



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE

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

Date: **27th February 2018** Signature: _____

CASE NO: 2012/30063

In the matter between:

SADER: DR SURIAYA

Plaintiff

and

PICK 'N PAY RETAILERS (PTY) LIMITED t/a

PICK 'N PAY – NORWOOD HYPER

First Defendant

NAKASANI HYGIENE SERVICES (PTY) LIMITED

Second Defendant

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

ADAMS J:

[1]. I shall refer to the parties as referred to in the main action. The plaintiff is the applicant in this application for leave to appeal. She applies for leave to appeal against the whole of the judgment and the order, as well as the reasons therefor, which I granted on the 28th of October 2016. In terms of my said order I had dismissed the plaintiff's claim for delictual damages against both the first and the second defendants.

[2]. In her notice of application for leave to appeal the plaintiff had indicated that she does not seek leave to appeal against my order relating to the second defendant. In my view therefore the order to the effect that the plaintiff's claim against the second defendant is dismissed with cost stands. There is no need for me deal with that part of the judgment and the order dealing with the second defendant.

[3]. The application for leave to appeal is in the main against my factual findings. The plaintiff submits that the court *a quo* erred in its finding that the plaintiff had failed to discharge the onus resting on her to prove her case. I ought to have found, so it was submitted on behalf of the plaintiff, that the first defendant and / or its employees were negligent in that they allowed the floor to be wet, which caused her to slip and fall.

[4]. Nothing new has been raised by the plaintiff in this application for leave to appeal. In my original judgment, I have dealt with all the issues raised in this application for leave to appeal and it is not necessary to repeat those in full. Suffice to restate what I said in my judgment, that is that if regard is had to the evidence as a whole, the plaintiff has not proven on a balance of probabilities that there was water on the floor which caused her to slip.

[5]. The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another court may come to a different conclusion to that reached by me in my judgment. This approach has now been codified in s 17(1)(a)(i) of the Superior Courts Act 10 of 2013, which came into operation on the 23rd of August 2013, and which provides that leave to appeal may only be given where the judge or judges concerned are of the opinion that *'the appeal would have a reasonable prospect of success'*.

[6]. In *Mont Chevaux Trust v Tina Goosen*, LCC 14R/2014 (unreported), the Land Claims Court held (in an *obiter dictum*) that the wording of this subsection raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. I agree with that view.

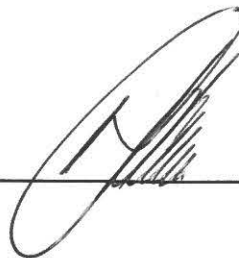
[7]. I am not persuaded that the issues raised by the plaintiff in her application for leave to appeal are issues in respect of which another court is likely to reach different conclusions. I am therefore of the view that there are no reasonable prospect of another court coming to different conclusions, be they on aspects of fact or law, to the ones reached by me. The appeal does not, in my judgment, have a reasonable prospect of success.

[8]. Leave to appeal should therefore be refused.

Order

In the circumstances I make the following order:

The plaintiff's application for leave to appeal is dismissed with costs.

**L ADAMS***Judge of the High Court
Gauteng Local Division, Johannesburg*

HEARD ON:	27 th February 2018
JUDGMENT DATE:	27 th February 2018
FOR THE PLAINTIFF:	Adv I J Zidel SC
INSTRUCTED BY:	Saders Attorneys
FOR THE FIRST DEFENDANT:	Adv E J Ferreira
INSTRUCTED BY:	Botha & Sutherland Attorneys
FOR THE SECOND DEFENDANT:	Adv L Grenfell
INSTRUCTED BY:	Shannon Little Attorneys