



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)(i) 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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