IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: 4755/2022

In the matter between:

HENDRIK PETRUS CILLIERS First Applicant

PAUL ERNEST MCMENAMIN Second Applicant

IZAK JACOBUS BOOYSEN Third Applicant

JOHANNES VENTER Fourth Applicant

And

KLEINFONTEIN AANDELEBLOK (PTY) LTD First Respondent

(Registration number: 2018/209461/07)

CITY OF TSHWANE METROPOLITAN MUNICIPALITY Second Respondent

APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE that the Applicants intend to apply for leave to appeal, on a date to be allocated, against the whole of the judgment and order specifically under case number: 4755/2022 granted by the Honourable Justice Vorster AJ on the 2nd of August 2024,

TAKE NOTICE FURTHER that the Applicants will apply for leave to appeal to the Supreme Court of Appeal, alternatively the full court of the above Division of the High Court, on the following grounds:

1. The Court *a quo* erred in not granting the relief sought by the Applicants in the Notice of Motion.

2. The Court *a quo* ought to have granted an interdict against the First Respondent, interdicting it from commencing or continuing with activities that are manifestly unlawful.

3. The Court *a quo* should have granted a final interdict preventing the First Respondent from acting unlawfully until such time as the First Respondent has procure the necessary authorisations and approvals.

4. Accordingly, the Court *a quo* erred in only granting an order against the Second Respondent ("the Municipality") in circumstances where an interdict against the First Respondent was justified.

5. In circumstances where the First Respondent acts unlawfully (in the absence of the necessary approvals), the Court *a quo* should have found that it has no discretion whatsoever but to grant the interdictory relief as is sought by the Applicants.

6. The aforesaid is especially so in circumstances where the First Respondent conceded that the necessary approvals are not in place.

7. Accordingly, the Court *a quo* could have, on the facts that were common cause, granted an interdict against the First Respondent.

8. The Court *a quo*, after correctly finding that none of the legislative provisions dealing with land use rights have been complied with and thereafter correctly finding that the provisions of the National Building Regulations and Building Standards Act had not been complied with, should have found that the aforesaid constitutes offences and that the Court *a quo*, in the circumstances, has no discretion but to interdict the First Respondent from so acting.

9. The Court *a quo* should have found that a deliberate flouting of the law should not be countenanced.

10. The Court *a quo* erred in not finding that the Applicants have a clear right to seek interdictory relief against the First Respondent on the grounds set out in the Founding Affidavit.

11. It was explained in the Founding Affidavit why the Applicants are detrimentally impacted upon and has a clear right to prevent the First Respondent from continuing with its unlawful actions to the detriment of the Applicants.

12. The Court *a quo* should thus have found that the Applicants have demonstrated a clear right worthy of protection and that such requirement has been satisfied.

13. The Court *a quo* furthermore erred in seemingly finding that the Applicants had an alternative remedy available that militates against the granting of a final interdict.

14. The Court *a quo* should have found that the interdictory relief granted against the Municipality does not constitute a satisfactory alternative remedy to the final interdict sought by the Applicants against the First Respondent.

15. The Court *a quo* also erred in its finding on the *"clean hands"* doctrine, as the absence of unclean hands was clearly demonstrated in the papers.

16. There is nothing in the papers that could possibly have justified a finding by the Court *a quo* of the Applicants' hands being *"not merely 'unclean' but dripping with moral turpitude"*.

17. The Court *a quo* should have found that it is abundantly clear from the papers that the Applicants were not informed of the First Respondent's unlawful activities when they took occupation in Kleinfontein.

18. The Court *a quo* thus ought to have granted the interdictory relief as sought in the Notice of Motion against both the First Respondent as well as the Municipality and should have ordered the First Respondent to pay the Applicants' costs on the scale as between attorney and client.

19. As aforesaid, leave to appeal is sought to the Supreme Court of Appeal and in the alternatively, to the full court of the above Division of the High Court.

20. Leave to appeal is sought on the basis that:

20.1. There are reasonable prospects of success on appeal; and

20.2. There also exist compelling reasons why leave to appeal should be granted. The reasoning of the Court *a quo* contradicts what has been found in other judgments and same justifies a reconsideration thereof on appeal. Furthermore, a reconsideration would also serve a public interest, and it would be to the benefit of the occupiers of Kleinfontein to have the matter reconsidered by the Supreme Court of Appeal.

SIGNED AT PRETORIA ON THIS THE __ DAY OF AUGUST 2024

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TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
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AND TO: **MJ LOMBARD**
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