

SOUTH AFRICA / JUDGMENT

## Ba-Phalaborwa Local Municipality & ML Nkosi Electrical Contractors and Another - Leave to Appeal (4482/2020) [2023] ZALMPPHC 113 (29 November 2023) [2023] ZALMPPHC 113

COURT

Limpopo High Court, Polokwane

BEFORE

M.V Semenya

CASE / FILE NUMBER

4482/2020

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REPUBLIC  
OF SOUTH AFRICA  
IN  
THE HIGH COURT OF SOUTH AFRICA;  
LIMPOPO  
DIVISION; POLOKWANE.  
CASE  
NO: 4482/2020

REPORTABLE: YES/NO  
OF  
INTEREST TO OTHER JUDGES: YES/NO  
REVISED

Date: 29 November 2023  
APJ  
SEMENYA M.V  
In

the matter between: BA-PHALABORWA  
LOCAL MUNICIPALITY  
:  
APPLICANT  
And  
ML  
NKOSI ELECTRICAL CONTRACTORS  
:  
FIRST RESPONDENT  
SOMA  
CONSTRUCTION  
:  
SECOND RESPONDENT

## JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and publication and release to SAFLII. The date and time for hand-down is deemed to be 29 November 2023 at 10:00.

SEMENYA AJP:

[1] The applicants in this application for leave to appeal was the respondents in the main application. They launched application

for leave to appeal the judgment and order of this court delivered on the 28 August 2023. The application is in terms of section 17 of the Superior Courts Act 10 of 2013.

[2] The applicant has raised six grounds of appeal. The first grounds deal with the formulation of the order, second, third and fourth grounds deal with the lateness of the launching of the application and the late filing of the replying affidavit. The last three addresses the merits of the main application.

[3] On the issue of the delay in the launching of the application, the applicant argue that the application was launched 31 months after the project was finalised, 26 months after the respondent had acknowledged its indebtedness, 20 months after the section 3 of the Institution of Legal Proceedings Against Certain Organs of State notice, 18 months after service of summons on the respondents, 17 months after the respondents deposed to an affidavit resisting summary judgment and 9 months the respondents filed their plea.

[4] On the point of the lateness of the launching of the application, this court followed the Constitutional Court's finding in State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd 2018(2 SA 23 (CC) (Gijima) where the court found that the delay in the institution of proceedings should not override the rule of law.

[6] Although I am of the view that the view that the prospects of success on the are non-existent, I am of the view that the appeal court may find that, in comparison with the period of delay in Gijima, which was 22 months, the appeal court would find that the delay in this matter was excessive.

[7] In the result I make the following order:

- i. Leave to appeal to the full court of the Limpopo Division of the High Court, Polokwane is granted; and
- ii. Cost to be costs in the appeal.

M.V SEMENYA

ACTING JUDGE PRESIDENT OF THE

HIGH COURT; LIMPOPO DIVISION

APPEARANCES: For the applicant : Adv EJ Van Rensburg Instructed by: Baardman & Du Plessis  
Attorneys For the Respondent: Adv. J.A Motepe SC Instructed by: Raphela Attorneys Date of  
hearing: 20 October 2023 Date of delivery: 29 Nvember 2023

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Prepared on 10 October 2026 · Esheria