



Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates:	NO

**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION MAHIKENG**

Case No: 740/2024

In the matter between:

**O S HOLDINGS (PTY) LTD
(Reg No:201/087619/07)**

Applicant

And

RUSTENBURG LOCAL MUNICIPALITY

First respondent

MUNICIPALITY MANAGER:

RUSTENBURG LOCAL MUNICIPALITY

second respondent

The executive mayor

RUSTENBURG LOCAL MUNICIPALITY

Third respondent

**CHAIRMAN: BID EVALUATION
COMMITTEE**

Fourth respondent

CHAIRMAN: BID ADJUDICATION

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be on **29 APRIL 2026 at 10h00 AM**

ORDER

1. The application for leave to appeal is dismissed .
2. The applicant is to pay the respondents costs ,on party and party scale including the costs of counsel, on scale B.

JUDGMENT**MOKHARE AJ**

1. This is an application for leave to appeal to the Full Bench of this Court, alternatively, the Supreme Court of Appeal against the whole judgment and order granted in the main application. For convenience, the parties are referred to as cited in the main proceedings.
2. The application is brought in terms of section 17(1)(a) of the Superior Courts Act 10 of 2013 ("the Act"). The applicant contends that the Court erred in material respects and that the appeal would have reasonable prospects of success or, alternatively, that there

exist compelling reasons why the appeal should be heard.

3. The grounds of appeal relied upon by the applicant may be summarized as follows:

- 3.1 That the Court erred in not striking out the entire answering affidavit on the basis that the deponent lacked personal knowledge and failed to obtain confirmatory affidavits;

- 3.2 That the Court failed to apply the principle of *stare decisis*, particularly the judgment of *Applemint Properties 108 (Pty) Ltd v Rustenburg Local Municipality*; and

- 3.3 That the Court erred in finding that the meeting and minutes of 11 October 2023 did not constitute administrative action susceptible to review under the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”).

The Test for Leave to Appeal

4. Section 17(1) of the Superior Courts Act, 10 of 2013 provides that the test to be applied in determining whether leave to appeal should be granted is whether the presiding judge is “*of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard*”.
5. In *The Mont Cheveaux Trust*¹ *The Mont Cheveaux Trust v Tina Goosen and 18 Others* 2014 (JDR) 3225 (LCC). Justice Bertelsmann explained that section 17(1)(a)(i) of the Act postulates

a higher test than what had previously applied in terms of the common law. This is because the legislature had used the phrase “*the appeal would have a reasonable prospect of success*”. Justice Bertelsmann said the following in this regard:

‘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 ... 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’.

6. That threshold has been raised and has been confirmed, referred to and cited with approval in several judgements: *Notshokudu v S [2016] ZASCA 112 (7 September 2016) at par 2. In Caratco (Pty) Limited v Independent advisory Pty) Limited 2020 (5) SA 35 (SCA)* the following was stated at paragraph [2]:

‘in order to be granted leave to appeal in terms of section 17 (1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013 an applicant for leave to appeal must satisfy the Court that the appeal would have a reasonable prospect of success or that there are some other compelling reasons why the appeal should be heard. If the court is unpersuaded of the prospects of success, it must still enquire whether there is compelling reason to entertain the appeal. A compelling reason included an important question of law or a discreet issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive.’

I have considered the grounds of appeal, arguments of both counsel and the heads of arguments filed herein. I am of the view that the appeal would not have a reasonable prospect of success and there is no compelling reason why the appeal should be heard.

Lack of personal knowledge by the respondent 's deponent.

