IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO: 1161/2017

In the matter between:

TEDCOR (PTY) LTD **Applicant**

and

MAHIKENG LOCAL MUNICIPALITY **Respondent**

Coram: Reddy J

Heard: 27 March 2026

Judgment reserved: 27 March 2026

This judgment was electronically circulated to the parties' legal representatives by e-mail and released on SAFLII. The date and time of hand down are deemed to be 10 April 2026 at 12h00.

Summary

Leave to appeal — s 17 of the Superior Courts Act 10 of 2013 governs applications for leave to appeal against judgments of the High Court and raises the threshold above that applicable under the former Supreme Court Act 59 of 1959. Under s 17(1)(a)(i), leave may only be granted where the appeal *would* have a reasonable prospect of success: the word "would" requires a measure

of certainty that another court will differ, not merely that it might. Under s 17(1)(a)(ii), leave may also be granted where there is a compelling reason why the appeal should be heard, including an important question of law or a matter of public importance. However, the merits remain relevant even on that enquiry.

Tedcor claimed R 2 312 393.40 from the Municipality for waste collection services rendered during September to November 2015 under a month-to-month arrangement. The Municipality did not pay and denied that any valid contract existed. The trial court dismissed the claim. Tedcor sought leave to appeal to the Supreme Court of Appeal, alternatively, the Full Court.

The application was dismissed because the evidence Tedcor presented to the trial court was fatally deficient on the most basic elements of its contractual cause of action, and an appellate court operating on the same record could not reach a different conclusion. Tedcor's sole witness could not identify who concluded the arrangement on the Municipality's side, could not prove the agreed monthly fee of R 770 797.80, and herself conceded that there was no written contract and that payments without one constituted irregular expenditure under the MFMA. A purported appointment letter was never discovered or produced. The pleaded cause of action further rested on the unsupported premise that Tedcor held a written contract with the Municipality.

The *Oudekraal* argument failed for want of evidence of any identifiable administrative act by an authorised official. The CFO's alleged acknowledgement of debt was pleaded but never proved at trial. The s 34 constitutional ground was not sustained. No compelling reason under s 17(1)(a)(ii) was established, as the legal principles invoked presupposed a factual foundation absent from the record.

An appellate court would operate on the same deficient record and could not reach a different conclusion.

ORDER

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1. The application for leave to appeal is dismissed with costs, including The costs of two counsel were so employed.

JUDGMENT

REDDY J

Introduction

[1] This is an opposed application by Tedcor (Pty) Ltd, the applicant for leave to appeal to the Supreme Court of Appeal, or to the Full Court of the North West Division, against the entire judgment and order of this Court delivered on 30 October 2025. In that judgment, the applicant's claim for payment of R2 312 393.40 was dismissed with costs. The application is brought pursuant to s 17 of the Superior Courts Act 10 of 2013. The respondent opposes the application. For ease of reading, the parties are referred to as they were cited at trial, namely the plaintiff (Tedcor) and the defendant (the Municipality).

[2] Tedcor claimed payment of R 2 312 393.40 for fees for domestic waste collection services allegedly rendered to the Municipality in September, October and November 2015, under what it described as a "continued agreement." The Municipality denied the claim in its entirety.

Background facts

[3] Prior to August 2012, Tedcor provided domestic waste collection services to the Municipality in terms of an arrangement flowing from a service delivery agreement between the Department of Environmental Affairs and Tourism (DEAAT) and a company known as Shisaka Development Services (Pty) Ltd (Shisaka). Shisaka, in turn, sub-contracted Tedcor to provide the physical waste collection service. Tedcor was not a party to the DEAAT/Shisaka written contract. That contract expired by effluxion of time in August 2012.

[4] From September 2012, the Municipality continued to use Tedcor on what all parties accepted was a month-to-month basis, and made monthly payments to Tedcor through to August 2015. On 19 October 2015, the acting municipal manager Mr I.T. Mokwena addressed a letter to Tedcor terminating its services as of 30 November 2015. That letter acknowledged that Tedcor had been retained to continue delivering domestic waste services "on a month to month without a substantive contract or service level agreement" and that the arrangement "may constitute irregular expenditure within the contemplation of the MFMA."

[5] Tedcor continued providing services through November 2015, but the Municipality did not pay Tedcor's fees for September, October, and November 2015, amounting to R 2,312,393.40. Tedcor's sole witness at trial was Ms. Verona Mirenia Petersen, a director of Tedcor. The Municipality in

turn called Mr Shomoleile Benjamin Pelele, its legal manager. After hearing the evidence and considering the submissions, this Court dismissed Tedcor's claim with costs.

