



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

REPUBLIC OF SOUTH AFRICA

CASE NO:34337/2018

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
DATE: 04 OCTOBER 2023
SIGNATURE: *ML SENYATS*

In the matter between:

JACQUIRE FREDERICK JOHN

Applicant

and

PRETORIUS JOHANNES STEFANUS

Respondent

In re:

PRETORIUS JOHANNES STEFANUS

Plaintiff

and

JACQUIRE FREDERICK JOHN

Defendant

JUDGMENT

(Leave to Appeal Application)

SENYATSI J:

- [1] This is an application for leave to appeal against the order I granted on 08 August 2022. A request for written reasons was made by the applicant/defendant which reasons were handed down on 30 January 2023.
- [2] It is a trite principle of our law that leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have reasonable prospect of success or where there is a compelling reason, including conflicting judgments, why the appeal should be heard.¹
- [3] The test whether the requirements of section 17(1)(a) of the Act have been met is a stringent one.²

¹ Section 17(1)(a) of the Superior Courts Act No.10 of 2013 ("the Act")

² See MEC for Health, Eastern Cape v Mkhitha and Another [2016] ZASCA 176 paras 16-17

[4] The grounds of appeal have been spelt out in the notice of application for leave to appeal and will not be repeated in this judgment.

[5] An application for leave to appeal must meet the requirements set out in 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 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);

(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] The case of the “would” in section 17 (1)(a)(i) of the Superior Courts Act No: 10 of 2013 has been held to denote “a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against³, and that the test for leave to appeal to be successful is more stringent than the traditional test.”

[7] In *Notshokovn v S*⁴, the Supreme Court of Appeal held as follows on the test:

“...an appellant, on the other hand faces a higher and stringent threshold in terms of the Act compared to the provisions of the repealed Supreme Court Act 59 of 1959.”

[8] In *MEC for Health Eastern Cape v Mkhintha and Another*⁵, Schippers AJA provided the following guidance on the test:

“[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17 (1)(a) of the Supreme Courts Act 10 of 2013 makes it that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is

³ See *Mont Chevaux Trust v Goosen and Others* (Case No: LCC 14R/2004)

⁴ [2016] ZASCA 112 para 2

⁵ [2016] ZASCA 176 paras 16 -18

not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

[9] Having considered the grounds raised in support of the application for leave to appeal, I am not persuaded that the stringent threshold set out in section 17(1) (a) of the Act that the appeal would succeed has been met.

[10] It follows in my view, that there is no prospect that the appeal would succeed. There are also no compelling reasons why the appeal should be heard.

ORDER

[11] Accordingly, the application for leave to appeal is dismissed with costs.



ML SENYATSI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Delivered: This Judgment was handed down electronically by circulation to the parties/ their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 04 October 2023.

DATE JUDGMENT RESERVED: 08 September 2023

DATE JUDGMENT DELIVERED: 04 October 2023

APPEARANCES

Applicant: Mr F J Jacquire (*In person*)

Counsel for the Respondent: Mr AJ Cronje

Instructed by: Otto Krause Inc.