
SOUTH AFRICA / JUDGMENT

Port st Johns Municipality v Fono and Others (96/2017) [2020] ZAECHMHC 5 (1 January 2020) [2020] ZAECHMHC 5

COURT

Eastern Cape High Court, Mthatha

BEFORE

J C Coltman

CASE / FILE NUMBER

96/2017

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, MTHATHA

Case no.: 96/2017

In the matter between:

PORT ST JOHNS MUNICIPALITY

Applicant

and

LUXOLO FONO

First Respondent

CAGUBA COMMUNITY

Second Respondent

CAGUBA TRIBAL AUTHORITY

Third Respondent

THE MINISTER OF RURAL DEVELOPMENT &

LAND REFORM

Fourth Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

Coltman AJ:

Introduction

- [1] This is an opposed application for leave to appeal to the Full Court of this Division, against the whole of my judgment handed down on 18 June 2019, wherein I dismissed the applicant's application and directed the applicant to pay the costs of the application.
- [2] In dismissing the application, I based my decision primarily on the points raised in limine by the first respondent, viz,
- 2.1. that the National Building Regulations and Building Standards Act 103 of 1977 (NBSA) has not been extended to the former Transkei by the Justice Laws Rationalisation Act (Rationalisation Act) and that the NBSA, therefore, does not apply to the property in question; and
- 2.2. that the first respondent did not contravene any provisions of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) or the applicant's municipal bylaws.
- [3] Although the notice of application for leave to appeal sets out several grounds of appeal, Mr Notyesi, who appeared for the applicant at the hearing of this application, confined his argument to only the following two issues:
- 3.1. that this is a public interest matter, in that the municipality is under a duty to manage the construction of buildings in its jurisdictional area; and
- 3.2. that the prohibition against developing the land without an environmental impact assessment being undertaken, contained in the annexure to the founding affidavit (the agreement), arises from the papers and that I, accordingly, erred in deciding that it was not properly raised in the founding affidavit.
- [4] Mr Notyesi further submitted that it could not have been the intention of parliament to exclude the former Transkei from the application of the NBSA and that it had been a mere omission on the part of parliament not to have added the NBSA to the list of statutes covered by the Rationalisation Act.
- [5] Mr Duminy, who appeared for the first respondent, argued that the applicant has to stand or fall on the case it pleaded in the notice of motion. He submitted that the five grounds on which the applicant's case is based, does not include the issue of the environmental impact assessment, and that same cannot be read into any of those grounds. He, therefore, submitted that it is not permissible for the first respondent to be expected to meet a new cause of action that was not pleaded by the applicant. He also reiterated his submissions with regard to the non-application of the NBSA to the property and that the first respondent had not contravened any provisions of SPLUMA or the applicant's municipal bylaws.

- [6] Section 17 of the Superior Courts Act, 10 of 2013, provides that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.
- [7] I have already expressed my concern in the main judgment with regard to the failure of the fourth respondent's to participate in this matter, particularly in view of the environmental aspect involved and the state's obligations in terms of SPLUMA and other environmental legislation that may be applicable to this property.
- [8] Even though I am not entirely convinced that the issue regarding the environmental impact assessment had been properly raised in the papers by the applicant, another court may come to a different conclusion in this regard, as the broader public (including the second respondent, that is, the Caguba Community) has a substantial interest in this matter.
- [9] Furthermore, I was similarly alarmed that the NBSA has not yet been extended to the former Transkei and my findings in this regard will obviously have far-reaching implications. There is not the slightest doubt in my mind, therefore, that this matter is of huge importance to the broader public. Moreover, as I have mentioned in my main judgment, the fact that the building will be used for tourist accommodation, makes it all the more important that the building be safe for occupation.
- [10] Having given this matter considerable thought, I am of the view that, for the reasons set out above, there are other compelling reasons why the appeal should be heard by a full bench of this division.
- [11] In the result, I make the following order:
- a) The applicant is granted leave to appeal to the Full Court of this Division against the whole of the judgment delivered on 18 June 2019.
 - b) The costs of the application for leave to appeal are reserved for determination by the Court hearing the appeal.

J C Coltman

Acting Judge of the High Court

For the applicant:

Mr M. Notyesi, of Mvuzo Notyesi Inc., Mthatha.

For the 1st and 3rd respondents: Adv A. R. Duminy, instructed by Khaya Nondabula Attorneys, Mthatha.

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Prepared on 14 October 2026 · Esheria