

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

Case No: 417/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE: 25 May 2023

SIGNATURE:

In the matter between:

TARQUIN JONATHAN BISHOP

APPLICANT

And

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

RESPONDENT

In re:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

APPLICANT

And

TARQUIN JONATHAN BISHOP

FIRST RESPONDENT

BISHOP INCOPORATED

SECOND RESPONDENT

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 25 May 2023.

JUDGMENT

COLLIS J

1. This is an application for leave to appeal against the judgment and order made on 24 January 2023.

2. The application is premised on the grounds as listed in the Application for Leave to Appeal dated 14 February 2023.

3. In anticipation of the hearing of the application for leave to appeal, the parties were requested to file short heads of argument. They both acceded to this request so directed by the Court. The Court expresses its gratitude to the parties for the heads so filed.

LEGAL PRINCIPLES

4. Section 17 of the Superior Court's Act provides as follows:¹

“(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 appeal does not fall within the ambit of section 16(2)(a);

¹ Act 10 of 2013

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.”

5. *In casu* the applicant relies on the grounds of appeal mentioned in section 17(1)(a) of the Superior Courts Act 10 of 2013, namely, that the appeal would have reasonable prospects of success.

6. As to the test to be applied by a court in considering an application for leave to appeal, Bertelsmann J in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para 6 stated the following:

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

7. ‘In order to succeed, therefore, the appellant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorized as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.’²

² *S v Smith* 2012 (1) SACR 567 (SCA) at para 7.

8. In *Fair-Trade Independent Tobacco Association v President of the Republic of South Africa and Another*³ the Full Court of this Division observed that:

“As such, in considering the application for leave to appeal it is crucial for this Court to remain cognizant of the higher threshold that needs to be met before leave to appeal may be granted. There must exist more than just a mere possibility that another court, the SCA in this instance, will, not might, find differently on both facts and law. It is against this background that we consider the most pivotal grounds of appeal.”

9. Having read the papers and having carefully heard counsel I come to the conclusion that there is no a 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. This I say so in circumstances where the applicant filed multiple affidavits in opposing the striking application, wherein he had placed contradictory evidence before this Court.

ORDER:

10. Consequently, the following order is made:

10.1. Leave to appeal is refused, with costs on an attorney and client scale.

COLLIS J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

I agree and it is so ordered.

PHAHLANE J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

³ Case no: 21688/2020 [2020] ZAGPPHC 311 (24 July 2020) at [6].

APPEARANCES

Counsel for Applicant: Adv. F. Botes SC & Adv. R. De Leeuw

Instructed By: Wiese and Wiese Inc. Attorneys

Attorney for Respondent: Mr. L. Groome

Instructed By : Rooth and Wessels Inc. Attorneys

Date of Hearing: 15 May 2023

Date of Judgment: 25 May 2023