



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable
Case no: 5743/2024

In the matter between:

ALICOM (PTY) LTD
[Registration No. 2013/096799/07]

APPLICANT

and

MASILONYANA LOCAL MUNICIPALITY

RESPONDENT

In re:

ALICOM (PTY) LTD
[Registration No. 2013/096799/07]

PLAINTIFF / RESPONDENT

and

MASILONYANA LOCAL MUNICIPALITY

DEFENDANT / EXCIPIENT

Neutral citation: *Alicom (Pty) Ltd v Masilonyana Local Municipality* (5743/2024)
[2026] ZAFSHC 238 (10 April 2026)

Coram: VAN ZYL J

Heard: 29 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by e-mail and released to SAFLII. The date and time for hand-down is deemed to be 15h00 on 10 April 2026.

Summary: Application for leave to appeal –s 17(1)(a)(i) of the Superior Courts Act 10 of 2013 – test for reasonable prospect of success – higher threshold for granting leave to appeal.

ORDER

1 Leave to appeal is granted to the applicant to appeal to the Full Court of this Division against the whole of the order and the reasons for the order handed down under the abovementioned case number.

2 The costs of the application for leave to appeal are costs in the appeal.

JUDGMENT

Van Zyl, J

[1] This is an application for leave to appeal against the whole of the order and the reasons for the order handed down by Benade, AJ (as he then was) in terms of which the exception raised by Masilonyana Local Municipality against the particulars of claim of Alicom (Pty) Ltd was upheld.

[2] At the time when the application for leave to appeal was filed, the acting stint of Benade, AJ had ended. The matter was allocated to me in terms of s 17(2)(a) of the Superior Courts Act, 10 of 2013 ('the Act').

[3] I will refer to the parties as they are in the present application.

Averments in terms of the particulars of claim

[4] During or about 2019 the respondent advertised a tender for the supply of Information Communication Technology (ICT) services, alternatively for the appointment of service providers to form a Panel of Service Providers to provide such products and services to the respondent, for the duration of thirty-six (36) months. According to the plaintiff a due and proper bid evaluation process was followed, whereafter the applicant was found to be the successful bidder. The respondent appointed the applicant for the said tender as per a letter of appointment, dated 23 July 2019, which appointment was accepted by means of a letter from the applicant dated 22 August 2019.

[5] In the letter of appointment it was foreseen that the respondent will require the applicant to sign a Service Level Agreement in terms of s 116 of the Local Government: Municipal Finance Management Act, 56 of 2003. A draft of the said agreement was prepared by the respondent, but never signed by the parties. A copy of the said document is attached to the particulars of claim.

[6] The applicant instituted a contractual claim against the respondent for the payment of subsequent products and services rendered.

[7] The respondent raised an exception to the particulars of claim on three grounds. Only the first ground is relevant for purposes of this application as Benade, AJ did not determine the other grounds. The first ground is set out as follows in the said exception:

'1. In paragraph 10 of the particulars of claim the plaintiff alleged that:

"10. Following the appointment by the Defendant as per Annexure 'A1, above and the acceptance thereof by the Plaintiff, the Defendant proceeded to draft the service level agreement between parties, which ought to have been signed but was not signed by the parties thereto, but nonetheless, the parties had genuine intentions to conclude and/or sign the service level agreement ('SLA') and the fact that the agreement was not signed by the parties does not suggest or invalidate the appointment of the plaintiff or the agreement between the parties. Copy of the service level agreement is attached hereto marked 'A3'."

2. Paragraph 2 of the appointment letter annexed A1 to the particulars of claim of the plaintiff states that:

"Upon the receipt of your appointment letter the Municipality will require you to sign an SLA in terms of section 116(1) of the MFMA".

3. The Plaintiff's particulars of claim do not disclose a cause of action in that:

3.1 No Service Level Agreement has been concluded between the parties.

3.2 The letter of appointment does not constitute a contract between the parties, but an intention to conclude a Service Level Agreement in future.'

Applicable principles in considering an exception:

[8] It is trite that in considering an exception the court must accept, as true, the allegations pleaded by the relevant party. It is also trite that when an exception is based on the ground that a pleading lack averments necessary to sustain a cause

of action or a defence, the excipient is required to show that upon every interpretation which the pleading in question can reasonably bear, no cause of action or defence is disclosed.

