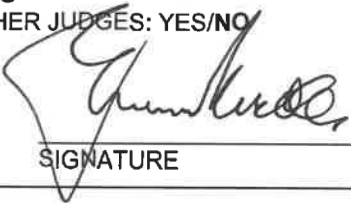




**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**Case No: 2025-090751**

<b>DELETE WHICHEVER IS NOT APPLICABLE</b>	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES
25 AUGUST 2025	
DATE	SIGNATURE

In the matter between:

**AFRIFORUM NPC**

**APPLICANT**

and

**CITY OF TSHWANE METROPOLITAN  
MUNICIPALITY**

**FIRST RESPONDENT**

**THE MUNICIPAL COUNCIL OF THE CITY  
OF TSHWANE METROPOLITAN MUNICIPALITY**

**SECOND RESPONDENT**

**THE EXECUTIVE MAYOR OF THE CITY OF  
TSHWANE METROPOLITAN MUNICIPALITY**

**THIRD RESPONDENT**

**THE MUNICIPAL MANAGER OF THE CITY OF  
TSHWANE METROPOLITAN MUNICIPALITY**

**FOURTH RESPONDENT**

**THE MINISTER OF FINANCE**

**FIFTH RESPONDENT**

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This judgment is made an order of court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court, and is submitted electronically to the parties/their legal representatives by email. This judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or his/her secretary. The date of this order is deemed to be 25 August 2025.

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**JUDGMENT IN THE RESPONDENTS' APPLICATION FOR LEAVE TO APPEAL  
DATED 25 AUGUST 2025**

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**AVVAKOUMIDES, AJ**

**INTRODUCTION**

1. The parties are referred to herein as they were in the main application for ease of reference. The respondents seek leave to appeal against the orders and judgment ("the judgment") delivered by this court on 31 July 2025, which judgment was grammatically revised on 7 August 2025.
2. The applicant opposes the application for leave to appeal on the basis that there are no prospects of success in the intended appeal against the orders and judgment and no prospects of success against the dismissal of the points *in limine* which were not upheld in the main application. The respondents heavily rely on the points *in limine* and further submit that this court granted relief which was not sought in the main application. I will deal with the grounds of appeal later.

### TEST FOR LEAVE TO APPEAL

3. In order to succeed with leave to appeal, the applicants must meet the standard set in section 17(1) of the Superior Courts Act 10 of 2013 ("Superior Act"). It reads thus:

"(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

- (a) (i) the appeal would have a reasonable prospect of success; or
  - (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
- (b) The decision sought on appeal does not fall within the ambit of section 16(2)(a); and
- (c) Where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."

4. It has been held in ***Mont Chevaux Trust (IT 2012/28) v Tina Goosen & 18 Others at para 6<sup>1</sup>*** that this provision has raised the bar for granting leave to appeal. In that case, Bertelsmann J, as he then was, held as follows:

"It is clear that the threshold for granting leave to appeal against the judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a

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<sup>1</sup> Unreported judgment of the Land Claims Court under case no: LCC14R/2014 (3 November 2014); See also Acting National Director of Public Prosecutions v Democratic Alliance In Re: Democratic Alliance v Acting Director of Public Prosecutions and Others [2016] ZAGPPHC 489 at para 25.

different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word 'would' in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against..."

5. The Supreme Court of Appeal ("SCA") had the following to say in ***MEC for Health, Eastern Cape v Mkhita***:<sup>2</sup>

"[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear 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 it should be heard.

[17] 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..."

6. In ***Ramakatsa and Others v African National Congress and Another***<sup>3</sup> the SCA explained that:

"[10]...the test of reasonable prospects of success postulates 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 a trial court. In other words, the appellants in this matter must convince the Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist."

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<sup>2</sup> [2016] ZASCA 176

<sup>3</sup> (724/2019) [2021] ZASCA 31 (31 March 2021)

7. The respondents have to show on the basis set out above any reasonable prospects of success in the appeal or compelling reason(s) as to why the appeal should be heard.

### **GROUND OF APPEAL**

8. The respondents' grounds of appeal are mainly predicated on the following:
  - 8.1 That this court erred in finding that the applicant has the necessary standing to launch the application initially. I disagree. The applicant was at pains to show that it acted in the public interest and aptly demonstrated how courts have deal with the applicants' standing in the past. I thus stand by my orders and reasons on the issue of the applicant's standing and the authorities relied on by the applicant.
  - 8.2 On the ground of subsidiarity, I respectfully must express my dismay at how the City misunderstands the principle and incorrectly raises this ground. The City contends that PAJA is applicable to this application whereas in fact, the entire basis for the application was anchored on the principle of legality, the City's disregard thereof, and its failure to abide by and follow the applicable legislation.
  - 8.3 The respondents aver that this court erred by interfering with draft By-Laws and placed reliance on *Glenister v President of RSA and Others* 2009 (1) SA 287 (CC). In my view, this ground is misplaced and ignores the fact that the respondents firmly anchored their case with reliance upon a 2016 By-Law and tariff, the latter which it did not produce in the court papers.

