REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION, JOHANNESBURG

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

.....2 June 2022..... .....

DATE SIGNATURE

Case Number: 22/12774

In the matter between:

MAMODUPI MOHLALA MULAUDZI	Applicant
and	
MINISTER OF HUMAN SETTLEMENTS	1st Respondent
PROPERTY PRACTIONERS REGULATORY AUTHORITY	2nd Respondent
THE BOARD OF THE AUTHORITY	3rd Respondent
STEVEN PIET NGUBENI (CHAIRPERSON)	4th Respondent
SHAHEED PETERS	5th Respondent
PAMELA NONKULULEKO MAKHUBELA	6th Respondent
PAM EATRICE SNYMAN	7th Respondent
NOKULUNGA MAKOPO	8th Respondent
MXOLISI SPHAMANDHLA NENE	9th Respondent

TERRY KEVIN JOHNSON	10th Respondent
THUTHUKA SIPHUMEZILE SONGELWA	11th Respondent
THOKOZANI RADEBE	12th Respondent
THATO RAMAILI	13th Respondent
VERUSHKA GILBERT	14thRespondent
JOHAN VAN DER WALT	15th Respondent

JUDGMENT

[Leave to Appeal]

SIWENDU J

[1] The applicant seeks the leave of the court to appeal against the Court's Judgement handed on 22 April 2022.

[2] Section 17 of the Superior Courts Act 10 of 2013 (the Superior Courts Act) governs the applications for leave to appeal. It provides as follows:

'(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.'

[3] It is by now trite that the bar to test under section 17 (a) (ii) whether a potential appeal could succeed was raised and that except in extraordinary cases, leave may be granted only if another court '*would*' come to the conclusion that the appeal had

merit. It has been held that the use of the word "would" in the section indicates a measure of certainty that another court will differ from the judgment appealed against.[1]

[4] Accordingly, the Applicant through her newly appointed Counsel Mr Katz SC brings her grounds for appeal under the ambit of Section 17(a)(ii) on account that there are compelling reasons why the appeal should be heard by another court. The contention is that the judgment creates a precedent on executive's power to act on legislation that has not commenced. The judgment has implications on a range of issues affecting property practitioners on a daily basis. The latter submission is a sweeping one. The Court was not apprised of these issues and they did not form a part of the applicant's case.

[5] It is said that the Court should have found that the Minister could only have appointed the Board of the Authority (Board) in terms of the Property Practitioners Act 22 of 2019 (PPA) once the Act commenced on 1 February 2022. The Minister was not empowered to appoint the Board on 26 November 2021. Minister acted unlawfully.

[6] It is also said the court erred in its interpretation and application of the provisions in section 14 of the Interpretation Act 33 of 1957. The point pivots on considerations of *"necessity"* in the provision. Mr Katz contends that it was not necessary for the Minister to appoint the Board.

[7] The argument is that Section 75 the Act provides a transitional arrangement in that the pre-existing Board (EAAB) under the Estate Agents Act 112 of 1976 (EAA) becomes the Board of the Property Practitioners Regulatory Authority. It is said the section ensures that there is continuity in the functioning of the Authority as the Board appointed under the EAA becomes the Board of the Authority under the PPA.

[8] Linked to the above, is the contention that to the extent that a decision to terminate the EAAB exists independently from the decision to appoint the Board, the court should have found that the Minister had no authority under the EAA to terminate

[1] See South African Breweries (Pty) Ltd v The Commissioner of the South African Revenue Services [2017] ZAGPPHC 340 (28 March 2017) para 5, in which the court cited with approval the following passage from Mont Chevaux Trust v Goosen 2014 JDR 2325 (LCC) para 6:

the existing EAAB. Any purported decision to terminate the EAAB is invalid and unlawful.