Grounds of Appeal

[6] Tedcor's amended notice of application for leave to appeal sets out eleven grounds. These may be classified into four categories. First, Tedcor contends that this Court erred in typifying the cause of action as one based on a written contract to which Tedcor was not a party, rather than on the month-to-month arrangement pleaded in paragraphs 5 to 9 of the particulars of claim. Second, Tedcor claims that the Court disregarded common cause facts and the admissions made in the Municipality's plea, including the admissions of paragraphs 6.1, 6.3 and 8 of the particulars of claim. Third, Tedcor maintains that the Court failed to consider the full body of legal submissions advanced by Tedcor, particularly those relating to the *Oudekraal* principle, the supply chain management policy, and the preservation of rights already accrued. Fourth, Tedcor contends that the description of the "continued agreement" as legalistic acrobatics was erroneous.

Tedcor's contentions

[7] Advocate Mphahlane made the following submissions. First, this Court erred by treating paragraphs 3 and 4 of the particulars of claim as the foundation of the cause of action. Advocate Mphahlane asserts that those paragraphs were merely contextual background. The operative pleading was paragraphs 5 to 9, which unambiguously pleaded the month-to-month arrangement and the unpaid invoices for the three months in question. Moreover, Advocate Mphahlane contends that the Municipality's own plea admitted that Tedcor rendered services from August 2012 to 30 November 2015, that either party was entitled to terminate on a month's notice, and that

the Mokwena termination letter was sent. Advocate Mphahlane argues that the Municipality's admissions undoubtedly established the factual substratum of the claim.

[8] Second, Advocate Mphahlane alleges that the classification of the term "continued agreement" as legalistic acrobatics was incorrect. The Municipality's own plea employed the term "contract/agreement" to describe the arrangement, and Pelele himself confirmed in cross-examination that it was correct to say the municipality "retained" Tedcor and that it was logical to do so. Therefore, on this score, Advocate Mphahlane contends that this Court's critique was misplaced.

[9] Third, Advocate Mphahlane asserts that this Court failed to engage with Tedcor's submissions on the *Oudekraa*l principle. According, to Advocate Mphahlane, these submissions are apposite, since the Municipality's monthly appointments of Tedcor constituted administrative acts that were never reviewed or set aside. It stands to reason, so Advocate Mphahlane concludes that those acts must be treated as valid until a court sets them aside.

[10] To underscore these contentions, Advocate Mphahlane placed reliance on *Oudekraal Estates (Pty) Ltd v City of Cape Town*[1] *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd*, and *Kwa Sani Municipality v Underberg/Himeville Community Watch Association*[2]. Besides, Advocate Mphahlane asserts that the Municipality's own Supply Chain Management Policy, more pertinently paragraph 12.17, empowered the municipal manager

1 2004 (6) SA 222 (SCA).
2 [2015] ZASCA 24.

to appoint service providers directly in emergency circumstances, including where the interruption of essential services was at risk.

[11] Fourth, Advocate Mphahlane argues that the CFO's written acknowledgement of the debt in August 2016 constituted an independent basis for the award sought by Tedcor. Further, Advocate Mphahlane posits that, notwithstanding any question of contractual validity, Tedcor was entitled to an award that preserved rights already accrued in respect of invoices rendered for work done before the date of termination, on the authority of *Kwa Sani Municipality*.

The Municipality's Submissions

[12] Advocate Muza's divergent views can be summarised as follows. First, the judgment was correct in all material respects. Advocate Muza underscores that the particulars of claim in paragraphs 3 and 4 pleaded a written contract between Tedcor and the Municipality. Advocate Muza maintains that it was common cause that no such contract existed. Notably, Advocate Muza contends that Tedcor was not a party to any written contract with the Municipality. Of note, Advocate Muza draws attention to the pleadings, where the Municipality denied paragraph 3, and to the evidence at trial, which confirmed that the pleaded fact was incorrect. In those circumstances, the Court's criticism of the pleadings was warranted.

[13] Second Advocate Muza advances that Tedcor's sole witness, Petersen, was unable to establish the material elements of the claimed contractual cause of action. Crucially, Advocate Muza contends that Petersen could not identify the municipal official or officials who concluded the month-to-month arrangement with Tedcor, or whether any such person had authority to bind the Municipality. Advocate Muza emphasizes that Petersen was unable to

point to any document or agreement establishing the monthly fee of R 770 797.80 as an agreed term. Importantly, Advocate Muza accentuates that Petersen acknowledged in cross-examination that there was no written contract, namely the appointment letter upon which Petersen sought to rely, which was not among the discovered documents and was not produced to the Court, constituting a lacuna in Tedcor's case.

