

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

CASE NO: 49281/2019

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHERS JUDGES: NO

(3) REVISED

DATE: 22/05/2023

SIGNATURE:

In the matter between:

SELLO ELLY MOGODIRI AND ANOTHER

Applicant

and

EXCLUSIVE LOG CABINS CC AND ANOTHER

Respondent

JUDGMENT

NQUMSE, AJ:

Introduction

[1] This is an application for leave to appeal to the full bench of this court against the whole of my judgment wherein various rescission applications which were brought by the applicant were dismissed with costs. The application is opposed by the respondents.

[2] What resonates from the grounds for leave to appeal both legal and factual is to a large extent that this court's reasoning was erroneous in that it failed to properly interpret the applicable rules governing the rescission applications and failed to properly evaluate the factual matrix in the matter. Furthermore, that the court failed to have regard to the various provisions of the Housing Protection Measures Act and those of the National Home Builders Registration Council.

[3] The applicant's counsel argued with brevity that in light of the triable issues attended in the matter a different court can come to a different decision.

[4] Counsel for the respondent relied heavily on the interpretation which has been given to section 17(1) of the Superior Courts Act 10 of 2013 ("the Act") which deals with circumstances in which leave to appeal may be granted. I hasten to say that both counsel for the applicant and for the respondent referred in their heads to the same authority in this regard.

[5] For sake of completeness I shall refer to the said provision which provides thus:

" (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 to be appealed 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."

[6] What is clear from section 17 (1) of the Act is that the threshold to grant a party leave to appeal has been raised from the test, which was applied previously in applications of this nature, namely whether there were reasonable prospects that another court “may” come to a different conclusion. In **The Mont Chevaux Trust v Tina Goosen & 18 Others** 2014 JDR 2325 (LCC) at para [6] , Bertelsmann J held 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, see **Van Heerden v Cronwright & 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 will differ from the court whose judgement is sought to be appealed against”.

[7] In my view the reason behind the raising of the threshold for granting of leave to appeal is that the expeditious resolution of disputes requires that appeals be limited to those matters in which there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some dispute on the law.

[8] Regarding the application of this nature the Supreme Court in **S v Mabena and another** 2017 (1) SACR 482 (SCA) at paragraph [22] stated thus: “It is the right of every litigant against whom an appealable order has been made to seek leave to appeal against the order. Such an application should not be approached as if it is an impertinent challenge to the Judge concerned to justify his or her decision. A court from which leave to appeal is sought is called upon merely to reflect dispassionately upon its decision, after hearing and decide whether there is a reasonable prospect that a higher court may disagree”.

[9] After a dispassionate and careful consideration of the applicant’s grounds for leave to appeal as well as the submissions made by counsel of both parties, I am persuaded that the application ought to be granted. Accordingly, the following order shall issue:

[10] The application for leave to appeal to the full bench of this division is granted and costs to be costs in the appeal.

MV NQUMSE

Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 2 February 2023

Judgment delivered: 22 May 2023

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