

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER:

4243/2012

5 **DATE:**

8 MAY 2012

In the matter between:

THE RESIDENTS ASSOCIATION OF HOUT BAY 1st Applicant

THE HABITAT COUNCIL 2nd Applicant

10 and

ENTILINI CONCESSION (PTY) LIMITED 1st Respondent

THE PREMIER OF THE GOVERNMENT
OF THE WESTERN CAPE 2nd Respondent

THE MINISTER OF TRANSPORT & PUBLIC
15 **WORKS: PROVINCIAL GOVERNMENT OF**
THE WESTERN CAPE 3rd Respondent

SOUTH AFRICAN NATIONAL PARKS 4th Respondent

THE MINISTER OF WATER AND
ENVIRONMENTAL AFFAIRS 5th Respondent

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J U D G M E N T

(Application for leave to appeal)

ALLIE, J:

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4243/2012

In this matter I have considered the brief notes as well as the notice of leave to appeal, I have reconsidered the papers and the judgment handed down on 9 March 2012.

5 I am of the view that this court is of course, subject to the provisions of Section 21A of the Supreme Court Act and, of course, so too will the Supreme Court of Appeal be.

I have listened keenly to the arguments advanced on behalf of
10 the applicant to see if I was able to find what will effectively amount to exceptional circumstances about why applicants should be afforded an opportunity to ventilate the issue of costs only in another court, bearing in mind the provisions of Section 21A. Just on the argument advanced on behalf of
15 applicant for exceptional circumstances, they rely effectively on the standing of the applicants as a public interest group, and the relief which they sought, and the relief in another application which is of course of public interest value and is an assertion of constitutional rights.

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However, I am of the view that the exceptional circumstances that the applicants advance really relates to the merits of the relief that they sought. I am also of the view that the judgment handed down on 9 March 2012 related to the procedural aspect
25 of what was sought and it is clear from the judgment that in no

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way did the court refuse the relief sought on the merits nor on the basis that the applicants were not a public interest group nor that they were not representing public interest and not asserting constitutional rights.

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However, a court of appeal which would be seized with a leave to appeal on the costs, if that was granted, would not necessarily have to consider the aspects of the relief sought or the standing of the applicant but rather whether the court
10 exercised its discretion judicially in arriving at a cost order. I am not persuaded by the arguments that I have heard today on behalf of the applicant that the exceptional circumstances in relation to the cost order that was granted have been shown today. Therefore I am not persuaded that in fact another court
15 would be in a position to hear or entertain the matter bearing in mind the provisions of Section 21A. Certainly not the full bench of this division nor the Supreme Court of Appeal for that matter.

20 I am not persuaded that the applicants have crossed the hurdle of in fact establishing that this is a matter that a court of appeal ought to be seized with. Having not crossed that hurdle, I am of the view that the application for leave to appeal has to fail. So the application is dismissed with costs,
25 including the costs of two counsel.

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ALLIE

ALLIE, J