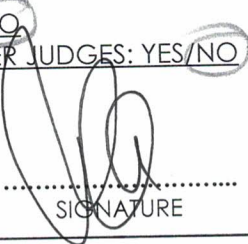


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 37732/2021

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
17/7/2023 DATE  SIGNATURE	

In the matter between:

JOHN ZAZI DLADLA

First Applicant

SESHUPO THABISO MAGEZA

Second Applicant

**SAKHIKUSASA CONSTRUCTION AND
PROJECTS (PTY) LTD**

Third Applicant

And

CNG HOLIDNGS (PTY) LTD

First Respondent

XOLILE LENNOX SIZANI

Second Respondent

MUSA HLONGWA

Third Respondent

ALETA JOVNER

Fourth Respondent

THANDI HILLIE

Fifth Respondent

STEVEN LEE ROTHMAN

Sixth Respondent

MARK OTTO

Seventh Respondent

JUDGMENT IN RESPECT OF
APPLICATION FOR LEAVE TO APPEAL

MAKUME, J:

- [1] On the 6th August 2021 the Applicant launched an application in which they sought an order calling upon the Respondent to show cause why the decision of the Board of the first Respondent taken on 16th July 2021 should not be reviewed and set aside. That decision concerned the dismissal of the first and second Applicants as Executor Director of the first Respondent.
- [2] On the 20th June 2022 the Applicants filed an interlocutory application in terms of Rule 7(1) of the Rules of Court in which they seek an order that the Eighth Respondent have not been authorised to represent the first Respondent.
- [3] On the 31st January 2023 I dismissed the interlocutory application with costs which shall include costs of two Counsel wherever employed.
- [4] The Applicants now seek leave to appeal against that interlocutory ruling. It is opposed by the first to seventh Respondents.
- [5] The Applicants main ground of appeal is that this Court incorrectly interpreted clause 11.1 of the Memorandum of Incorporation of the Company.
- [6] The test applicable in determining whether or not leave to appeal should or should not be granted was clearly set out by Bertelsman J in the matter of **The Mount Chevaux Trust v Tina Goosen & 18 Others [2014] JDR 2325 (LCC)** at paragraph 6 wherein the following was said:

“It is clear that the threshold for granting leave to appeal against a judgement of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another Court might come to a different conclusion, See: **Van Heerden v Cronwright & Others 1985 (2) SA 342 (T) at 343 H.**

- [7] I do not intend to traverse the content of my judgement and the reasons therein save to say that the purpose behind the interlocutory application was to find that the eighth Respondent had no authority to act for the first Respondent because the decision to appoint them as attorneys of record was passed at an improperly constituted board meeting.
- [8] I made reference and relied on the provisions of Section 66 (11) of the Companies Act and made a finding that even if the Board was not properly constituted (which is not admitted) the decision to appoint the eighth Respondent remains valid.
- [9] There are no reasonable prospects that the appeal would succeed. The Applicants have failed to set out the proper grounds on which they rely on and on which they allege there are reasonable prospects of success.
- [10] In the result I make the following order:

ORDER

1. The Application for Leave to Appeal is dismissed.
2. The Applicant is ordered to pay the Respondent taxed party and party costs including the costs of two Counsel.

Dated at Johannesburg on this day of July 2023



M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances:

DATE OF HEARING	:	21 JUNE 2023
DATE OF JUDGMENT	:	17 JULY 2023
FOR APPLICANT	:	ADV BERLOWITZ
INSTRUCTED BY	:	MESSRS AARONS ATTORNEYS INC.
FOR 1 ST TO 8 TH RESPONDENTS:		ADV CARRIM
INSTRUCTED BY	:	SHAHEEM SAMSODIEN ATTORNEYS
4 TH , 5 TH & 11 TH RESPONDENTS	:	ADV COWLEY
	:	ON WATCHING BRIEF