



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 22 June 2023

Status: Immediate

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City of Tshwane Metropolitan Municipality v Vresthena (Pty) Ltd & Others (Case no 1124/2022) [2023] ZASCA 104 (22 June 2023)

Today the Supreme Court of Appeal (SCA) struck a matter from the roll with costs including costs of two counsel.

The matter emanated from the full court of the Gauteng Division of the High Court, Pretoria (the full court) with the issue before the SCA being whether s 18(4)(ii) of the Superior Court Act 10 of 2013 (the Act) allows for a second automatic right to appeal to the 'next highest court' under s 18(4) of the Act, against an order granted under s 18(3) of the Act, with further appeals being possible.

The first respondent Vresthena (Pty) Ltd (Vresthena), is the owner of six units in the Sectional Title Scheme known as Zambesi Retail Park, which is a shopping centre. Vresthena leased its properties to different businesses in the scheme. These properties shared a single electricity supply point. The appellant, the City of Tshwane Metropolitan Municipality (the Municipality), provides electricity to these properties through the Body Corporate of Zambesi Retail Park. The Body Corporate has been dysfunctional from its inception. On 28 March 2022, the Municipality issued disconnection notices to the tenants and occupiers of the scheme. These notices were given because the tenants and occupiers had failed to pay for electricity and other services. As a result, the electricity and water services were disconnected on 13 April 2022.

Vresthena filed an urgent application requesting the Gauteng Division of the High Court, Pretoria (the high court) to compel the Municipality to accept and review its application for a separate electricity connection for the tenants. Additionally, Vresthena sought an order to restore its electricity and water supply. On 16 June 2022, the high court granted an interim order on an urgent basis, ordering the Municipality to restore electricity and water supply to the property within 14 (fourteen) days of the order. The high court further authorised Vresthena to instruct an electrician to reconnect the electricity, should the Municipality fail to comply with the order.

On 6 July 2022, the Municipality delivered an application for leave to appeal, subsequently on 23 August 2022, Vresthena filed an application under s 18(3) of the Act. Vresthena sought a declaratory order stating that the order issued by the high court on 16 June 2022 should not be suspended while the Municipality's application for leave to appeal is being considered.

On 28 September 2022, the high court granted the Municipality leave to appeal the judgment granted on 16 June 2022. The high court also ordered that the order given on 16 June 2022, should be put into effect and carried out while the appeal decision is pending. The Municipality exercised its automatic right of appeal under s 18(4) by filing an appeal to the full court against the execution order. On 10 November 2022, the full court rejected the s 18(4) appeal and issued an order allowing the main order to be implemented while the appeal decision is pending. On 22 November 2022, the Municipality filed a notice of appeal in the SCA, asserting that the phrase 'next highest court' in s 18(4) of the Act should be interpreted more broadly to include more than one court of appeal. Vresthena, on the other hand, contended that s 18(4) of the Act allows for only one appeal to the court immediately above the lower court, and therefore, the Municipality's notice of appeal is irregular and as a result void.

In addressing the issue on appeal, the SCA held that s 18(4) of the Act establishes an extraordinary provision that establishes a unique category of appeals, specifically designed to be utilised solely for orders made under s 18(3) of the Act. It further held that this provision carves out a specific and extraordinary avenue for appeals in exceptional circumstances, especially when it can be proved that irreparable harm would follow if the operation and execution of a decision is suspended.

The SCA further reasoned that the language of s 18(4)(ii) of the Act is explicit and straightforward in that it states that a party who is aggrieved has an automatic right of appeal to the 'next highest court' and that the use of the word 'an' and 'court' in s 18(4)(ii) of the Act indicates a meaning in the singular rather than allowing for multiple appeals. The clear wording of the provision does not warrant a wider interpretation and does not conflict with constitutional principles. Consequently, the SCA reasoned that the remedy of reading down the section cannot be employed to endorse the Municipality's interpretation and that it cannot be said that a court's general appellate jurisdiction automatically extends to the appealability of all justiciable rights.

In the result, the SCA concluded that the notice of appeal dated 22 November 2022 delivered by the Municipality is irregular and void and no proper appeal served before the SCA. Consequently, the matter was struck from the roll with costs, including the costs of two counsel where so employed.

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