


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 10264/2020

1.REPORTABLE:	/NO
2.OF INTEREST TO OTHER	
JUDGES:	/NO
3.REVISED	
07 December 2021	
DATE	

In the matter between:

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

Applicant

and

UNLAWFUL OCCUPIERS OF THE

IMMOVABLE PROPERTIES AT PORTION 102;

FARM HOLGATFONTEIN 326 IR, NIGEL, also known

as MACKENZIEVILLE EXTENSION 2

First Respondent

THE SOUTH AFRICAN POLICE SERVICE

Second Respondent

CITY OF EKURHULENI METROPOLITAN

POLICE DEPARTMENT

Third Respondent

ALISTAIRE MULLER TO 345th RESPONDENTS

Fourth Respondent

This judgment is delivered electronically by circulation to the parties' legal representatives by email, and uploaded on caselines electronic platform. The date of issue is deemed to be 07 December 2021.

LEAVE TO APPEAL: JUDGEMENT

Molahlehi J

[1] This is an opposed application for leave to appeal against the judgement of this court made on 09 June 2021. The court, in that judgment, confirmed the rule nisi obtained by the respondent, Ekurhuleni Metropolitan Municipality evicting the applicants (the respondents in the main application) from the incomplete and completed houses built by the Municipality.

[2] The applicant conceded that the occupation was unlawful but pleaded necessity due to the Covid-19 pandemic. They also contended that the Municipality should provide them with alternative accommodation.

[3] It is now well established that the standard of reasonable prospects of success on appeal in an application for leave to appeal has been elevated to a higher standard by the provisions of the Superior Courts Act 10 of 2013 (the

SC Act). In this respect, section 17 of the SC Act provides that leave to appeal may be granted in circumstances where the court believes that the appeal would have reasonable prospects of success or some other compelling reason why the appeal should be heard.

[4] The applicants have raised several grounds of appeal, which appear in the notice of leave to appeal and substantiated in the heads of argument. The grounds of appeal were substantiated further in the oral submission made during the oral hearing.

[5] I do not deem it necessary for this judgement to repeat every ground for leave to appeal stated in the applicants' application as the same appears on the record. The issues raised in the application are the same as those raised in opposition to the eviction application. In my view, those issues were fully ventilated and considered in the judgment that ordered the eviction of the respondents.

[6] In considering this application and applying the test for leave to appeal summarised above, I found that there are no prospects of success that the court of appeal would arrive at a decision different to that reached by this court and thus, this application stands to fail.

Order

[7] In the premises, the applicants' application for leave to appeal is dismissed with costs.



E Molahlehi
Judge of the High
Court,
Gauteng Local Division,
Johannesburg

Representation:

For the applicant: Adv. D Brown

Instructed by: Chris Billing Attorneys

For the Respondent: Adv. E Sithole

Instructed by: Lebea Incorporated Attorneys

Heard: December 2021

Delivered: 07 December 2021.

