

SOUTH AFRICA / JUDGMENT

**Ethekwini Municipality and Another v Haffejee
NO and Others, Haffejee NO and Others v
eThekwin Municipality and Others (9845/2006,
7098/2008) [2010] ZAKZDHC 80 (25 August 2010)
[2010] ZAKZDHC 80**

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Theron

CASE / FILE NUMBER

9845/2006, 7098/2008

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IN THE KWAZULU-NATAL HIGH COURT

DURBAN, REPUBLIC OF SOUTH AFRICA

CASE NO.: 9845/2006

In the matters between:

eTHEKWINI MUNICIPALITYApplicant

and

YUSUF GOOLAM MAHOMED HAFJEJEE N.O.First Respondent

MOHAMMED YUSUF HAFJEJEE N.O.Second Respondent

EBRAHIM YUSUF HAFJEJEE N.O.Third Respondent

And

CASE NO. : 7098/2008

SARAH HAFJEJEE N.O.First Applicant

MOHAMMED YUSUF HAFJEJEE N.O.Second Applicant

EBRAHIM YUSUF HAFJEJEE N.O.Third Applicant

eTHEKWINI MUNICIPALITYFirst Respondent

MINISTER OF PUBLIC WORKSSecond Respondent

PREMIER OF THE PROVINCE OF KWAZULU-NATALThird Respondent

JUDGMENT OH APPLICATION FOR LEAVE TO APPEAL

Date heard 12 August 2010

Date delivered: 25 August 2010

THERON J

- [1] The trust has applied for leave to appeal to the Supreme Court of Appeal against the judgment of this court handed down on 14 December 2009 ('the judgment*'). The two main grounds relied upon by the trust in this application are, firstly, that the expropriation process was flawed and secondly, that the expropriation was unconstitutional in that the municipality had deprived the trust of its property rights in respect of the buildings that had been constructed on the expropriated land. The contention was that such conduct amounted to a repudiation of a constitutional obligation to pay compensation for the buildings. [2] The first ground relied upon by the trust was considered in the judgment. For the reasons set out in the judgment¹ the conclusion was reached that the municipality had complied substantially with the requirements of the Local Authorities Ordinance 25 of 1974 and that 'the various grounds relied upon by the trustees in challenging the validity of the expropriation have no substance and are "over-technical and lacks common sense" 2 '

THERON J

- [1] The trust has applied for leave to appeal to the Supreme Court of Appeal against the judgment of this court handed down on 14 December 2009 ('the judgment*'). The two main grounds relied upon by the trust in this application are, firstly, that the expropriation process was flawed and secondly, that the expropriation was unconstitutional in that the municipality had deprived the trust of its property rights in respect of the buildings that had been constructed on the expropriated land. The contention was that such conduct amounted to a repudiation of a constitutional obligation to pay compensation for the buildings.
- [2] The first ground relied upon by the trust was considered in the judgment. For the reasons set out in the judgment¹ the conclusion was reached that the municipality had complied substantially with the requirements of the Local Authorities Ordinance 25 of 1974 and that 'the various grounds relied upon by the trustees in challenging the validity of the expropriation have no substance and are "over-technical and lacks common sense" 2 '
- ,
- [3] The second ground relied upon, namely, that the municipality's conduct had amounted to a repudiation of a constitutional obligation

to pay compensation for the building, was not raised at the hearing of this matter. The matter was argued at length - over a period of three days. The applicant is not entitled to raise this as a ground of appeal at this late stage of the proceedings.³ In the event that it is suggested that this argument is linked to the payment of compensation; that argument was dealt with in para

[24] of the judgment,

[4] The trust has not identified which section or sections of the Expropriation Act 63 of 1975 are unconstitutional or which provision

or provisions of the Constitution have been contravened by the municipality. It has made a bald allegation that the expropriation

was unconstitutional. In the constitutional application, the trust had claimed that certain provisions of the Expropriation Act, in particular ss 2(1), 7(1), 8(1), 9(1), 10, 11, 21 and 22, were unconstitutional. This claim was dealt with and rejected in the judgment.⁴

[5] I have not been persuaded that there are reasonable prospects of success on appeal and that there is a likelihood that another court may come to a different conclusion. In the result, the application for leave to appeal is refused. The YGM Haffeejee Family Trust, alternatively, the trustees of the trust, jointly and severally, the one paying the others to be absolved, are directed to pay the costs of this application, A

[3] The second ground relied upon, namely, that the municipality's conduct had amounted to a repudiation of a constitutional obligation

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Legal representatives YGM Haffejee Family Trust Counsel: K Kemp SC with H S Gani Attorneys: Omar & Associates eTliekwini Municipality Counsel: VI Gajoo SC with S Mahabeer Attorneys: Naidoo Maharaj Inc Minister of Public Works Counsel: V Soni SC Attorneys: State Attorney (KwaZum-Nata!) Premier of the Province of KwaZutu-Natal Counsel; A J Dickson SC Attorneys: PKX Attorneys c/o Luthuli Sithole Attorneys

Legal representatives

YGM Haffejee Family Trust

Counsel: K Kemp SC

with H S Gani

Attorneys: Omar & Associates

eTliekwini Municipality

Counsel: VI Gajoo SC

with S Mahabeer

Attorneys: Naidoo Maharaj Inc

Minister of Public Works

Counsel: V Soni SC

Attorneys: State Attorney (KwaZum-Nata!)

Premier of the Province of KwaZutu-Natal

Counsel; A J Dickson SC

Attorneys: PKX Attorneys

c/o Luthuli Sithole Attorneys

1eThekwtln Municipality v Raffejee NO and others; Haffejee NO ami others v eThehvini Municipality and others [2010] a All SA358 (KZD) paras [10]-[1 7]

2ibid, para [18].

3Municipal Manager: Qettikeni Local Municipality and another vFV General Trading CC 2010 (I} SA 356 (SCA) para (19); National Director of Public Prosecutions v Zuma [2009] ZASCA 1; 2009

(2) SA 277 (SCA) para (47); Prince v President, Cape Law Society, others [2000] ZACC 28; 2001

(2) SA 388 (CC) para (22);
4paras [22]-[28).

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