

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2022-008554

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 4 December 2023

E van der Schyff

In the matter between:

DIAMOND PANELBEATERS AND TOWING CC

APPLICANT

and

SPRINGS CAR WHOLESALERS (PTY) LTD

t/a NO FINANCE CARS

RESPONDENT

In re

SPRINGS CAR WHOLESALERS (PTY) LTD

t/a NO FINANCE CARS

APPLICANT

and

DIAMOND PANELBEATERS AND TOWING CC

RESPONDENT

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

Van der Schyff J

- [1] This is an application for leave to appeal. The respondent in the main application (Diamond Panelbeaters) seeks leave to appeal against the whole judgment and parts of the order handed down on 2 October 2023.
- [2] The test a court must apply in considering applications for leave to appeal is set out in s 17 of the Superior Courts Act 10 of 2013. Contrary to what Diamond Panelbeaters' counsel submitted, the legislature's determination that leave to appeal 'may only' be granted where the judge concerned is of the opinion that the appeal 'would have a reasonable prospect of success', introduced a more stringent test when applications for leave to appeal is considered.¹ A measure of certainty that another court will hold a different view is required.²
- [3] In *Ramakatsa and Others v African National Congress and Another*³ Dlodlo JA, writing for the court, stated:

‘I am mindful of the decisions at high court level debating whether the use of the word ‘would’ as opposed to ‘could’ possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion

¹ *Notshokovu v S* [2016] ZASCA 112 (7 September 2016).

² *The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others* (Unreported) cited with approval by the Full Court in *Acting National Director of Public Prosecution v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2016] ZAGPPHC 489 (24 June 2016).

³ (724/2019) [2021] ZASCA 31 (31 March 2021) at para [10].

different from that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.’

- [4] *Ramakatsa* does not support the view that the test to be applied when a court considers an application for leave to appeal equates to the position that applied before the Superior Courts Act 10 of 2013 was promulgated.⁴

- [5] Having considered the grounds of appeal listed, two aspects require specific mention. The *locus standi* issue and the finding that stickers on the side of both cars clearly indicated that the vehicles were not to be towed without Springs Car’s permission.

- [6] As for the technical objection regarding the applicant in the main application’s (Spring Car’s) incorporation and the respondent’s reliance on *S v Omega Bearing Works (Edms) Bpk and Andere*,⁵ it is necessary to take cognisance thereof that the burden of proof in criminal matters differs substantially from the burden of proof in a civil matter. I need not elaborate on this point. Secondly, technological advancement placed information regarding incorporated companies at the tip of any interested party’s fingers. It is common cause that anyone without qualification can register and access the Companies and Intellectual Commission’s data base and verify information regarding an alleged registered company. This does not mean that a juristic person need not prove that it has the required *locus standi*. It does mean that the circumstances and facts of each case would dictate the extent of the evidence required to prove such *locus standi* and that a court can follow a common sense approach in determining whether the applicant proved its *locus standi* on a balance of probabilities, specifically where such *locus standi* is not explicitly placed in dispute.

⁴ This view is shared in *Van Zyl v Steyn* (83856/15) [2022] ZAGPPHC 302 (3 May 2022) at para [15].

⁵ 1977 (3) SA 978 (O).

- [7] Diamond Panelbeaters does not specifically take issue with the factual finding in the judgment that visible stickers on the sides of both the vehicles in question expressly stated that the vehicles could only be towed by companies authorised by Springs Car. Diamond Panelbeaters did not obtain Springs Car's consent, and that is, in these factual circumstances ultimately the end of the inquiry.
- [8] After considering the grounds of appeal in the context of the facts of this case and the legal submissions raised, I am not convinced that there is truly a reasonable and realistic prospect of success on appeal. The application stands to be dismissed.

ORDER

In the result, the following order is granted:

- 1. The application for leave to appeal is dismissed with costs.**



E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be emailed to the parties/their legal representatives as a courtesy gesture.

For the applicant:

Instructed by:

Adv. H.P. Van Nieuwenhuizen

TSHABALALA ATTORNEYS, NOTARIES
& CONVEYANCERS

For the respondent:

Instructed by:

Adv. A.C.J Van Dyk

RAEES CHOTIA ATTORNEYS

Date of the hearing:

23 November 2023

Date of judgment:

4 December 2023