



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case no: 1715/2022

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

CIRCULATE TO MAGISTRATES: NO

In the matter between:

AMANZI AHLO BILE TRADING 25 (PTY) LTD
t/a TRISCH INDUSTRIES

APPLICANT

And

CELANUBUSI (PTY) LTD

RESPONDENT

LEAVE TO APPEAL APPLICATION JUDGMENT

BEFORE: CHESIWE, J

HEARD ON: THE PAPERS AS PER THE HEADS OF ARGUMENT, FILED ON 17 MARCH 2023 AND 29 MARCH 2023 RESPECTIVELY.

DELIVERED ON: This judgment was handed electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 13h00 on 2 JUNE 2023.

[1] The Applicant seeks leave to appeal the summary judgment and order granted on 3 February 2023. The application is opposed by the Respondent.

[2] Parties were requested to file written heads of argument and the matter was to be decided on the papers in terms of the rules.

[3] The grounds for leave to appeal are listed and well versed and will therefore not be repeated.

[4] The Applicant contends that it has good prospects of success on appeal. On the other hand, the Respondent contends that there exists no sound and rational basis to conclude that there are prospects of success.

[5] The Application for leave to appeal is instituted in terms of Section 17(1) and (2) of the Superior Courts Act 10 of 2013 (herein after to be referred to as the Act).

[6] Section 17 of the Act provides 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;

(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.

[7] The test to be applied in applications of this nature is explained as follows ¹:

“There can be no doubt that the bar for granting leave to appeal has been raised. Previously, the test was whether there was reasonable prospect that another court might come to a different conclusion. Now, the use of the word ‘would’ indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”

[8] In **Smith v S** ², the court dealt with the question of what constitutes reasonable prospects of success as follows:

a. *“What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts of the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. 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 categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”*

[9] In **MEC for Health, Eastern Cape v Mkhitha and Another** ³, the court held as follows:

“[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 Superior Court Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have reasonable prospect of success or there are some other compelling reasons why it should be heard.

¹ Hans Seuntjje Matoto v Free State Gambling and Liquor Authority (987/2017) [2018] ZASCA 110 (12 September 2018) in Cornelius Jahannes De Bruyn N.O and Another v Koot Oosthuizen Attorneys and Another (3668/2021) [2022] ZAFSHC 148 (19 May 2022)

²2012 (1) SACR 567 (SCA)

³ (1221/2015) [2016] ZASCA 176 (25 November 2016)

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

[10] Most of the grounds sought to be relied upon are essentially a rehash of the case as set out in the pleadings and fully argued and dealt with in my judgment.

[11] The issue raised in these grounds for appeal, entail a revisit to the seriously contended issues in which the Applicant contends that there are prospects of success. In an application for leave to appeal, the Applicant is not precluded to revisit the issues, provided that the court is satisfied that there is a reasonable prospect that the factual matrix would receive a different interpretation by another court.

[12] Based on the submissions of the Applicant, and indeed in consideration of the bar that has been raised for granting leave to appeal against the judgment, in my view, I am inclined to agree with the submissions of the Respondent.

[13] I am therefore of the considered view that the Applicant is without merit and that the Applicant does not have reasonable prospects of success on appeal and that the application should be dismissed with costs.

[14] I accordingly make the following order:

1. The application for leave to appeal to the full bench of this Division is dismissed with costs.

CHESIWE, J

On behalf of the Applicant:	Adv. JS Rautenbach
Instructed by:	Huggett Retief Incorporated
	BLOEMFONTEIN

On behalf of Respondent:

Adv. M Karolia

Instructed by:

Du Toit Lambrecht Attorneys
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