[14] Third, Advocate Muza postulated that the *Oudekraal* principle could not assist Tedcor. To this end, Advocate Muza continued that the principle presupposes the existence of an identifiable administrative act, a decision by an authorised official which may be treated as valid until set aside. Simply put, Advocate Muza's argument ran that Tedcor led no evidence identifying any such act. Furthermore, the Municipality never pleaded the unlawfulness of the arrangement as a defence. Still, the absence of a valid contract was squarely in issue from the outset by virtue of the denial of paragraphs 3, 4, 6.2, 7, 9 and 10 of the particulars of claim.

[15] Fourth, Advocate Muza submits that the CFO's alleged acknowledgement of debt was pleaded but never proved at trial. Petersen did not give evidence about August 2016. It was accordingly not tested in cross-examination. Accordingly, Advocate Muza maintains that a cause of action pleaded and denied but not advanced or proved at trial cannot constitute a ground for leave to appeal.

[16] Fifth, Advocate Muza indicated at the close of Tedcor's case that he "would have loved to apply for absolution from the instance," but elected not to do so purely for reasons of time. This, so the argument of Advocate Muza ran, is a frank acknowledgement from the bar that Tedcor had not made out

even a *prima facie* case. Advocate Muza submitted that no court, applying orthodox principles of contract law, could have found for Tedcor on the evidence led.

The Test for Leave to Appeal

[17] Section 17(1)(a) of the Superior Courts Act provides that leave to appeal may be granted only if the judge is of the opinion that:

> *"(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."*

[18] The threshold for granting leave to appeal against a judgment of a High Court judgment has been raised under the Superior Courts Act. The former test was whether there was a reasonable prospect that another court might come to a different conclusion. Under the Superior Courts Act, the word "would" connotes a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.

[19] What the test for reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably conclude differently from that of the trial court. To succeed, Tedcor must convince this Court on proper grounds that it has prospects of success on appeal, and those prospects must not be remote but must have a realistic chance of succeeding[3].

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[3] *MEC for Health, North West Province v L.S.M obo O.M* [2024] ZANWHC 14 para 7; *Smith v S* 2012 (1) SACR 567 (SCA) para 7; *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA) para 2.

[20] The success of an application for leave to appeal must therefore be related to the outcome that another court would make a different order, and not merely to an argument that finds fault with the reasoning but would not change the result.[4]

[21] Even where the court is not persuaded that there are reasonable prospects of success, it must still inquire whether there is "some other compelling reason" for the appeal to be heard. A compelling reason would include an important question of law or a discrete issue of public importance that will affect future disputes. However, the merits remain vitally important and are often decisive even on this alternative enquiry.[5]

Discussion

[22] The application falls to be considered against the backdrop of what was actually pleaded, what was led in evidence, and what the trial court found. I now address each of the class grounds in turn.

The issue of the pleadings

[23] Tedcor's primary complaint is that this Court mischaracterised the cause of action by treating paragraphs 3 and 4 of the particulars of claim which referred to a written contract in terms of which Tedcor rendered services up to August 2012 as the foundation of the claim, rather than the month-to-month arrangement pleaded in paragraphs 5 to 9. The complaint is meritless.

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4 *Western Johannesburg Rent Board v Ursula Mansions (Pty) Ltd* 1948 (3) SA 353 (A) at 354.

5 *Caratco (Pty)Ltd v Independent Advisory (Pty)Ltd* 2020 [5]SA 35 (SCA) para 2.

[24] I amplify this in the following way. It is correct that the operative cause of action was the post 2012 month-to-month arrangement described in paragraph 5 as the "continued agreement." However, paragraph 5 defines that arrangement as one under which Tedcor rendered services "on the same basis as set out in paragraph 3 above." Critically, paragraph 3, in turn, describes the services rendered in terms of a written contract with the Municipality. It was common cause that no such written contract existed between Tedcor and the Municipality. Tedcor was sub-contracted by Shisaka; the written contract was between Shisaka and DEAAT; the Municipality was not a party to it. The foundational premise of paragraph 3 was, as this Court found in the judgment, factually incorrect. Tedcor was not a party to that written contract and was implicitly aware of this. It follows that the conclusion reached was correct.

[25] More fundamentally, even accepting the most generous reading of the particulars, Tedcor still had to prove, at trial, the material elements of its cause of action as pleaded. It is the state of the evidence and not the pleading dispute alone that is dispositive of the present application.

