

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 40642/2020

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: YES

17 June 2022

In the matter between:

ABDUR-RAHMAN ESSAT

APPLICANT

and

JOHN MAURICE FLETCHER

FIRST RESPONDENT

LYNN DIANA FLETCHER

SECOND RESPONDENT

CITY OF JOHANNESBURG

THIRD RESPONDENT

METROPOLITAN MUNICIPALITY

JUDGMENT

ALLY AJ

[1] This is an application for leave to appeal against the judgment of this Court delivered on 14 April 2022. The application is opposed. For convenience the parties are referred to as in the main application.

[2] The sole ground for leave to appeal as outlined in the Notice of Leave to Appeal¹, is, put broadly, the Court did not have jurisdiction to adjudicate the matter as an application was pending before the Housing Tribunal.

¹ Caselines: 043-1 – 043-3

[3] I had requested the parties to file heads of argument before the hearing of this application but the Applicant was the only party to file such heads timeously.

[4] On the day of the hearing, the First and Second Respondents were represented by Counsel, Mr Coleman, who indicated that he had been briefed late but that he had filed heads of argument. However, on an immediate search of Caselines no heads from the said Respondents were visible. I afforded the Respondents permission to upload the heads and directed that same be made available to Applicant's legal representatives.

[5] The heads of argument were uploaded and I received an email, via my registrar, from Mr Bouwer, Counsel for the Applicant, wanting to supplement his heads as he did not have the opportunity of dealing with the cases relied on by the Respondents. The said supplementary heads of argument were uploaded on Caselines before judgment was handed down. The said email had also been copied to the legal representative of the Respondents.

[6] I have had regard to the Heads of Argument of both parties as well as the supplementary Heads of the Respondent. I take this opportunity to thank both Counsel for said Heads.

[7] Counsel for the Respondents submitted that because an application was serving before the Housing Tribunal, this Court should have postponed the matter pending finalisation of the matter by the Housing Tribunal.

[8] When asked whether this application was a review application, Mr Coleman submitted that it does not matter what kind of application was before the Housing Tribunal as this Court had no power to delve into the substance of such application. To be clear, the application² referred to by Mr Coleman can be found on Caselines. For reliance on the above submission, Mr Coleman mentioned the cases of

² Caselines: 026-4 – 026-8

Maphango & Others v Aengus Lifestyle Properties (Pty) Ltd³ and Hoya Investment CC v Phiri & Others⁴.

[9] I dealt with the nature of the abovementioned application before the Housing Tribunal in the main judgment and will not repeat it here. Suffice to state that the argument is misplaced in the context of this matter as further explained within this judgment.

[10] The law and principles regarding applications for leave to appeal in terms of Section 16 and 17 of the Superior Courts Act⁵ have now become settled.⁶ Essentially, the bar has been raised in considering whether to grant an application for leave to appeal or not. In this regard I agree with the principles as set out in **H & A Manufacturing & Another v Bower & Others:**

“Section 17 makes provision for leave to appeal to be granted where the presiding judge is of the opinion that either the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard, including whether or not there are conflicting judgments on the matter under consideration.”⁷

[11] The test has changed and the threshold is higher and more stringent as outlined above. Therefore, the Applicant in this matter must convince this Court that there is a reasonable possibility that another Court *would* come to a different conclusion. Put differently, in the context of this application, ‘*would*’ another Court come to a different conclusion regarding the specific ground for leave to appeal, namely, an order for eviction should not have been granted for the reason that an application was pending before the Housing Tribunal?

³ 2012 (3) SA 531 CC

⁴ 2021 GPPHC 392 – found in Safflii

⁵ Act 10 of 2013

⁶ The Mont Chevaux Trust v Tina Goosen 3 November 2014 (Unreported judgment LCC Case No: LCC14R/2014; The Acting National Director of Public Prosecution v Democratic Alliance (unreported Case No: 19577/09 dated 24 June 2016); First Reality (Pty) Ltd v Mitchell & Others 2021 ZALCC 21 dated 23 August 2021 @ para 2

⁷ H & A Manufacturing & Another v Bower & Others 2020 KZNDHC at para 5

[12] The **Maphango** case, in my view, related to a situation where the Landlord's conduct was contrary to the provisions of the Rental Housing Act⁸ and as the Act is ideally suited to deal with disputes between landlord and tenant, remitted the matter to the Housing Tribunal within certain time limits.

[13] In the present case, the matter served before the Housing Tribunal and a settlement agreement was made an Order which Order is an Order in terms of the Magistrate's Court⁹.

[14] Accordingly, the Applicant and the Respondent have made use of the Rental Housing Act and a ruling was made and this ruling has the force of an Order of Court as stated above.

[15] As stated in my judgment in the main application, the remedies available to the Applicant in this application fall within the provisions of the said Act and in my view have not been acted upon.

[15] The **Hoya** case, in my view, also relates to similar facts as the **Maphango** case and therefore, the Court in that matter, and correctly so, was bound by the judgment in the **Maphango** case. Both cases in my view are distinguishable from the present case on the facts and the argument of the Respondents' placing reliance on the said two cases is misplaced and cannot avail them in that the Respondents had had recourse to the Housing Tribunal and a ruling on the grounds of an agreement was issued which bound both parties until set aside or reviewed in terms of the law.

[16] Accordingly, it is my view that another Court would not come to a different conclusion in accordance with the requirements of Section 17 of the Superior Courts Act as outlined above.

[17] In the result this application for leave to appeal must fail with costs.

[18] It is thus Ordered:

⁸ Act 50 of 1999

⁹ Section 13 (13) of the Rental Housing Tribunal Act *supra*

- a) The application for leave to appeal is dismissed;
- b) The First and Second Respondents are to pay the Applicant's costs of this application, the one paying the other to be absolved.

G ALLY
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG
Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 17 June 2022.

Date of virtual hearing: 13 June 2022

Date of judgment: 17 June 2022

Appearances:

Attorneys for the Applicant: **MN HOOSEN ATTORNEYS**
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Counsel for the Applicant: **Adv. RJ Bouwer**

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Counsel for 1st and 2nd Respondent: **Adv. E Coleman**