[9] The aforesaid principles were again confirmed in the judgment of *Trustees, Burmillà Trust and Another v President of the Republic of South-Africa and Another* [2022] ZASCA 22; 2022 (5) SA 78 (SCA) para 16:

'It is trite that in deciding an exception a court has to accept the facts alleged in the relevant pleading (save for those that are palpably untenable). It is for the excipient to satisfy the court that, upon every reasonable interpretation of those facts, the pleading is excipiable. An interpretation that disregards the context in which the factual allegations are made would generally not qualify as a reasonable one.'

[10] An excipient is confined to his complaint as stated in the grounds of his exception. See *Feldman NO v EMI Music SA (Pty) Ltd; Feldman NO v EMI Music Publishing SA (Pty) Ltd* [2009] ZASCA 75; 2010 (1) SA 1 (SCA) para 7.

Notice of Application for Leave to Appeal

[11] The said notice sets out the grounds of the application for leave to appeal in a detailed manner from which the relevant issues are clear. I do not deem it necessary to repeat same herein.

Legal principles *re* leave to appeal

[12] Section 17(1)(a) of the Act determines 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) if there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration. . . ' (My emphasis.)

[13] In *Acting National Director of Public Prosecutions v Democratic Alliance In Re Democratic Alliance Acting National Director of Public Prosecutions* (19577/09) [2016] ZAGPPHZ 489 (24 June 2016) para 25 the court held that the Act has raised the bar for granting leave to appeal and in this regard it referred to the judgment of

The Mont Chevaux Trust (IT2012/28) v Tina Goosen and 8 Others 2014 JDR 2325 (LCC), where the following was stated:

'It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another Court *might* come to a different conclusion, see *Van Heerden v Cronwright and Others* 1985(2) SA 342 (T) at 343 H. The use of the word "would" in the new statute indicates a measure of certainty that another Court will differ from the Court whose judgment is sought to be appealed against.' (My emphasis)

See also *Rohde v S* [2019] ZASCA 193; 2020 (1) SACR 329 (SCA) para 8 and *Fair-Trade Independent Tobacco Association v President of the Republic of South Africa and Another* (21688/2020) [2020] ZAGPPHC 311 (24 July 2020) para 4.

[14] In *MEC Health, Eastern Cape v Mkhitha* (1221/15) [2016] ZASCA 176 (25 November 2016) the court also dealt with the more stringent test for an application for leave to appeal and held, *inter alia*, as follows at para 17:

'[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.'

[15] In considering the application, I am required to objectively and dispassionately consider the aforesaid principles, See *S.P v S.B and Another* (Leave to Appeal) (2025/054457) [2025] ZAWCHC 528 (14 November 2025) para 7.

Consideration of the application

[16] After having considered the exception and the judgment, in conjunction with the abovementioned principles, and the very eloquent arguments, both orally and in the heads of argument, presented on behalf of both parties, I conclude that there is a reasonable prospect that another Court would come to a different conclusion and that leave to appeal should therefore be granted. See, *inter alia*, *CNN Development Engineers and Project Managers CC v Dr A.B. Xuma Municipality* (1640/2019) [2025] ZAECKHC 23 (13 March 2025).

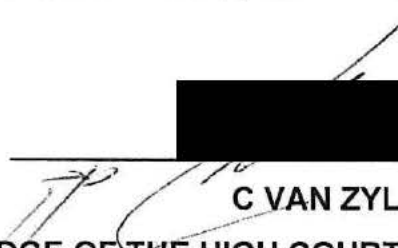
Costs

[17] There is no reason why the usual order as to costs in respect of an application for leave to appeal should not be granted.

Order

[18] The following order is granted:

- 1 Leave to appeal is granted to the applicant to appeal to the Full Court of this Division against the whole of the order and the reasons for the order handed down under the abovementioned case number.
- 2 The costs of the application for leave to appeal are costs in the appeal.



C VAN ZYL
JUDGE OF THE HIGH COURT

Appearances:

For the Applicant/Plaintiff: OI Monnahela
Instructed by: McIntyre & van der Post Attorneys,
Bloemfontein

For the Respondent/Defendant: J Hlongwane
Instructed by: PH Attorneys.
Bloemfontein