<u>The evidence *is ex facie* the record.</u>

[26] In the absence of being repetitive, Tedcor's claim was founded on a contractual cause of action. That being so, the material elements that Tedcor was required to prove included:

(a) the conclusion of the agreement, the parties to the agreement, the date and place of conclusion, and who represented the Municipality;

(b) the terms of the agreement, including the agreed price; and

(c) Tedcor's performance and the Municipality's breach. Rule 18(6) of the Uniform Rules of Court required Tedcor to state whether the contract was written or oral, when, where and by whom it was concluded. The evidence fell gravely short of meeting these requirements.

[27] On the question of who concluded the arrangement on behalf of the Municipality, Petersen was at large to provide any answer of substance. When challenged in cross-examination about who represented the Municipality when Tedcor was retained to continue rendering services from September 2012, she responded, "There were a lot of changes in the municipality at the time." This statement, in broad strokes, is telling for several reasons. First, no name was given. Second, no designation was identified. Third, no date or place of conclusion was stated. Petersen's response provided no details on the most basic element of a contractual cause of action against a juristic person.

[28] Pertinently on the question of the agreed price pleaded as a material express, alternatively implied, further alternatively tacit term, the position was equally unsatisfactory. When Advocate Muza directly invited Petersen to point to any written contract or document containing the R 770 797.80 per month figure, the transcript records no answer. The entire quantum of the claim rested on a price term that was never proved.

[29] Tedcor's difficulties were further compounded by what emerged from Petersen during cross-examination. When presented with the Mokwena termination letter's statement that Tedcor had been retained without a written contract or service level agreement, Petersen agreed there was no written contract. When asked whether payments without a written contract would constitute irregular expenditure under the MFMA, she agreed. Petersen

thereby conceded the two main pillars of the Municipality's defence. This concession, emanating from Petersen, was fatal to the claim.

[30] A further difficulty arose from Petersen's attempt during her evidence to rely on a "continuation appointment letter" from the Municipality as the document formalising Tedcor's retention. This document was not part of Tedcor's discovered documents and was not admitted into evidence following the objection by Advocate Muza at the commencement of proceedings. When challenged in cross-examination to produce this letter, Petersen confirmed that it was not in the documents before the Court. The case Tedcor sought to present at trial was that the retention was formalised by a written appointment letter from the Municipality, which was both materially different from the case pleaded and gravely shy of supporting evidence.

[31] It is within this context that the assessment of Petersen's evidence in the first judgment, which found that the findings are supported by the record and are not shown to be clearly wrong, as her evidence moved from a written contract to a continued agreement to an appointment letter to letters received by her bookkeeper. The result was that Petersen's evidence failed to explicate the critical specifics of a cause of action in contract that is vindicated by the record. An appellate court applying the principles enunciated in *R v Dhlumayo*[6] and *S v Hadebe*[7] would be slow to interfere with those findings. Nothing in the record demonstrates them to be clearly wrong.

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6 1948 (2) SA 677 (A).
7 1998 (1) SACR 422 (SCA).

The *Oudekraal* point

[32] Tedcor invokes the principle that an administrative act, until reviewed and set aside, must be treated as valid and capable of having legal effect.[8] This submission is meritless.

[33] The *Oudekraal* principle presupposes the existence of an identifiable administrative act, a decision by an authorised official, taken in a public capacity. Tedcor led no evidence identifying any such act, whether by name, date, designation or authority. It follows logically that one cannot invoke the protection of the *Oudekraal* principle in respect of an administrative act that was never placed before the Court. The absence of evidence on this point is not cured by legal argument. Furthermore, the principle is inapplicable to the pleaded facts. The Municipality did not plead unlawfulness as a defence; the absence of a valid contract was squarely in issue from the outset. In those circumstances, *Oudekraal* simply does not arise. There is no administrative act whose validity requires preservation.

The supply chain management policy

[34] The supply chain management policy argument is equally unavailable *ex facie* the record. Tedcor refers to paragraph 12.17(3) of the Municipality's Supply Chain Management Policy, which permits direct appointment in emergency circumstances. The evidence at trial did not establish that the municipal manager purported to invoke that provision, or indeed that any identified official made any formal decision to retain Tedcor at all. The

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[8] *Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA); *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd* 2014 (3) SA 481 (CC) paras 102-103.

argument rests on an assumption about a decision that was never supported by evidence.