7. The applicant sought to strike out the answering affidavit deposed to by Mr Ashmar Ranthekeg Khuduge, the Municipal Manager, on the basis that he allegedly lacked personal knowledge of the matters contained therein. Alternatively, the applicant sought the striking out of specific paragraphs dealing with events prior to his employment.
8. It is common cause that the Municipal Manager commenced employment on 1 October 2023. The tender validity period expired on 12 October 2023. The Bid Evaluation Committee made recommendations to the Bid Adjudication Committee, which in turn considered the matter on 11 October 2023.
9. At the time of the meeting of 11 October 2023, the Municipal Manager was already in the employ of the Municipality, and the recommendations of the Bid Adjudication Committee were made to him in his official capacity as accounting officer.
10. While it is accepted that the Municipal Manager was not employed at the time when the tender was advertised and when certain earlier events transpired, it does not follow that the entire affidavit was devoid of personal knowledge.
11. This Court accordingly struck out those portions of the answering affidavit that related to events preceding the Municipal Manager's employment, while allowing those portions dealing with matters within his personal knowledge to stand.

12. In *Voight v Magistrate of Magistrates Court, East London (EL457/2023) [2024] ZAECELLC 40 (5 September 2024)* the Court stated that:

‘The answering affidavit was deposed to by the members’ attorney, Ms Moodley, who claims to have had personal knowledge of the facts deposed to without providing any context under which she could have acquired such knowledge of the assertion referenced above.’

13. The respondents’ answering was deposed to by the fourth respondents and he does state as to how became aware of information or occurrence which took place during his employment in the Municipality.
14. The applicant’s contention that the entire answering affidavit ought to have been struck out is therefore without merit. This ground of appeal cannot succeed.

The Principle of Stare Decisis.

15. The applicant further contends that this Court failed to apply the principle of *stare decisis* by not following the judgment of Masike AJ in *Applemint Properties 108 (Pty) Ltd v Rustenburg Local Municipality* (Case No. 3855/2024).
16. In that matter, the Court criticized the deponent for relying on information relating to events that occurred prior to his employment, without explaining how such information was obtained or providing confirmatory affidavits.

17. That case is clearly distinguishable from the present matter. In the *Applemint* judgment, the deponent purported to testify to matters occurring before his employment without any explanation.
18. In the present matter, paragraphs dealing with events outside the Municipal Manager's knowledge were struck out, and only those falling within his period of employment were retained.
19. Accordingly, there was no deviation from binding precedent, nor did the Court disregard the principle of *stare decisis*. This ground of appeal is devoid of merit.

No administrative decision taken.

20. The applicant submits that the Court erred in finding that the meeting of 11 October 2023 did not constitute administrative action.
21. For PAJA to apply, there must be a decision that has direct external legal effect. The evidence shows that on 13 October 2023; the Bid Adjudication Committee informed the Municipal Manager that the tender validity period had lapsed on 12 October 2023 and that no further consideration could lawfully take place.
22. Once the tender validity period expired, the accounting officer was legally precluded from making an appointment. No administrative decision capable of review under PAJA could therefore arise.
23. This approach is consistent with the principles articulated in *Joubert Galpin Searle Inc v Road Accident Fund* 2014 (4) SA 148 (ECP), where it was held that once no valid tender award can be made,

there is no administrative action susceptible to review.

24. In the absence of a lawful decision, the applicant's reliance on PAJA is misplaced. This ground of appeal likewise cannot succeed.

COSTS

25. On issues of costs, I am satisfied the costs should follow the events.

Order

26. Accordingly, the following order is made:
1. The application for leave to appeal is dismissed.
 2. The applicant is to pay the respondents costs ,on party and party scale including the costs of counsel, on scale B.



T C MOKHARE
ACTING JUDGE
NORTHWEST DIVISION

APPEARANCES

DATE OF HEARING :27 MARCH 2026

DATE OF JUDGMENT :29 APRIL 2026

COUNSEL FOR APPLICANT :ADV L MONNAKGOTLA

Instructed by : DIRK COETZEE ATTORNEYS

COUNSEL FOR RESPONDENT : ADV M MOTLOGELWA

**Instructed by :SETSHEDI MAKGALE &
MATLAPENG INC**