

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

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

26 September 2022
DATE

A handwritten signature in black ink, appearing to be "M. M. M.", is written over a horizontal line.

SIGNATURE

CASE NUMBER: 47616/2017

In the matter between:

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH,
GAUTENG PROVINCE**

APPLICANT

AND

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 26 September 2022.

JUDGMENT APPLICATION FOR LEAVE TO APPEAL

[1] This is an application for leave to appeal against the judgment and order I made on 2nd September 2021. The order of the court reads as follows:

“[39] In the result the following order is made:

39. The applicant is granted condonation in terms of Rule 27 for the late launching of the application in terms of Rule 28.

39.2 The applicant is granted leave to amend her particulars of claims in terms of the Notice to Amend, served on the respondent on 17 August 2020.

39.3 The respondent is ordered to pay the costs of this application on an opposed basis on an attorney and client scale.”

[2] The application is premised on the grounds as listed in the Application for Leave to Appeal dated 20 September 2021.

LEGAL PRINCIPLES

[3] 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.”

[4] In the present instance, the applicant failed to set out specifically the ground in terms of section 17 of Act 10 of 2013, upon which it relies to seek that leave to appeal should be granted.

[5] 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.’

[6] ‘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.²

[7] 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 consider the most pivotal grounds of appeal."

² *S v Smith* 2012 (1) SACR 567 (SCA) at para 7.

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

[8] The applicant and the respondent on request by this court had filed written Heads of Argument in order to facilitate the virtual hearing of the matter.

[9] Having read the papers and having carefully heard counsel I come to the conclusion that there is no reasonable prospect that another court would come to a different conclusion on the order of the court.

[10] In the present instance the order granted by the court, is interlocutory in nature and has no final effect and the applicant in terms of the order so granted by the court, will have an opportunity to affect a consequential amendment following on the amendment.

ORDER

[11] Consequently I make the following order:

11.1 The application is dismissed with costs, including costs of counsel.



COLLIS C
JUDGE OF THE HIGH COURT
GAUTENG DIVISION

APPEARANCES

Counsel for Applicant : Adv. T.T Tshivhase

Instructed by : State Attorney

Counsel for Respondent : Adv. W L Munro

Instructed by : Adams and Adams Inc Attorneys

Date of Hearing : 15 September 2022

Date of Judgment : 26 September 2022