

REPUBLIC OF SOUTH AFRICA



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

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

25/10/2022

DATE

A handwritten signature in black ink, consisting of a stylized 'A' with a circle around it.

SIGNATURE

CASE NO: 25241/2021

In the matter between:

SOHO NAILS WAXING BEAUTY (PTY) LIMITED

Appellant

and

CGS SHOPFITTERS CC

Respondent

Coram:

Dlamini J

Date of hearing:

7 October 2022 – in a 'virtual Hearing' during a videoconference on Microsoft Teams digital platform.

Date of judgment:

25 October 2022

This judgment is deemed to have been delivered electronically by circulation to the parties' representatives via email and shall be uploaded onto the caselines system.

JUDGMENT
LEAVE TO APPEAL

DLAMINI J

- [1] This is an application for leave to appeal my judgment that I handed down on 8 September 2022.
- [2] The matter has a long history going back to a default judgment that was granted against the applicant on 14 November 2018.
- [3] It is common cause that when the matter came before me, the parties agreed that only the point *in limine*, whether this rescission application is incompetent, should be argued as this will have the effect of disposing of the matter without dealing with the merits thereof.
- [4] The numb of the issue is whether Judge Senyatsi had already made a ruling that a further rescission application was incompetent.
- [5] It is trite that for an application for leave to appeal to be successful it is required of the parties seeking such leave to demonstrate that there are reasonable prospects that another Court would come to a different conclusion to that reached in the judgment that is sought to be taken on appeal.
- [6] The provisions of section 17 of the Supreme Court Act has now elevated the test to be applied for granting of leave to appeal. The use of the word "would" when considering the prospects of success in section 17 (1)(a)(i), now imposes a more stringent and vigorous threshold.

[7] I have read the heads of argument and heard submissions of Counsel for both parties.

[8] The honourable Senyatsi J found that another rescission application is incompetent. Further, the application to rescind the judgment is impermissible.

[9] It is my considered view that there is no ambiguity in Judge Senyatsi's judgment. Unless it is reviewed, appealed, and set aside, the judgment remains valid and should be followed.

For all the reasons stated above and in my judgment, I make the following order:

ORDER

The application for leave to appeal is dismissed with costs



DLAMINI J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing: 7 October 2022

Delivered: 25 October 2022

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