



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
<u>14 MARCH 2024</u>	
DATE	SIGNATURE

CASE NUMBER: 46150/2018

In the matter between: -

BLAIR ATHOLL HOMEOWNERS ASSOCIATION (NPC) Respondent/ Applicant

and

W S C MEYER

Applicant/ First Respondent

METROPOLITAN MUNICIPALITY OF THE

CITY OF TSHWANE

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 14 MARCH 2024.

JUDGMENT

COLLIS J

1.This is an application for leave to appeal against the judgment and order made on 22 December 2023.

2. The application is premised on the grounds as listed in the Application for Leave to Appeal dated 17 January 2024.

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.

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);

and

¹ Act 10 of 2013

(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 ground of appeal mentioned in section 17(1)(a)(i) 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 applicant 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. The Court must test the grounds on which leave to appeal is sought against the facts of the case and the applicable legal principles to ascertain whether an appeal court would interfere in the decision against which leave to appeal is sought. 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

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

² MEC for Health, Eastern Cape v Mkhitha and Another (1221/2015) ZASCA 176 (25 November 2016) para 17

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

consider the most pivotal grounds of appeal."

9. Having had regard to the grounds of appeal so listed and the submissions made by the respective parties, I am of the opinion that a reasonable prospect of success does exist in respect of which leave to appeal should be granted.

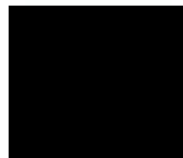
ORDER

Consequently, the following order is made:

10.1 The application for leave to appeal is granted to the Full Court of this

Division;

10.2 with costs in the appeal.



C. COLLIS

JUDGE OF THE HIGH COURT

GAUTENG DIVISION PRETORIA

APPEARANCES:

Counsel for the Applicant: Adv. HF OOSTHUIZEN SC

Instructed By: NAUDE & NAUDE ATTORNEYS

Counsel for the Respondent: Adv. T. OHANNESSIAN SC

Adv. M. REINEKE

Instructed By: RIAAN BOCH ATTORNEYS

Date of Hearing: 23 February 2024

Date of Judgment: 14 March 2024