



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

REPUBLIC OF SOUTH AFRICA

CASE NO: 21549/2021

(1) [REDACTED]	REPORTABLE: YES/NO
(2) [REDACTED]	OF INTEREST TO OTHER JUDGES: YES/NO
(3) [REDACTED]	REVISED: YES/NO
[REDACTED]	DATE <u>6/2/2024</u>

In the matter between:

KREETIV COMMUNICATION CC

APPLICANT

And

ANDREW JAMES

FIRST RESPONDENTS

HARRINGTON N.O.

MARIUS HOFF MULLER N.O.

SECOND RESPONDENT

JOHN RUSSEL MACKEY N.O.

THIRD RESPONDENT

INGE FRANCES PICK N.O.

FOURTH RESPONDENT

In their capacities as the duly appointed

Trustees for the time being of **VUNANI**

PROPERTY INVESTMENT TRUST

KUPER LEGH PROPERTY

FIFTH RESPONDENT

MANAGERS (PTY) LTD

JUDGMENT

(Leave to Appeal Application)

SENYATSI J:

[1] This is an application to appeal the order I granted on 17 July 2023 in terms of which I granted leave to file a supplementary affidavit by the respondents to the extent that they sought to introduce the annexures referred to in the answering affidavit in the main application. I also ordered the applicant (the plaintiff in the main action) to put up the security for costs in the sum of R500 000 with costs. The judgment did not deal with the determination of the main claim as that is for the trial Court to deal with.

[2] The contestation against the judgment has been laid bare in terms of the notice of application for leave to appeal and will not be repeated in this judgment.

[3] The requirement and the test for granting leave to appeal are regulated by section 17(1)(a) of the Superior Courts Act No. 10 of 2013 which states as follows:

“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

(a)(i) the appeal would have a reasonable prospect of success.

or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.”

[4] In Mont Chevaux Trust v Goosen and Others¹ Bertelsman J interpreted the test as follows:

“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...The use of the word ‘would’ in the new statute indicates a measure of certainty that another

¹ 2014 2325 (LCC)

court will differ from the court whose judgment is sought to be appealed against.”

[5] In Acting National Director of Public Prosecutions and Others v Democratic Alliance: In re: Democratic Alliance v Acting National Director of Public Prosecutions² the court acknowledged the test by Bestertsman J.

[6] In Mothule Inc Attorneys v The Law Society of the Northern Provinces and Another³, the Supreme Court of Appeal stated as follows regarding the trial court’s liberal approach on granting leave to appeal:

“It is important to mention my dissatisfaction with the court a quo’s granting of leave to appeal to this court. The test is simply whether there are any reasonably prospects of success in an appeal. It is not whether a litigant has an arguable case or mere possible of success.”

[7] Having considered the grounds of appeal and the heads of arguments prepared by both parties, I am not persuaded that the requirements of section 17(1) (a) of the Act have been met. I am also not convinced that there is a

² (Case no: 19577/09) ZAGPPHC 489 at para 25

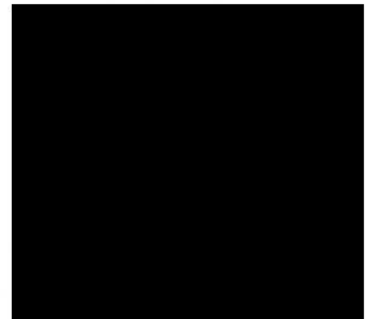
³ (213/16) [2017] ZASCA 17 (22 March 2017)

compelling reason to grant the application for leave to appeal. There is therefore no prospect that the appeal would succeed.

ORDER

[8] The following order is issued:

- (a) The application for leave to appeal is dismissed with costs.



SENYATSIM L
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION

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 6 February 2024.

Appearances:

For the Applicant: Ms CV Govindsamy

Instructed by: appointed/designated representative of the applicant

For the Respondent: Adv S Mc Turk

Instructed by: UYS Matyeka Schwartz Attorneys

Date Judgment Reserved: 15 November 2023

Date of Judgment: 6 February 2024