- 8.4 It again begs the question why the City relied on a 2018 tariff policy whilst maintaining that the source of power was the 2016 By Law.
- 8.5 The next ground is somewhat perplexing in that the City argues that the court erred in not specifically defining whether the intended levy is a tax or levy. If the premise upon which the City contends that it can levy the public for services who do not receive such service or could take up such service if they so choose to, then by implication it must follow that the intended levy is nothing more than a tax. In suggesting that the court found that the 2016 By Law did not exist, the respondents are mischievous. The court expressly stated that the Tariff policy relied upon by the City was not before the court. It is common cause that the 2016 By-Law formed part of the papers.
- 8.6 The next ground to consider was the relief granted in respect of the publication of the By-Law 2025. The respondents aver that the court erred in granting relief not sought by the applicant in the second line of paragraph 4 of the judgment. This ground must fail because the court has a wide discretion in cases where additional relief should be granted when dealing with breach of the legality principle by an organ of state. See: *Democratic Alliance v City of Johannesburg and Others* (052407/2024) [2025] ZAGPJHC 1 (2 January 2025).
- 8.7 The relief granted is in line with the additional relief granted and inextricably linked and section 172 (1) (b) of the Constitution empowers a court to order remedial relief. The consequential relief is just and equitable, given the facts of this case. The criticism by the



respondents against the judgment is that the court was obliged to state the reasons for arriving at the additional relief granted. The additional relief flows from the advertisement of the tariff policy and/or resolution and despite the court enquiring from the City's legal representatives as to the status of the advertisement during argument, there was nothing forthcoming despite an undertaking to apprise the court. The City's submissions in this regard are misplaced. The ground of appeal must therefore fail as well.

8.8 The next ground is that the court erred in granting the relief it did in paragraph 5 of the order to the effect that the City must cease charging account holders with the levy and reimburse each account holder it has so charged and billed. The criticism is that the court did not identify which account holders and made a blanket order which order goes beyond the identified group. Again, the submissions are misplaced and hold no merit. I stand by my orders and reasoning contained in the judgment in this regard.

8.9 Lastly, the City contends that it has been deprived of its section 34 right to have its dispute with the applicant adjudicated. I find this ground of appeal most perplexing because the City could and should have obeyed the legislation applicable to it and followed a lawful process. Instead, it delved into a meritless course of action which it knew was bound to fail.

8.10 The City knew long before the application was launched when the DA, the applicant, SAPOA and others lodged complaints and suggested solutions. The City complains that it did not have a fair hearing

because the court should have analysed every fact and given reasons on every fact and issue. To the best of my knowledge the court did just that. The City's opposition of the application on the basis it argued and, judging by the papers it filed, show that such opposition was unmeritorious.

9. I have no doubt that the City, under different circumstances, and with due regard to, and in compliance with, legislation binding upon it, may come up with different guidelines and plans to get its house in order, however, in this application, it showed its true intentions (to raise its revenue of approximately 540 million rand over a period of one year, unlawfully), and was found wanting on the principle of legality.

## **CONCLUSION**

10. I have considered all the submissions made by both parties and have regard to the head of argument filed. I thus find no merit in the application for leave to appeal and the respondents have not met the required threshold set in terms of section 17(1) of the Superior Courts Act that the appeal would have a reasonable prospect of success. I further find that the respondents have also not demonstrated the existence of compelling reasons as to why the appeal should be heard. I find that the application for leave to appeal, and the submissions made on behalf of the applicants were similarly without merit and clearly avoided the legality issue. An organ of state is obliged to abide by the laws governing it. A punitive order against the City is warranted as a result.



11. Consequently, the application for leave to appeal is dismissed with costs on the scale as between attorney and client, such costs to include the employment of senior counsel.



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**G. T. AVVAKOUMIDES, AJ**

Acting Judge of the High Court

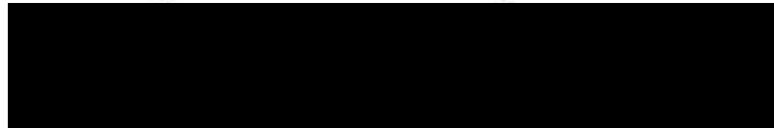
Representation for the parties:

For the Applicant: Counsel for the Applicant

E Botha SC



Instructed by: Hurter and Spies

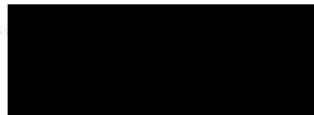


For Respondents: Counsel for First to Fourth Respondents

ZZ Matebese SC (substituting of M Dewrance SC)



M Manala



Instructed by: Mahumani Incorporated

