



**THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

CASE NO. 3269/2024

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

31 July 2026
DATE


SIGNATURE

In the matter between:

**ERNST KEBUILE DANKE
KEARABETSWE DANKE**

**1ST APPLICANT
2ND APPLICANT**

And

**MBOMBELA LOCAL MUNICIPALITY
SILULUMANZI (RF) (PTY) LTD**

**1ST RESPONDENT
2ND RESPONDENT**

JUDGMENT

Delivery: This matter was heard on 10 July 2026, and judgment was reserved.
This judgment was delivered by uploaded to *CaseLines* on 31 July 2026.

Mangena AJ:

- [1] Applicants seek leave to appeal a judgment and orders made on the 13 May 2026. It is submitted on behalf of the applicants that the court committed a misdirection when it impermissibly cured a defect in the respondent's case through an informal inquiry as to the depth of the pipe and the feasibility of its relocation.
- [2] It was further argued on behalf of the applicants that the court failed to apply trite legal principles regarding servitudes, in particular that an unregistered servitude does not bind subsequent purchasers. Reliance for this contention was placed on *Vestine Eshowe (Pty) Ltd v Town Council of the Borough of Eshowe*, 1978 (3) SA 546 (N).
- [3] It was further argued that the applicants do not have a responsibility to maintain, repair or relocate the pipeline and placing a financial burden on them goes against established principles that a servitude cannot impose a positive duty on the servient owner. It was submitted that the court erred by focusing exclusively on the lawfulness of the initial installation rather than the current and ongoing burden which limits applicants' rights as registered owners of the property. To buttress this point, the applicants argued that "regardless of how lawfully the pipe was installed in 2004, its continued presence on the property of a *bona fide* successor-in title, without a registered real right, constitutes a continuous and unlawful deprivation of the applicants' ownership rights". This is so because when the applicants bought the property, they lacked knowledge of the unregistered pipeline which unlawfully encroaches on their land.
- [4] The respondent opposes the application for leave to appeal and argues that the applicants seek to argue a different case from the one they argued in the initial proceedings. It is argued on its behalf that the issue for determination during the initial proceedings was whether the installation of the municipal bulk sewer pipeline was unlawful or irregular; if so; then the municipality must remove it to stop the unlawfulness.
- [5] The respondent is correct. The applicants' case has always been that the pipeline was unlawfully or irregularly installed, and it should be removed as it places a burden on the applicants' rights of ownership. For them to succeed, they ought to have established the basis upon which it is contended that its installation was unlawful. They failed to do so and now seek to advance a separate and distinct argument that the continuous presence of the pipeline is unlawful as it limits their ownership right. They should not be allowed to do so. It is impermissible to argue one case in the initial proceedings and then want to advance a completely different case on appeal.

[6] The presence of the pipeline cannot simply be unlawful because there is no registered servitude. The lawfulness or otherwise of the presence of the pipeline needs to be determined in context and informed by the circumstances that existed at the time of its installation. The facts are simple. At the time the pipeline was installed, the property was not a developed township and there was no obligation on the part of the municipality to comply with the Land use Scheme or the conditions of establishment of Stonehenge Extension 1. The failure by the developers to have the pipeline servitude registered does not in my view render its presence unlawful or irregular.

[7] It follows logically that once it is accepted, as it should, that the laying of the pipeline was lawful, it should equally follow and be accepted that there should be no reason to order the municipality to relocate the pipeline. The subsequent owners who acquired the property, even without knowledge of the existence of the pipeline, should tolerate its presence or existence as they are obliged to. See *Rand Water Board v Big Cedar Trading 22 (Pty) Ltd*, [2016] ZASCA 177 at para 24.

[8] I therefore remain unpersuaded that applicants have met the threshold for leave to appeal as envisaged in section 17 of the Superior Courts Act 10 of 2013.

[9] In the result, it is ordered that

1. The application for leave to appeal is dismissed.

2. There is no order as to costs.



IM MANGENA
ACTING JUDGE OF THE HIGH COURT

FOR THE APPLICANT: ADV DD SWART

**INSTRUCTED BY: CRONJE DE WAAL-SKHOSANA INC
MBOMBELA**

AND

FOR THE 1ST RESPONDENT: ADV M NGOMANE

INSTRUCTED BY: NCUBE ATTORNEYS INC

DATE HEARD: 10 JULY 2026

DATE OF JUDGMENT: 31 JULY 2026