



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

Case No: 11889/2021

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

[REDACTED]

SIGNATURE

.....12 FEBRUARY 2024.....

DATE

In the matter between:

KGANKI FRANCE DWANE

First Applicant

BAMAKETSE SURPRISE BATLENG

Second Applicant

and

MINISTER OF STATE SECURITY AGENCY

First Respondent

**ACTING DIRECTOR GENERAL STATE SECURITY
AGENCY**

Second Respondent

ADVOCATE S.J. COETZEE

Third Respondent

JUDGMENT

RETIEF J

[1] The First and Second Applicant [Applicants] apply for leave to appeal, as confirmed in argument, only to the Full Court of this Division in respect of the whole Judgment and order handed down on the 16 January 2023. This is notwithstanding the request in their application for leave to appeal which also refers to the Supreme Court of Appeal.

[2] The Applicants request leave to amended the application before this Court, such amendment for consideration, is dated 23 September 2023 in which the correct spelling of my surname is requested. Leave is to be granted. No further procedural issues arising. The Applicants raise 8 (eight) grounds which include the cost order [collectively: grounds].

[3] In argument, the thrust of the Applicants' request for leave centres around grounds 1 to 4. These grounds when read together all appear to deal with the Court's reasoning and consequences when it dismissed the Applicant's point *in limine*. The point *in limine* was an authority point, the authority to oppose the review application and the authority of the deponent of the founding papers to depose to evidence relating to the subject matter of the review.

[4] The aspect of authority was extensively dealt with in the judgment, the Applicants' Counsel in argument did not raise any other point not already considered for further consideration which, may in any way alter the finding. In fact, Counsel conceded that the Court, in coming to any finding of authority, must have regard to the Applicants' replying affidavit. The concession significantly limiting the potency of the grounds 1 and 2 in which the Applicants contend that the Court erred in not dealing with the application on an unopposed basis. In consequence these grounds must fail.

[5] On the face of it, ground 5 in its drafted form appears to be bad in law as it simply states that the Court erred in not finding in favour of the Applicants. A wider statement in the circumstances can't be found. No concise reasons followed setting out specifically where the Court erred or misdirection itself in law or fact. In argument however, the Applicants' Counsel from the bar, tried to remedy the position advancing a reason for this all-encompassing ground. The Court was now to deal with a procedural unfairness issue at the disciplinary stage before the disciplinary committee. The point was advanced yet further by stating that the 'unfairness' occurred because

procedures should have been initiated against “another employee” (as stated in the heads of argument) as well and not only against the Applicants, therein lay the unfairness. This issue even if raised as a ground falls short of the issue before the Court namely the judicial review of the sanction (the dismissal), the outcome of an appeal process and not the failure to charge.

[8] Lastly with regard to this expanded ground, no leave for an amendment to the application was sought nor granted. In light of the aforesaid, this ground must fail.

[9] Grounds 6 and 7 refer to an error in which the Court adjudicated the matter “-on grounds not raised on the papers or argued-”, which exact “grounds” are unclear. This could explain why these grounds were not advanced in argument and when dealt with in the heads of argument were not expanded. Unfortunately though a serious allegation of irregularity by the Court, as a direct result of such unknown grounds was levied in the heads of argument. Which “grounds” under the circumstances, still remain unamplified and unexplained in open Court. In consequence grounds 6 and 7 are vague in the extreme and must suffer a similar fate as ground 5.

[10] Ground 8 advances the that the Court erred in awarding the costs to the Respondent. Once again, the Applicants’ fail to set out reasons upon which the Court failed to exercise its discretion in awarding costs. The Applicants’ Counsel in his heads of argument attempted to demystify the reason by advancing that the Court should have considered the conduct of the Respondent in the case to warrant costs against it. This contention is advanced without any reference to which conduct upon which I Court could come to a different cost order.

[11] Having regard to application of the leave to appeal, the submission made and the Applicants’ heads of argument I am unpersuaded that the threshold of section 17(1)(a) of the Superior Courts Act 10 of 2013 has been met.

The following order:

1. The Applicants are granted leave to amend the application for leave to appeal to clearly incorporate reference to Retief AJ;
2. The application for leave to appeal is dismissed with costs.


L.A. RETIEF
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

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Date of argument:

02 February 2024

Date of judgment:

12 February 2024