



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

REPUBLIC OF SOUTH AFRICA

Case Number: 2016/40359

| | |
|------------------------------------|--|
| DELETE WHICHEVER IS NOT APPLICABLE | |
| (1) | REPORTABLE: YES <input checked="" type="radio"/> NO <input type="radio"/> |
| (2) | OF INTEREST TO OTHER JUDGES: YES <input type="radio"/> NO <input checked="" type="radio"/> |
| (3) | REVISED <input checked="" type="checkbox"/> |
| DATE: | 22/8/19 |
| SIGNATURE: | <i>[Signature]</i> |

In the matter between:

M F RAMAPHAKELA

First Applicant

STANDARD BANK OF SOUTH AFRICA

LIMITED

Second Applicant

**SHERIFF OF THE HIGH COURT OF
SOUTH AFRICA BENONI**

Third Applicant

-and-

MUNICIPAL EMPLOYEES' PENSION FUND

First Respondent

**AKANI RETIREMENT FUND
ADMINISTRATORS (PTY) LTD**

Second Respondent

JUDGMENT

BHOOLA AJ :

- [1] The first applicant seeks leave to appeal against the whole of my judgment and order handed down in this matter on 13 December 2018 in which I ordered that :
- 1.1 The Pension Funds Adjudicator had no jurisdiction to make the determination;
- 1.2 The determination is invalid and of no force and effect, and is accordingly set aside;
- 1.3 The first applicant is to pay the costs of the application as well as the reserved costs of Part A.
- [2] The grounds of appeal are set out fully in the notice of application for leave to appeal.
- [3] Having read the written submissions of the first applicant and having heard the oral submissions of counsel for the parties, I am satisfied that I erred in a number of respects in making the above judgment and order, in particular in not determining that the first applicant's complaint fell within the ambit of the definition of "a complaint" as defined in section 1 of the Pension Funds Act, 24 of 1956. On this issue counsel for the first applicant referred me to a judgment of Van Der Linde J in *Municipal Employees' Pension Fund and another v Mongwaketse and others* (47457/2017) [2019] ZAGPJHC 162 (4 June 2019) in which the Court came to a different conclusion.
- [4] The test to be applied in an application for leave to appeal is that referred to in s 17 of the Superior Courts Act, 10 of 2013. Section 17(1) provides:
- "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

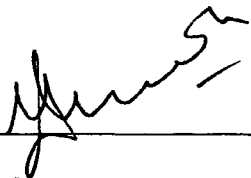
(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.

[5] In my view, not only would the appeal have reasonable prospects of success but also there are conflicting judgments on the matter under consideration as provided for under s 17(1) (a) (i) and (ii) above.

Order

[6] Accordingly, I make the following order:

- a. The application for leave to appeal against my full judgment and order to a Full Bench of the Gauteng Division is granted.
- b. Costs are costs in the appeal.



**U. BHOOLA
ACTING JUDGE
HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

APPEARANCES

Counsel for the First Applicant:

Adv F Matika

Counsel for the Respondents :

Adv JPV McNally SC