

SOUTH AFRICA / JUDGMENT

Naledi Local Municipality v Reitum Investments (Pty) Ltd and Others (M259/2022) [2025] ZANWHC 120 (17 July 2025) [2025] ZANWHC 120

COURT

North West High Court, Mafikeng

BEFORE

Makoti

CASE / FILE NUMBER

M259/2022

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IN THE HIGH COURT OF

SOUTH AFRICA

NORTH WEST DIVISION –

MAHIKENG

CASE NO: M259/2022

Reportable: YES / NO

Circulate to Judges: YES
/ NO

Circulate to Magistrates:

YES / NO

Circulate to Regional

Magistrates: YES / NO

In the appeal of: NALEDI
LOCAL MUNICIPALITY
Applicant
and
REITUM
INVESTMENTS (PTY) LTD
First
Respondent
KOTZE
LOUW SWANNEPOEL
Second
Respondent
VALUATION
INDEPENDENT SERVICES CC
Third
Respondent
REGISTRAR
OF DEED
Fourth
Respondent
TSHEPO
MACDONALD BLOEM
Fifth
Respondent

Coram: Makoti AJ

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses.
The date for the hand-down is deemed to be 15 July 2025.

JUDGEMENT

Makoti AJ

Introduction

[1] This is an opposed application for leave to appeal by Naledi Local Municipality (the Municipality). It is aggrieved by the remedies that I granted in the main review judgment. It contends that I misapplied the principles set out in section 172(1)(b) of the Constitution,

1996. I will elaborate on this issue later in this judgment.

[2] It is so that upon hearing the application to review and set aside the decision taken by the Municipality to sell a certain portion of land to the respondent, Reitum Investments (Pty) Ltd (Reitum), I

ruled in favour of the Municipality. I granted a declaratory order to the effect that the sale of the land, Erf 1[...] (Portion of Erf 5[...]) Vryburg, was unlawful.

- [3] I then declined to set aside the sale and formulated an order the terms of which I perceived to be just and equitable. Instead I ordered Reitum to pay the determined value for the land property. This is what irks the Municipality, which contends that I used the wide discretion bestowed on the court injudiciously.

The order upon which leave to appeal is sought

- [4] For convenience sake, I restate only the main orders which I granted as part of my judgment, and they read as follows:

“55.1 ...;

55.2 The First Respondents is ordered to pay an amount of R1 875 000-00 (One Million, Eight Hundred and Seventy-Five Thousand Rand) to Naledi Local Municipality to retain ownership of the property, Erf 1[...] (Portion of Erf 5[...]) Vryburg.”

- [5] Apart from the order mentioned above, the Municipality is aggrieved that I did not award it costs of the litigation. It contends that it has succeeded and ought to have been granted the costs. The parties,

relying on the same authority, are ad idem that the issue of remedy as in this case falls within the ambit of the court’s true discretion.[1] They also make common cause the fact that the question of costs is also not the kind of order that a court on appeal easily interferes

with. I will revisit these points later in this judgment.

Principles for leave to appeal

- [6] Leave to appeal is to be granted if the Court comes to the conclusion that the application would have reasonable prospects of success.[2] In *S v Smith*[3] the Court had an opportunity to answer what constitutes reasonable prospects of success and it came to the conclusion that:

"What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal." (Emphasis added)

[7] The wording of section 17(1)(a)(i) of the Superior Courts Act[4] suggest that leave to appeal may be granted where a court is of the view that the appeal would have reasonable prospects of success. The section has been interpreted as meaning that the phrase ‘would have reasonable prospects of success’ serves to indicate some degree of certainty that the court of appeal would reach a different conclusion prior to the granting of the application for leave to appeal. An applicant faces a higher than it was previously.[5]

[8] This was explained in MEC for Health, Eastern Cape v Mkhitha and Another[6] in which it was held that:

“An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.”

[9] The Municipality, additionally, relies on Pretoria Society of Advocates and Others v Nthai[7] to advance the contention that, if I am not with it in respect of prospects of success, I may still grant it leave to appeal on the basis of the existence of a ‘compelling reason why the appeal should be heard’.

Whether the Municipality has passed the threshold for leave to appeal

[10] I am not with the Municipality on the exercise of the discretion.

[11] However, the Municipality reasons that I failed to take into account the present value of the property when making an order that Reitum should pay the balance of R2 000 000-00 for the land. It contends that the valuation upon which I relied was dated, having been conducted in 2018. This heralds the following questions:

[11.1] Whether the present valuation of the land property was a relevant consideration in comparison the valuation at the time of the transaction? This is important because I did not set aside the sale and the Municipality does not frontally challenge that aspect of my

judgment.

[11.2] If, for whatever reason, the present value is to be considered, does it stand to benefit the Municipality in circumstances where it is accepted that it is the rezoning work or input that was conducted by Reitum that led to the value appreciating?

[12] I perceive these questions as important or compelling enough for a court on appeal to determine. They implicate quantum aspect, whether I should have ordered Reitum to pay a different and possibly higher amount for the land property. I find that there is a compelling reason for the appeal to be heard on this aspect. Thus, I will grant leave to appeal on circumscribed basis.

[13] As for costs, the Municipality's contention is not sound. It has not attained success to be awarded costs. It came to the show quite late, seeking indulgence, which, by itself, carries costs implications. I do not say more, other than to dismiss leave to appeal the costs order in terms of my judgment.

ORDER

[14] I make the following order:

[i] Leave to appeal is granted to the Full Bench of the North West Division of the High only in respect of the question of quantum, that is, whether I exercised my discretion appropriately in ordering Reitum to pay an amount of R1 850 000-00 for the land property;

[ii] Leave to appeal my cost order is dismissed;

[iii] Costs of this application for leave to appeal are in the appeal.

M. Z. MAKOTI

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION

APPEARANCES:

FOR APPLICANT:

ADV MOKUTU SC; with

ADV MORETLWE

MODIBOA ATTORNEYS INC

MAHIKENG

FOR 1ST RESPONDENT: ADV PIENAAR

SYMINGTON DE KOK ATTORNEYS

C/O NIENABER AND WISSING ATT

FOR 1ST RESPONDENT: ADV STEYN

KOTZE LOW SWANNEPOEL ATT

VAN ROOYEN TLHAPI INC.

JUDGMENT

RESERVED: 14 APRIL 2025

JUDGMENT HANDED DOWN: 17 JULY 2025

- [1] Central Energy Fund SOC Ltd and Another v Venus Ray Trade (Pty) Ltd 2022 (5) SA 57 (SCA) at para 43.
- [2] S 17(1) of the Superior Courts Act No. 10 of 2013.
- [3] 2012
- (1) SACR 567 (SCA) 570 at para [7].
- [4] Act 10 of 2013.
- [5] Notshokovu v S (157/15) [2016] ZASCA 112 (7 September 2016).
- [6]
- [2016] ZASCA 176, para 17.
- [7] 2020
- (1) SA 267 (LP) at para 4.
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