

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

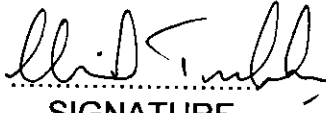
CASE NO: 35248/14

In the matter between:

MOGALAKWENA LOCAL MUNICIPALITY

7/8/2014
Applicant

and

(1)	<u>REPORTABLE:</u>	<u>YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES:</u>	<u>YES / NO</u>
	06/08/14..... DATE	 SIGNATURE

PROVINCIAL EXECUTIVE COUNCIL, LIMPOPO

First Respondent

MEMBER OF EXECUTIVE COUNCIL FOR
COGHSTA, LIMPOPO

Second Respondent

NATIONAL MINISTER OF COOPERATIVE
GOVERNANCE AND TRADITIONAL AFFAIRS

Third Respondent

NATIONAL COUNCIL OF PROVINCES

Fifth Respondent

DH MAKOBE

Sixth Respondent

JUDGMENT

Tuchten J:

- 1 This is an application by the erstwhile first, second and sixth respondents ("the respondents") for leave to appeal against my order

interdicting the respondents from implementing a decision taken by the first respondent pending the final determination in this court of an application to review and set aside that decision.

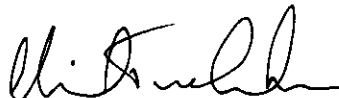
2 There is also an application for condonation of the late filing of the application for leave. Counsel for the erstwhile applicant opposed the application substantially on the ground that the respondents had no prospects of success in the application for leave but consented to the grant of condonation on the footing that the applicant reserved the right to address the issue of prospects of success in the application for leave itself.

3 In my view the application for leave cannot succeed. I say so for three reasons. Firstly, the order, not being final in effect, is not appealable. Secondly there is no reasonable prospect that another court will come to a conclusion different from that to which I came. Thirdly, my decision that is sought to be appealed against does not dispose of all the issues in the case. These issues will only be disposed of when the review is decided. Under s 17(1)(c) of the Superior Courts Act, 10 of 2013, an appeal will not lie in such a case unless the appeal would lead to a just and prompt resolution of the real issues between the parties. One of the key issues in the case is whether the respondents were *bona fide* in their recourse to s 139(1) of the Constitution. In para

62 of the judgment, I found that there was reason to believe that there was substance in the applicant's allegation that the decision was made with ulterior motives and in bad faith.

4 I make the following order:

- 1 The application for condonation is granted.
- 2 The application for leave to appeal is dismissed.
- 3 The costs of both the application for condonation and the application for leave to appeal must be paid by the first, second and sixth respondents, jointly and severally, on the basis that the employment of both senior and junior counsel was justified.


NB Tuchtén
Judge of the High Court
6 August 2014

MogalakwenaLimpopo35248LA.14

For the applicant:
Adv J Dreyer SC and Adv JAL Pretorius
Instructed by Mohulatsi Attorneys
Pretoria

For the first, second and sixth respondents:
Adv WR Mokhari SC and Adv TB Hutamo
Instructed by the State Attorney
Pretoria