The Famate judgment

[35] The Municipality relied on the decision of this Division in *Mahikeng Local Municipality v Famate Infocast (Pty) Limited* as authority for the proposition that no court could reach a different conclusion from that in the judgment. In the judgment, at paragraph [21], this Court identified key differences between *Famate* and the present case. First, in *Famate*, the municipality initiated and advertised a tender to which Famate responded and participated; in the present case, there was no tender process. Second, in *Famate*, the company was awarded the tender, as evidenced by a letter of appointment; in the present case, no appointment letter was submitted to the Court. Third, in *Famate*, both parties negotiated the terms of a written service level agreement; in the present case, no such agreement was negotiated or concluded. More fundamentally, *Famate* presupposed a factual matrix in which both a tender process and a written appointment had occurred. The legal proposition the Municipality invokes, that an unlawful contract bars recovery, does not arise in the present case because Tedcor failed at the prior stage to prove that any contract, lawful or otherwise, was concluded. *Famate* therefore provides no basis for granting leave.

The CFO's alleged acknowledgement of debt

[36] In paragraph 10 of the particulars of claim, it is pleaded that on 16 August 2016 at Mahikeng, the Municipality, represented by its CFO, Mr. Terrance Mathe, agreed that the outstanding amount of R 2 312 393.40 would be paid in full by 30 November 2016. The Municipality denied this. Petersen provided no evidence regarding that meeting during examination-in-chief or re-examination. The allegation was not put to Pelele in cross-examination. It

was never proved. A pleaded cause of action that is denied and then abandoned at trial provides no basis for leave to appeal. This ground is also meritless.

Section 34 of the Constitution

[37] Tedcor contends that this Court's failure to properly examine the submissions, arguments and evidence adduced by Tedcor denied it a fair hearing guaranteed by section 34 of the Constitution. It is submitted that the judgment disposed of the claim without engaging with the substantial body of legal argument advanced in Tedcor's heads of argument, which extended to seventy-three (73) paragraphs and cited several authorities.

[38] The central legal arguments in those heads, namely the *Oudekraal* principle, the supply chain management policy, and the accrued rights argument, are drawn from *Kwa Sani Municipality*. Each was addressed. The *Oudekraal* argument was considered and rejected for want of any identifiable administrative act. The supply chain management policy argument was rejected for want of evidence that an authorised official invoked the relevant provision. The accrued rights argument failed because no valid retention was proved. Section 34 of the Constitution requires engagement with central contentions; it does not demand exhaustive treatment of every subsidiary argument. The judgment engaged with Tedcor's core submissions as recorded at paragraph [19] of the judgment under appeal and met that standard. The constitutional ground provides no independent basis for granting leave.

Conclusion

[39] An appellate court would be bound to apply the principles in *Dhlumayo* and *Hadebe* and would be slow to interfere with the trial court's factual and credibility findings unless they were clearly wrong. Nothing in this record discloses any such error. The record reflects precisely what the trial court

found, namely, that Petersen was unable to identify who concluded the arrangement on the Municipality's side, unable to prove the agreed price, and that she herself conceded the absence of a written contract and the irregular nature of the payments. No different finding on those facts was available to the trial court. An appellate court operating on the same deficient record would not reach a different conclusion. The requirements of s 17(1)(a)(i) of the Superior Courts Act are not met.

[40] The argument that there is a compelling reason to hear the appeal suffers a similar fate. The legal principles on which Tedcor seeks to rely, namely the *Oudekraal* principle, the MFMA, and the supply chain management framework, presuppose a factual foundation that is absent from this record. This case does not provide a suitable vehicle for developing those principles. I am not persuaded that there is a compelling reason why the appeal should be heard in terms of section 17(1)(a)(ii) of the Superior Courts Act.

[41] It follows that the application for leave to appeal falls to be dismissed.

<u>Costs</u>

[42] The application has been dismissed. There is no basis to deviate from the ordinary rule that costs follow the result. Having regard to the complexity of the issues raised and the fact that two counsel appeared at the hearing of this application, the costs of two counsel are warranted.

<u>Order</u>

[43] In the premises, I make the following order:

1. The application for leave to appeal is dismissed with costs, including the costs of two counsel where so employed.

[redacted]

A REDDY

JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

Appearances

Counsel for the Applicant:	Advocate T Mphahlane
Attorney for Applicant:	Kevin Cross & Affiliates Attorneys, Knysna
	C/O Van Rooyen Tlhapi Wessels Inc
	Mahikeng
Counsel for the Respondent:	Advocate C Muza
Attorney for the Respondent:	Kgomo Attorneys Inc.
	Mahikeng