



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

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case No: 540/2021

In the matter between:

MAJORO MARVIN MOFOKENG

Applicant

And

**THE FREE STATE GAMBLING, LIQUOR
AND TOURISM AUTHORITY**

Respondent

CORAM: C REINDERS, J

HEARD ON: 29 OCTOBER 2021

DELIVERED ON: 2 FEBRUARY 2022

APPLICATION FOR LEAVE TO APPEAL

- [1] This is an application for leave to appeal against the whole of the judgment and order granted by Parks AJ on 14 May 2021.
- [2] The applicant as cited above was the respondent in the application before Parks AJ, whilst the respondent herein was the applicant. Reference to the parties will be as it appears in this application. The applicant filed a notice on 4 June 2021 setting out the grounds of appeal. I do not intend to repeat these grounds verbatim. In heads of argument on behalf of the applicant, the gist thereof was summarised to be that the court erred in several ways in respect of the two main issues it was called upon to adjudicate, to wit the court's jurisdiction to hear the matter and the question of the lawfulness of the applicant to make certain deductions from the respondent's salary.
- [3] The parties were ad idem in respect of the test to be applied by me. An application for leave to appeal must be considered in accordance with the provisions of s17 of the Superior Courts Act, 10 of 2013. The applicant relied on both s 17(1)(a)(i) and (ii) of the Act.

In terms of s17 (1) leave to appeal may only be given if I am of the opinion that-

“(a)(i) the appeal **would** have a reasonable prospect of success; or

...

(iii)there is some other compelling reason why the appeal **should** be heard, including conflicting judgments on the matter under consideration.” (my emphasis)

- [4] The threshold that an applicant in an application for leave to appeal must meet to be successful was confirmed (with reference to *S v Smith* 2012 (1) SACR 567 (SCA)) in *MEC for Health, Eastern Cape v Mkhitha* (1221/15) [2016] ZASCA 176 (25 November 2016) at para [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 a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.”

[5] I have perused the papers before me, including the judgment of Parks AJ, the grounds for the application for leave to appeal and submissions by the legal representatives as per heads of argument and orally before me. Having done so, I am not of the opinion that there is a reasonable prospect of success in that another court would come to a different conclusion, nor that there are compelling reasons to grant leave.

[6] Consequently the following order will issue:

The application for leave to appeal is dismissed with costs.



C.REINDERS, J

On behalf of the applicant:

Mr D Qwelane
Qwelane Theron & Van Niekerk Inc
BLOEMFONTEIN

On behalf of the respondent:

Adv S Grobler SC
Instructed by:
Kramer Weihmann Inc
BLOEMFONTEIN