[9] I have carefully considered Section 75 raised by the applicant. As I understand the freshly raised point advanced on her behalf; Section 75 forms the basis on which the question of *"necessity"* in section 14 of the Interpretation Act is to be evaluated. Section 75 reads thus:

(1) Upon the commencement of this Act—

(a) the juristic person known as the Estate Agency Affairs Board established by section 2 of the Estate Agency Affairs Act, and any committee of the Estate Agency Affairs Board appointed in terms of that Act, is hereby disestablished;

(b) the members of the Estate Agents Affairs Board in office immediately before this Act takes effect, become members of the Property Practitioners Board, and must be regarded as having been appointed to the Property Practitioners Board in terms of section 7;

(c) the members contemplated in paragraph (b) hold office for the unexpired period for which such members have been appointed as members of the Estate Agents Affairs Board, as at the date of such members' assumption of office in the Property Practitioners Board in terms of paragraph (b);

[10] I agree that section 75 (1) (b) points to the continuity the previous Board appointed under the Estate Agency Affairs Act. However, Section 75 (1)(c) limits Section 75 (1) (b), to the extent that it limits the period of a Board Member to the *"unexpired period*" of their tenure.

[11] I have also considered a reference to a letter appointing the previous Board which Mr Katz contends was the proper transition Board catered for by the Section 75. It reads:

"I have resolved to appoint you as a member of the transitional Board with effect from 6 Jul 2019 until the Property Practitioners Regulatory [Authority] PPRA comes into effect.

[12] The implication of the letter is that the term of the previous Board would have ended on 1 February 2022.

[13] There are difficulties with the newly raised question of *"necessity*" on the facts before me. Firstly, it is not a matter raised by the previous Board but by the applicant. Other than the question of legality pertaining to the appointment of the new Board, she is not directly affected by the *"non- extension"* of the tenure previous Board from 26 November 2021 to 1 February 2022. She has no direct interest in that issue.

[14] Secondly, the court is not armed with facts or submissions about the criteria or standard to be applied to evaluate *"necessity."* I nevertheless accept, it cannot be based on the applicant's subjective view. In addition, even though on the reading a determination appears to be based on an assessment by the functionary, there can be no doubt that in doing do, the Minister must act in a rational manner. This legal requirement which keeps her decisions in check.

[15] The Third concern about *"necessity"* is that a statement by the Minister on 1 February 2022 attached to her affidavit points to a broader focus of the Authority within the department of Human Settlement. There is in addition a reference to a separation of the PPRA from the Water and Sanitation. A reading of the PPRA indicates a wider regulatory remit than was previously the case under the EAAA Act.

[16] As pointed in the judgment sought to be appealed, when account is taken of (1) the period from 26 November 2021 and 1 February 2022, (2) the representations made about engagements in anticipation of the 1 February 2022 and (3) the factors in paragraph 14 above, the conclusion which points to the bringing the PPRA into operation cannot be faulted. The Minister exercised her power lawfully in this instance.

[17] I have also considered the arguments advance by Mr Mosam SC for the second and third respondents. The points raised do not materially differ from those raised at the hearing. In addition to my finding above, I agree with Mr Mosam that at the heart of the dispute is the suspension of the applicant by the Board. The "true character" of her case is to reverse her suspension by the Board.

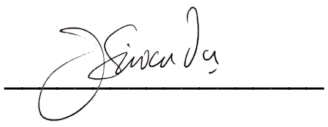
[18] In this appeal, she makes an about turn on a just and equitable relief, seeking a reversal of the decision to suspend her on account of "prejudice", an issue which was not properly raised or ventilated at the hearing, and potentially – the subject of the jurisdiction of another court. I agree further that an invalidation of the appointment of the Board would not render all its decisions invalid.

[19] The judgment does not set a new precedent as argued by Mr Katz. Even though the case implicates issue of legality and the exercise of statutory power, it there is existing precedent on the issues. The applicant's suspension does not raise to a constitutional issue. There are no compelling reasons why the matter should be heard by another court.

Accordingly,

I make the following order:

a. The application for leave to appeal is dismissed.
b. The applicant is ordered to pay the costs.
c. The cost order in b. above includes the costs of senior counsel.



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JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10h00 on 2 June 2022.

Heard on: 23 May 2022

Delivered on: 2 June 2022

For the Applicant:	Mr Katz S.C
	Eshed Cohen
With him:	Annelene M van den Heever
Instructed by:	
For the First Respondent:	Adv SB Nhlapo
	Adv MJS Langa
Instructed by:	The State Attorney
For the 2nd to 3rd	
Respondents:	Mr Afzal Mosam SC
With him:	Obakeng Mokgotho and

Suhail Mohammed (pupil)

Instructed by: De Swardt Myambo Hlahla Attorneys