




**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 34108/2020

DELETE WHICHEVER IS NOT APPLICABLE	
•	REPORTABLE: NO
•	OF INTEREST TO OTHER JUDGES: NO
•	REVISED
<u>18 April 2022</u>	
DATE	SIGNATURE

**Heard on: 7 March 2022
Delivered on: 18 April 2022**

In the matter between:

**MINISTER OF AGRICULTURE, LAND REFORM
AND RURAL DEVELOPMENT**

First Applicant

**THE DELEGATE OF THE MINISTER OF
AGRICULTURE, LAND REFORM & RURAL
DEVELOPMENT**

Second Applicant

and

HEINZ WERNER OTTO JOHANNES N.O

First Respondent

SIGRID ROSEMARIE JOHANNES N.O.

Second Respondent

In re

HEINZ WERNER OTTO JOHANNES N.O

First Applicant

SIGRID ROSEMARIE JOHANNES N.O.

Second Applicant

and

**MINISTER OF AGRICULTURE, LAND REFORM
AND RURAL DEVELOPMENT**

First Respondent

**THE DELEGATE OF THE MINISTER OF
AGRICULTURE, LAND REFORM & RURAL
DEVELOPMENT**

Second Respondent

THE MUNICIPAL MANAGER: MKHONDO LOCAL MUNICIPALITY

Third Respondent

JUDGMENT

VUMA, AJ

[1] The first and second applicant seek leave to appeal to the Full bench of the Gauteng Division, Pretoria, *alternatively* the Supreme Court against the whole judgment and order, including the costs order granted by me, as handed down on 19 November 2021, on the grounds that I erred both in fact and in law and in one or more of the respects to appear below-herein.

[2] It is trite that an application for leave to appeal a decision from a single Judge of the High Court is regulated by Rule 49 of the Uniform Rules of Court. The substantive law pertaining to application for leave to appeal is dealt with in section 17 of the Superior Courts Act 10 of 2013.

[3] The grounds of appeal are found in the applicant's Application for Leave to Appeal.

[4] Of note the applicants argue, *inter alia*, the following points:

- 4.1 That the Judge erred by finding, in paragraph [48] of her judgement that the Subdivision of Agricultural Land Act 70 of 1970 (SALA), prohibits, excising, only good land into small uneconomic units, allowing excising bad land from good land;
- 4.2 That the Judge erred in this regard by not having regard to the case, approved by the Constitutional Court (**Wary Holdings (Pty) Ltd v Stalwo (PTY) Ltd & Another** 2009 (1) SA 337 (CC)) , of **Van Der Bijl & Others v Louw & Another** 1974 (2) SA 493 (CPD) at 499 C – E;
- 4.3 That the Judge erred by not finding that the smaller subdivided portion will remain agricultural land and that the respondents (or another party) intends small scale farming on the portion, as evidenced in the initial application, submitted by NuPlan;
- 4.4 The Judge erred by not considering the initial application submitted by NuPlan;

- 4.5. The Judge erred by not considering whether the new unit of 6,49 ha can survive in its diminished form and provide a reasonable living for the new owners.

[5] The respondents oppose the application, arguing, *inter alia*, that the applicants' leave to appeal should be refused as the application does not comply with the law governing notices of appeal and notices of application for leave to appeal. The respondents argue that the application is ill-conceived and devoid of merit as it has dim prospects of success in the appeal for the following reasons:

- 5.1. The decision sought on appeal does not fall within the ambit of section 16(2)(a) of the Superior Courts Act 10 of 2013;
- 5.2. The applicants' application for leave to appeal is *pro non scripto* in that whereas the grounds of appeal in a notice of application for leave to appeal must be clearly and succinctly set out in unambiguous terms so as to enable the Court and the respondents to be fully and properly informed of the case which the applicant seeks to make out and which the respondent is to meet in opposing the application for leave to appeal, the applicants' notice is littered with arguments;
- 5.3. The application for leave to appeal is borne out of a material failure to understand the nature of the judgment, order and salient issues before this Court. The effect of the order granted by the Court is that the Minister will

be seized with a subdivision application and reconsider all the issues and thereafter take appropriate decision;

- 5.4. The Minister had an obligation to procure expert advice that will contradict or confirm Dr Gouws' findings. With in-expert advice Dr Gouws' expert advice stands uncontroverted and the Court had to take heed of his findings.

[6] The principles governing the question whether leave to appeal should be granted are well established in our law. Such principles have their origin in the common law and they entail a determination as to whether reasonable prospects of success exist that another court, considering the same facts and the law, may arrive to a different conclusion to that of the court whose judgment is being impugned. The principles now find expression in section 17 of the Superior Court Act 10 of 2013

[7] It has also been generally accepted that the use of the word "would" in section 17 of the Superior Court Act added a further consideration that the bar for the test had been raised with regards to the merits of the proposed leave to appeal before relief can be granted. The Superior Court Act widened the scope in which leave to appeal may be granted to include a determination of whether "there is some compelling reason why the appeal should be heard."

[8] In my view, considering both the parties' arguments and the impugned judgment, the applicants have failed to make out a case for leave to appeal. Neither have they shown on what basis there are prospects of success on appeal or that there are any compelling reasons why the appeal should be heard. Furthermore, I am not persuaded that another court would come to a different conclusion.

[9] It is for the above reasons that I dismiss the application for leave to appeal with costs.



Livhuwani Vuma
Acting Judge
Gauteng Division, Pretoria

ALA Heard on: 7 March 2022

ALA Judgment handed down on: 18 April 2022

Appearances

For 1st and 2nd Applicant: Adv. H.C. Janse van Rensburg

Assisted by: Adv. P. Nyapholi-Motsie

Instructed by: The State Attorney

For 1st and 2nd Respondent: Adv. M. Majozi

Instructed by: Ivan Pauw & Partners Attorneys