



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 4209/2022

CASE NO: 047850/2023

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

12/06/23

Date

ML TWALA

In the matter between:

NKOSINATHI SHEZI

APPLICANT

And

LERATO VANNESSA LEBETHE

FIRST RESPONDENT

JUDGMENT

Delivered: This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the order is deemed to be the 12th of June 2023.

Summary: *Superior Courts Act, 10 of 2013 - Leave to appeal in terms of section 17 of the Act – requirement of reasonable prospects of success – Section 18(3) of the Act – implementation of a Court order pending an appeal – requirements restated – order granted with costs.*

TWALA J

- [1] There are two applications before this Court with two different case numbers: first under case number 4209/2022 is an application by the first respondent wherein she sought leave to appeal the judgment and order of this Court handed down on the 24th of April 2023 giving her 30 days to vacate the property of the applicant, and secondly under case number 047850/2023, is an application launched by the applicant in terms of section 18(3) of the Superior Courts Act, 10 of 2013 (*"the Act"*) wherein an order is sought to give effect

to the judgment and order of this Court before the finalisation of the appeal process. Both applications are opposed by the respective respondents.

- [2] It is convenient for the Court to deal with both cases under this one judgment since the application to implement the Court order relates to the judgment being appealed against. For the sake of convenience, I propose to refer to the parties as they were referred to in the main application, ie. as they appear on the heading of this judgment.
- [3] It is a trite principle of our law 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 or where there is some other compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration. (*See section 17 (1)(a)(i) and (ii) of the Superior Courts Act, 10 of 2013*).
- [4] The grounds for the leave to appeal are succinctly stated in the notice of application for leave to appeal and I do not intend to repeat them in this judgment. Furthermore, I am grateful to both counsel for the parties for the submissions made during the hearing of this application for leave to appeal.
- [5] I am satisfied that I have covered and considered all the issues raised in the application for leave to appeal in my judgment. I am therefore of the view that there are no reasonable prospects of success in this appeal. Put differently, I am of the view that there is no prospect that another Court may come to a different conclusion in this case. Therefore, the application for leave to appeal the judgment falls to be dismissed with costs.

- [6] I now turn to deal with the application sought to implement the Court order appealed against before finalisation of the appeal process in terms of s 18(3) of the Act. Section 18 of the Act provides the following:

“Section 18 Suspension of decision pending appeal

(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

(2)

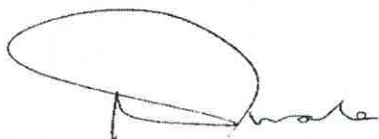
(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court so orders.

(4) ”

- [7] As it appears in the preceding paragraphs that the application for leave to appeal has been dismissed with costs, there is therefore no application or appeal which is pending which has the effect of suspending the operation of the Court order granted on the 24th of April 2023. Put in another way, there is no hinderance to the implementation and execution of the Court order of the 24th of April 2023 as contemplated in s18 in this case. Therefore, the application in terms of section 18(3) is unnecessary and falls to be struck from the roll with no order as to costs.

[8] In the circumstances, I make the following order:

1. The application for leave to appeal is dismissed with costs.
2. The application in terms of section 18(3) is struck from the roll with no order as to costs.



TWALA M L

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of Hearing: 8th of June 2023

Date of Judgment: 12th of June 2023

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