly, this application must fail with costs.

[8] In the result the following order is made:

1. Application for leave to appeal is dismissed with costs.

A.S ZONO
JUDGE OF THE HIGH COURT (ACTING)

APPEARANCES:

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