

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

Case No. 68355/2018

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED: **NO**

DATE: 26th April 2023

SIGNATURE:

In the matter between:

ANNETTE VENTER

APPLICANT

AND

FIRST NATIONAL BANK

5TH RESPONDENT

JUDGMENT

KHWINANA AJ

[1] This is an application for leave to appeal to the Supreme Court of Appeal alternatively full bench of the above honorable court against my judgment granted on this the 06th day of December 2022.

[2] Section 17(1) of the Superior Courts Act, Act 10 of 2013 the Superior Courts Act regulates applications for leave to appeal and provides:

(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;

(b) the decision sought on appeal does not fall within the ambit of Section 16(2)(a); and (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.

[3] The test in an application for leave to appeal prior to the Superior Courts Act was whether there were reasonable prospects that another court may come to a different conclusion.¹ Section 17(1) has raised the test, as Bertelsmann J, correctly pointed out in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para 61:

'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.'

[4] The applicant's leave to appeal is on my findings save to say the reasons

have been given in my judgment. Having read the papers and having carefully heard counsel I come to the conclusion that there is no reasonable prospect that another court would come to a different conclusion on the order of the court in terms of section 17(1)(a)(i) of the Superior Courts Act 10 of 2013.

¹ *Commissioner of Inland Revenue v Tuck* 1989 (4) SA 888 (T) at 890

In the result:

1. Leave to appeal is refused.
2. Fifth Respondent to pay the costs of the application.

ENB KHWINANA
ACTING JUDGE OF NORTH GAUTENG
HIGH COURT, PRETORIA

APPEARANCES

COUNSEL FOR APPLICANT:	J W STEYN
ATTORNEY FOR APPLICANT:	MALETE ATTORNEYS
COUNSEL FOR RESPONDENT:	S MANGANYE
ATTORNEY FOR RESPONDENT:	SWART REDELINGHUIS NEL & PARTNERS
DATE OF HEARING:	1 FEBRUARY 2023
DATE OF JUDGMENT:	26 APRIL 2023