

SOUTH AFRICA / JUDGMENT

Bojosinyane v Maroga and Others (Leave to Appeal) (UM197/2022) [2023] ZANWHC 139 (18 August 2023) [2023] ZANWHC 139

COURT

North West High Court, Mafikeng

BEFORE

S. Mfenyana

CASE / FILE NUMBER

UM197/2022

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IN THE HIGH COURT OF
SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG
CASE
NO: UM197/2022

Reportable:	YES/NO Circulate
to Judges:	YES/NO Circulate
to Magistrates:	YES/NO Circulate to Regional Magistrates: YES/NO In

the matter between:

OLAOTSE
THEOPHILUS BOJOSINYANE
Applicant
and
SELLO
MAROGA
First
Respondent
KAGISANO
MOLOPO LOCAL MUNICIPALITY
Second
Respondent
MEC
FOR THE NORTHWEST DEPARTMENT OF
COOPERATIVE
GOVERNANCE,
HUMAN
SETTLEMENT AND TRADITIONAL
Third
Respondent
AFFAIRS
ABSA
BANK LIMITED
Fourth
Respondent
MINISTER
OF COOPERATIVE GOVERNANCE
Fifth
Respondent
AND
TRADITIONAL AFFAIRS
PREMIER
OF THE NORTHWEST PROVINCE
Sixth
Respondent
EXECUTICE
COUNCIL: NORTHWEST PROVINCE
Seventh
Respondent
PROVINCIAL
LEGISLATURE: NORTHWEST PROVINCE
Eighth
Respondent
NATIONAL
COUNCIL OF PROVINCES
Ninth
Respondent
PRESIDENT
OF THE REPUBLIC OF SOUTH AFRICA
Tenth
Respondent

This judgement was handed down electronically by circulation to the parties' representatives via email. The date for hand-down is deemed to be 18 August 2023.

ORDER

In the circumstances, I

make the following order:

- (i)
Leave to appeal
is granted to the Full Court of this Division.
- (ii)
Costs shall be
costs in the appeal.

JUDGEMENT

ON APPLICATION FOR LEAVE TO APPEAL

- [1] On 31 October 2022, this Court per Mahlangu AJ made an order inter alia, dismissing an application brought by the applicant. The essence of that application was to obtain various orders, declaring and setting aside certain decisions of the respondents, in particular the 8th respondent (prayer 1); the 5th respondent (prayer 2); the 1st respondent (prayers 3 and 4); the 2nd respondent (also in respect of prayer 4) unlawful and invalid and set them aside. In addition the applicant sought an order reinstating him as the second respondent's municipal manager.
- [2] This application for leave to appeal lies against the whole of the judgement and orders granted by Mahlangu AJ. It is dealt with pursuant to the provisions of section 17(2)(a) of the Superior Courts Act, 10 of 2013 (the Act)
- [3] The application is opposed by the first, second, third, fifth and seventh respondents only.
- [4] Mr Zisiwe appeared on behalf of the applicant and on behalf of the first and second respondents, Mr Muza appeared. Mr Monnahela appeared for the third, sixth and seventh respondents.
- [5] The grounds of appeal are as set out in the notice of application for leave to appeal, and are essentially that the Court erred, (i) in finding that the Minister had approved the appointment of the first respondent as an administrator on 10 October 2022; (ii) in not finding that the seventh respondent (the Executive Council) had complied with the provisions of section 139(2)(a) of the Constitution when it submitted a notice for intervention to the fifth respondent (Minister) on 13 September 2022 pursuant to its resolution of 7 September 2022 to invoke section 139(1)(b); and (iii) finding that the applicant's contract of employment would lapse in November 2022, in circumstances where the administrator had no power to reduce the applicant's term of office.

- [6] It is the applicant's contention that the Minister made no mention of the appointment of the first respondent as an administrator for the second respondent (the Municipality). He further avers that the Minister, in any event, does not have the power to make such appointment.
- [7] Section 17 (1) of the Superior Courts Act 10 of 2013 states:
- 17(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –
- (a) (i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;...
- [8] An applicant for leave to appeal must show a sound and rational basis for the conclusion that the matter enjoys good prospects of success on appeal.
- [9] It was contended on behalf of the first and second respondents that there are no prospects of success on appeal as the matter has become moot and the relief sought would be academic. Thus, the first and second respondents contend that the court has no jurisdiction to entertain the matter. Also linked to the issue of mootness is that the first and second respondents aver that the applicant, has no locus standi to seek the relief he seeks in respect of the intervention aspects of the judgement, as his term of office has expired.
- [10] On behalf of the third, fifth and seventh respondents, the main grounds of opposition are that the issue had become moot and further that the matter enjoys no prospect of success on appeal. These respondents challenge the interpretation ascribed by the applicant to the provisions of the employment contract, which they argue, ignores the context within which the provision should be understood, as well as its interpretation of section 139 (2)(b)(i) of the Constitution.
- [11] Having listened to the parties and having read the papers in this application, I am of the view that a sound and rational basis exists for the applicant's conclusion that basis the matter enjoys prospects of success on appeal. I am also of the view that there are some aspects of the judgement which may warrant the attention of a Higher Court. I however do not believe that the issues raised, warrant the intervention of the Supreme Court of Appeal. For that reason, I am inclined to grant the application for leave to appeal.

Order

- [12] In the circumstances, I make the following order:

S. MFENYANA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTHWEST DIVISION, MAHIKENG

APPEARANCES

Date of Hearing: 03 February 2023 Date of Judgement Reserved: 03 February 2023 Date of Judgement: 18 August 2023 For the Applicants: Mr. BM Zisiwe Instructed by: Zisiwe Attorneys Email: msnyman@snymanfamilie.co.za Email: bongani@zisiweattorneys.co.za For the 1st & 2nd Respondent: Adv. CZ Muza Instructed by: Kgomo Attorneys Inc. Email: clintmuza@gmail.com info@kgomoattorneys.co.za For the 3rd, 5th & 7th Respondent : Adv. OI Monnahela Instructed by: Office of the State Attorney Email: PNkonwana@justice.gov.za

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Prepared on 13 October 2026 · Esheria