

SOUTH AFRICA / JUDGMENT

Van Schalkwyk v Minister of Justice and Constitutional Development and Others (24910/2021) [2024] ZAGPJHC 300; [2024] 6 BLLR 640 (GJ) (19 March 2024) [2024] ZAGPJHC 300

COURT

South Gauteng High Court, Johannesburg

BEFORE

Twala M L

CASE / FILE NUMBER

24910/2021

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FLYNOTES:

PROFESSION – Magistrate – Misconduct – Review
proceedings to set aside decisions that recommended applicant's removal – No merit in contention that charges were brought for ulterior purpose – Disingenuous of applicant to interpret Act and its Regulations to mean that investigators should only investigate what they have been tasked to investigate – Several charges reviewed and set aside – Remaining four charges of misconduct warrant removal of applicant from magistracy – Sufficiently serious to have potential to undermine administration of justice and rule of law – Magistrates Act 90 of 1993, s 13 and reg 26.

REPUBLIC
OF SOUTH AFRICA
IN
THE HIGH COURT OF SOUTH AFRICA
GAUTENG
DIVISION, JOHANNESBURG
Case
Number: 24910/2021
1.
REPORTABLE: No
2.
OF INTEREST TO OTHER JUDGES: No

3.
REVISED: YES
In
the matter between: JUDITH
FREDA VAN SCHALKWYK APPLICANT
and
THE MINISTER OF
JUSTICE AND CONSTITUTIONAL
DEVELOPMENT FIRST
RESPONDENT
THE
MAGISTRATE COMMISSION SECOND
RESPONDENT
ANAND
MAHARAJ
N.O THIRD
RESPONDENT
PARLIAMENT OF THE
REPUBLIC
OF
SOUTH
AFRICA FOURTH
RESPONDENT

JUDGMENT

TWALA J

[1] For the sake of convenience I propose to refer to the parties herein as they were referred to in the main application. Furthermore,

this Court directed that this matter be determined on the papers without an oral hearing, as provided for in the Gauteng Division

Consolidated Directives; re Court Operations during the National State of Disaster issued by the Judge President of this Division on the 18th of September 2020.

[2] The applicant brought this application for leave to appeal against the whole of the judgment and order of this Court handed down electronically on 19 March 2024. The application is opposed by the first to the third respondent.

[3] At the outset, I would like to express my gratitude to both counsels for the applicant and the respondents for the concise heads of argument and submissions made therein which have been more than helpful in determining the issues in this application.

- [4] It is a trite principle of our law that leave to appeal may only be given where the Judge or Judges concerned are of the opinion that the appeal would have a reasonable prospect of success or where there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.[1]
- [5] The grounds for the leave to appeal are succinctly stated in the notice of application for leave to appeal and I do not intend to repeat them in this judgment.
- [6] I am satisfied that I have covered and considered all the issues raised in the application for leave to appeal in my judgment. I am therefore not persuaded by the applicant that there are reasonable prospects of success in this appeal. Put differently, I am of the view that there is no prospect that another Court would come to a different conclusion in this case. Therefore, the application for leave to appeal the judgment falls to be dismissed.

TWALA M L

JUDGE OF THE HIGH COURT,

SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of Hearing:

Written submissions filed 10 May 2024

Date of Judgment:

16 May 2024

Appearances

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And third Respondents: Advocate Timothy Bruinders SC

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This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the order is deemed to be the 16 May 2024.

[1] See section 17 (1)(a)(i) and (ii) of the Superior Courts Act, 10 of 2013

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CASE PAGE https://chat.esheria.ai/case-law/south-africa/unknown-plaintiff-v-unknown-defendant-judicial_review-agpjhc-2024-24910-2021--6a3ea5143b1caa912980c309

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