

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2016/23508

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 15/1/2024

MOKOSE SNI

In the matter between:

D-KON DEVELOPMENT CC

Plaintiff

and

MJ NWEDAMUTSWU N.O.

1st Defendant

TS NWEDAMUTSWU N.O.

2nd Defendant

LEAVE TO APPEAL - JUDGMENT

MOKOSE J

[1] The first and second defendants (hereinafter referred to as "the defendants") have applied for leave to appeal to the Supreme Court of Appeal, alternatively, the Full Court of this Division against the whole judgment and order I delivered on 22 June 2023 under Case No. 23508/2016 where an order for the application sought was dismissed with costs.

[2] The defendants seek leave to appeal on several grounds as stated in their application for leave to appeal. Counsel for the respondents addressed the court on the salient points raised in the application. These points were opposed by counsel for the plaintiff on the grounds that I have reasoned out well in my judgment.

[3] Leave to appeal may be granted where a judge is of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. In the matter of *Caratco (Pty) Limited v Independent Advisory (Pty) Limited*¹ it was pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reasons would include an important point of law or an issue of public importance that will have an effect on future disputes in our courts. The court also emphasised that the merits remain vitally important and are often decisive.

[4] The test laid down in Section 17 of the Act is now a subjective one and no longer an objective test. There must be a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.² The court held in the case of *The Mont Chevaux Trust v Tina Goosen & 18 Others (supra)* that:

"It is clear that the threshold for granting leave to appeal against a judgment 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 Cornwright & Others 1985 (2) SA 342 (T) at 343H. the use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against."

[5] I had dealt in depth with all the issues raised in the application for leave to appeal in my judgement. After listening to submissions by both counsel for the first and second defendants and counsel for the plaintiff and after reading the application for leave to appeal, I am of the view that there are no prospects that another court would come to a different conclusion.

[6] In the premises, the following order is granted:

¹ 2020 (5) SA 35 (SCA)

² The Mont Cheveaux Trust (IT2012/28) v Tina Goosen & 18 Others 2014 JDR 2325 at para [6]

The application for leave to appeal is dismissed with costs.

MOKOSE J

15 January 2024