

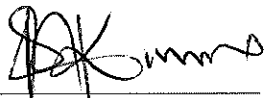
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

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

02/12/2021  
DATE

  
SIGNATURE

CASE NO: 34046/2021

In the matter between:-

**MONTSHENG SARAH MOEKETSI**

Applicant

And

**GAUTENG TOURISM AUTHORITY**

First Respondent

**MEC FOR ECONOMIC DEVELOPMENT,  
AGRICULTURE, ENVIRONMENT AND RURAL  
DEVELOPMENT-GAUTENG**

Second Respondent

**Delivered.** This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand down is deemed to be 10h00 on 02 December 2021.

---

## JUDGMENT-LEAVE TO APPEAL

---

### SKOSANA AJ

[1] This is an application for leave to appeal against my judgment handed down on 02 November 2021. The factual background is set out in the main judgment and need not be repeated herein.

[2] The central issue in this application is whether I misdirected myself when I allowed the collateral or reactive challenge brought by the first respondent in his opposing affidavit in relation to the validity of the decision of the second respondent (the MEC). The applicant persists with its submission that the decision of the MEC, even if it was invalid, could only be set aside through either a review application or a counter application in the present proceedings.

[3] I am required to decide whether there are reasonable prospects of success of the appeal and/or whether there are compelling reasons including conflicting judgments for me to grant such leave<sup>1</sup>. It was conceded though by the

---

<sup>1</sup> See section 17(1)(a) of the Superior Courts Act no. 10 of 2013.

applicant's counsel that there are no conflicting judgments in relation to the issue at hand.

[4] I am in agreement with the first respondent's counsel that the law has been settled in relation to whether a collateral or defensive challenge can be mounted against coercive action and there is no reason to limit the right to such challenge to private citizens. In this regard reliance was placed on the ***Merafong*** case<sup>2</sup>, ***Tasima*** case<sup>3</sup>, ***Gobela*** case<sup>4</sup> and ***Oudekraal*** case<sup>5</sup>. No authorities were cited on behalf of the applicant to counter the latter. Understandably, there is no contrary authority and the applicant's counsel rightly conceded that there are no conflicting judgments on that subject.

[5] As reasoned in my main judgment, the MEC's decision was clearly unlawful and in violation of the principle of legality. Moreover, both the MEC and the applicant had been admonished by the first respondent that the MEC has no authority to interfere with or set aside the decision of the chairperson of the disciplinary hearing. Notwithstanding this, the applicant proceeded with persuading the MEC to do what she did merely to avoid challenging the chairperson's decision through any legally recognized process. The MEC fell headlong into this folly.

---

<sup>2</sup> *Merafong City Local Municipality v Anglo Gold* 2017 (2) BCLR 182 (CC) para 55.

<sup>3</sup> *Department of Transport & Others v Tasima (Pty) Ltd* 2017 (2) SA 622 (CC) para 86.

<sup>4</sup> *Gobela Consulting CC v Makhado* (910/19) [2020] ZASCA 180 (22 December 2020).

<sup>5</sup> *Oudekraal Estates (Pty) Ltd v City of Cape Town & Others* 2004 (6) SA 222 (SCA) para [32].

[6] The other grounds of appeal have been sufficiently addressed in my judgment and have no merit.

[7] In the circumstances, there are no reasonable prospects of success of the appeal. I am not persuaded that this applicant warrants costs on a punitive scale as requested by the first respondent.

[8] Accordingly, I make the following order:

The application for leave to appeal is dismissed with costs.



---

**DT SKOSANA**  
Acting Judge of the High Court  
Gauteng Division, Pretoria

Date of hearing: 29 November 2021

Date of judgment: 02 December 2021

**Appearances:**

For the Applicant:	Mr L. Dixon
	Instructed by Phosa Loots Inc.
	Eros Street
	Boardwalk Office Park, Block 12
	First Floor

Faerie Glen

Pretoria

For the First Respondent:

Adv R. Ram SC

Instructed by Office of the State Attorney

95 Albertina Sisulu and Corner Kruis Streets

Johannesburg

For the Second Respondent:

No appearance