
SOUTH AFRICA / JUDGMENT

Esorfranki Pipelines v Mopani District Municipality and Others (56730/2012) [2018] ZAGPPHC 262 (11 April 2018) [2018] ZAGPPHC 262

COURT

North Gauteng High Court, Pretoria

BEFORE

T M Makgoka

CASE / FILE NUMBER

56730/2012

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HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Not reportable

Not of interest to other Judges

CASE NO: 56730/2012

ESORFRANKI PIPELINES Applicant

and

MOPANI DISTRICT MUNICIPALITY First Respondent

TLONG RE YENG CC Second Respondent

BASE MAJOR CONSTRUCTION (PTY) LTD Third Respondent

THE PREMIER OF LIMPOPO Fourth Respondent

THE MINISTER OF FINANCE Fifth Respondent

JUDGMENT - Leave to appeal

MAKGOKA J

- [1] This is an application for leave to appeal by the applicant (the unsuccessful plaintiff in the main action) against the judgment and order of this court in terms of which the applicant's damages claim against the first respondent was dismissed with costs. The application is opposed by the first respondent. The second to fifth respondents do not take part in this application, as was the case in the main action.
- [2] The common law test in an application for leave to appeal has always been whether there are reasonable prospects that another court, given the same set of facts, might arrive to a different conclusion. That test has been codified in s 17(1)(a)(i) and (ii) of the Superior Court Act 10 of 2013, in terms of which leave to appeal may only be given where a judge is of the opinion that the appeal would have reasonable prospect of success, or that there is some compelling reason why the appeal should be heard.
- [3] I have had a careful and dispassionate regard to the main judgment, as well as the application for leave to appeal. All the grounds set out in the application for leave to appeal have been exhaustively dealt with in the main judgment. There is no need to regurgitate them. As emphasised in the main judgment, the applicant's insurmountable hurdle is that for it to be successful, it must establish that, but for the unlawful conduct of the first respondent, it would have been the successful bidder. On this aspect, both this court (Matojane J) and the Supreme Court of Appeal, in their collective wisdom, declined to make a declaration to that effect, despite pertinent and express request by the applicant to do so.
- [4] It makes no difference that this time around, the same request is made under the guise of an action for damages. I do not see how the Supreme Court of Appeal would come to a different conclusion. Thus, the applicant fails at the first hurdle. This is dispositive of the matter. During argument, counsel for the applicant submitted that even if it is found that there is no reasonable prospect of success, there is a compelling reason why the appeal should be heard. That reason, so the argument went, is that the main judgment has made a policy decision that no claim lies against municipalities where a tender has been unlawfully awarded. I disagree. No such decision has been made. This matter was decided on its own peculiar facts, and it is by no stretch of imagination, precedent-setting.
- [5] I therefore conclude that there is no reasonable prospect of success in the appeal. There is similarly no compelling reason why the appeal should be heard.
- [6] The application is dismissed with costs, including costs of two counsel.

T M Makgoka

Judge of the High Court

APPEARANCES:

For the Applicant: KW Luderitz SC (with him C Woodrow)

Instructed by:

Thomson Wilks Inc, Johannesburg

Barnard Inc, Pretoria

Pretorius le Roux Attorneys, Pretoria

For the First Defendant: W Mokhari SC (with him NC Motsepe)

Mogaswa Inc., Johannesburg

Mafa Attorneys, Pretoria

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