

SOUTH AFRICA / JUDGMENT

**Burrie Smit Ontwikkelaars (Pty) Ltd
v Rustenburg Local Municipality
(Leave to Appeal) (2868/2008) [2024]
ZANWHC 35 (15 February 2024)
[2024] ZANWHC 35**

COURT

North West High Court, Mafikeng

BEFORE

R D Hendricks

CASE / FILE NUMBER

2868/2008

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**IN THE NORTH WEST HIGH
COURT, MAFIKENG
CASE
NO: 2868/2008**

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

the matter between:

BURRIE
SMIT ONTWIKKELAARS
PLAINTIFF/RESPONDENT
(PTY)
LTD
and
RUSTENBURG
LOCAL MUNICIPALITY
DEFENDANT/APPLICANT
DATE
OF HEARING
: 02
FEBRUARY 2024
DATE
OF JUDGMENT
: 15
FEBRUARY 2024
FOR
THE APPELLANT
: ADV. DU
PLESSIS SC
with ADV. LINDEQUE
FOR
THE RESPONDENT
: ADV. DE
VILLIERS

JUDGMENT

ON LEAVE TO APPEAL

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down is deemed to be 14h00 on 15 February 2024.

ORDER

Resultantly, the following order is made:

- (i) Leave to appeal is granted to the Supreme Court of Appeal (SCA), both with regard to the application for leave to appeal by the 1st defendant, as well as the cross-appeal by the plaintiff, in respect of the judgment and order by this Court dated 03 November 2023 in relation to interest and costs.
- (ii) The costs of the applications for leave to appeal and cross appeal shall be costs in the appeal.

HENDRICKS JP

Introduction

- [1] On the 07th June 202, this Court delivered a judgment and granted an order in the following terms:

“1. The Defendant is ordered to pay the Plaintiff an amount of R2 264 500.00 ins respect of the expropriated property (the reservoir area) calculated at R70/m2 in terms of section 12 (1)(a) of the Expropriation Act 63 of 1975;

2. The Defendant is ordered to pay the plaintiff an amount of R274 190.00 for the expropriated property (the servitude area) calculated at R35/m2 in terms of section 12 (1)(b) of the Expropriation Act 63 of 1975;.
 3. The defendant is ordered to pay an amount of R55 000.00 as solatium to be added in terms of section 12 (2) of the Expropriation Act 63 of 1975;
 4. Interest on the aforementioned amounts (including any reserved costs), Value Added Tax (VAT), as well as costs of suit are reserved to be later determined by this Court, after written submissions submitted by both parties within twenty (20) days of the date is this order.”
- [2] Submissions were made by the respective parties with regard to paragraph (4) of the aforementioned order, and on 03 November 2023, this Court granted an order in the following terms:

“1. The following order is made in addition to and in amplification of the order of 07th June 2023:

- (a) The Defendant is ordered to pay the plaintiff an amount of R362 670.00 as compensation in terms of Section 12 (1) (a) and (b) of the Expropriation Act (R323 500.00 for the reservoir area and R39 170.00 for the servitude area).
- (b) The Defendant is ordered to pay interest on the said amount of R362 670.00 at the applicable rate from the 07 AUGUST 2007 until date of finally payment.
- (c) The Defendant is ordered to pay interest at the applicable rate from the actual date expropriation as agreed between the parties, namely 31 JULY 2004 until 07 AUGUST 2007, less the amount of R391 683.00 that was already paid as interest on 07 AUGUST 2007.
- (d) No other amount as solatium is payable in terms of Section 12 (2) of Expropriation Act 63 of 1975.
- (e) The reserved costs of the interlocutory application of 03 AUGUST 2015;11 OCTOBER 2016; and 17 SEPTEMBER 2019 are costs in the action.
- (f) Each party is ordered to pay its own costs.”

- [3] The defendant filed a notice of application for leave appeal and the plaintiff filed a notice of application for leave to cross-appeal. Both the applications for leave to appeal and the cross-appeal are confined to the judgment / order of this Court dated 03rd November 2023, and in particular the aspects of interest and costs. No leave to appeal is sought by either of the parties against the merits of the judgment dated 07th June 2023, or Value Added Tax (VAT). Leave is sought to the Supreme Court of Appeal (SCA).
- [4] Having perused the perspective notices of appeal and cross – appeal and having considered the submissions made by the legal representatives of both parties, I am of the considered view that leave to appeal should be granted against the order of this Court dated 03 November 2023, with regard to interest and costs. I am of the view that it merits the attention of the SCA, as it involves the interpretation of two sections of legislation, and it is of importance not only to the respective parties but also of general application. Leave to appeal should consequently be granted to the SCA.

Order

- [8] Resultantly, the following order is made:
- (i) Leave to appeal is granted to the Supreme Court of Appeal (SCA), both with regard to the application for leave to appeal by the 1st defendant, as well as the cross-appeal by the plaintiff, in respect of the judgment and order by this Court dated 03 November 2023 in relation to interest and costs.
- (ii) The costs of the applications for leave to appeal and cross appeal shall be costs in the appeal.

R D HENDRICKS

JUDGE PRESIDENT OF THE HIGH COURT OF SOUTH AFRICA,

NORTH WEST DIVISION, MAHIKENG

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Prepared on 14 October 2026 · Esheria