

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

CASE NO: 34660/2009

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED.
2011-09-23
DATE SIGNATURE

23/9/2011

In the matter between:

DHAYALAN CHOCKANATHAN CHETTY

Applicant

and

ITALTILE CERAMICS LTD

Respondent

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

MAKGOKA, J:

[1] The unsuccessful defendant in the trial seeks leave to appeal against the whole of the judgment of this court delivered on 13 July 2011. The application is opposed by the successful plaintiff. The grounds for the application are fully set out in the notice of application for leave to appeal dated 1 August 2011, and it is therefore not necessary to regurgitate them here.

[2] The test applicable to an application such as the present, is trite and well settled, namely whether there are reasonable prospects that another court may come to a different conclusion. After a careful and dispassionate regard to the judgment, the grounds of appeal, as well as the oral submissions made by counsel for the parties, I am persuaded that there are indeed reasonable prospects that another court might arrive to a different conclusion to mine. I am therefore inclined to grant leave to appeal.

[3] Counsel were *ad idem* that in the event I grant leave, it should be to the Supreme Court of Appeal (the SCA). I agree. The cause of action and the question of law involved here are largely unexplored, as to merit the attention of the SCA.

[4] In the result I make the following order:

1. The applicant (DC Chetty) is granted leave to appeal to the Supreme Court of Appeal against the whole judgment and orders of this court delivered on 13 July 2011.
2. Costs of this application are costs in the appeal.


T M MAKGOKA
JUDGE OF THE HIGH COURT