



Reportable/Not reportable

IN THE HIGH COURT OF SOUTH AFRICA

(NORTHERN CAPE HIGH COURT, KIMBERLEY)

CASE NO: **2580/18**
DATE HEARD: **11/02/2022**
DATE DELIVERED: **18/02/2022**

In the matter between:

JOHN PANTI MOKOTEDI

1st Applicant

**THE OCCUPIERS OF ERF 7054, KATHU TOWNSHIP,
ALSO KNOWN AS 7054 21ST AVENUE, ROOISAND, KATHU**

2nd Applicant

GAMAGARA LOCAL MUNICIPALITY

3rd Applicant

and

SISHEN IRON ORE COMPANY (PTY) LTD

1st Respondent

Coram: MOSES AJ

APPLICATION FOR LEAVE TO APPEAL JUDGMENT

MOSES AJ

1. This is an application for leave to appeal, launched by Mr John Panti Mokotedi, the First Applicant, herein, on behalf of the First and Second Applicants on or

about 2 November 2021, against the judgment and orders granted by this Court dated 29 October 2021.

2. This application has subsequently been enrolled by the Registrar of this Court, by agreement between the parties for Friday, 11 November 2021. However this hearing could not proceed for the reasons fully set out in this Court's directive dated 15 November 2021, filed of record. In the said Directive, paragraph 12 thereof, the parties were directed as follows:

“12.1 The Applicants file and serve their Heads of Argument by no later than Monday 22 November 2021;

12.2 In the event that the Respondent wishes to supplement its/their Heads of Argument, to serve and file same by 24 November 2021;

12.3 The Applicants shall file and serve their replying Heads of Argument, if any, on or before 26 November 2021;

12.4 The parties may serve and file these Heads of Argument per electronic mail as contemplated in Rule 4A(1) of the Rules of Court.

12.5 The Application for Leave to Appeal will be determined by this Court on the papers duly filed and served, including the respective Heads of Argument of/by the parties.”

3. Due to the Applicants' failure to adhere to this Directive as above stated, the application for leave to appeal was struck off the roll with costs, by Court Order dated 30 November 2021.

4. Subsequently and given various emailed correspondence by the First Applicant to the Registrar of this Court and exchanged between the First Applicant, the Respondent's attorney of record and the Registrar of this Court the following Directive was issued by the Registrar on instructions of Williams AJP- as she then was, dated 21 January 2022:

“Please be informed that Williams AJP directed that the parties be informed as follows:

1. On 30 November 2021 the application for leave to appeal brought by the 1st and 2nd respondents in the main application was struck from the roll with costs.

2. Mr Mokotedi has indicated by email on 11 January 2022 that he intends bringing an application for condonation for the late filing of his heads of argument in the application for leave to appeal. Having been struck from the roll, an application for the reinstatement of the application for leave to appeal must also be brought.
3. Moses AJ will be in Kimberley finalising a part-heard matter from 7 to 11 February 2022 and is available to hear these applications (and if successful the application for leave to appeal) at 09:00 on 8,9, and 11 February 2022.
4. The parties are to indicate by 26 January which of these dates suits them, taking into account the time necessary for the filing of affidavits.”
5. However, and amidst further emailed correspondence from/ by Mr Mokotedi, on behalf of the Applicants, the Registrar’s office had to issue an urgent notice to the said Applicants and the Respondent, on 10 February 2022, in the following terms:

“The Court has received no indication on whether this matter will be proceeding tomorrow pursuant to the Directive of Williams AJP dated 21 January 2022 or whether you intend requesting the indulgence of a postponement.

Please note that in the event the Court requires the matter to be postponed on record, especially in view of the fact that you and your co-applicant are appearing in person and thus representing yourselves.

I require an e-mail address for yourself and the other two Respondents to which the link for the virtual proceedings can be sent so that arrangements can be made with our IT department to see to the recording of such virtual hearing. All parties participating in the application will be included in such link notification.”

6. The matter was therefore envisaged to be enrolled for hearing on 11 February 2022 to enable the Applicants to bring and move their applications for
 - a. Condonation for non-compliance with the directives and Rules of Court;
 - b. Reinstatement of their Applications for Leave to appeal, and, in the event;
 - c. Their application for leave to appeal;

which was to be concluded virtually, as agreed to between the parties and with leave of this Court.

7. On 11 February 2022 the Registrars' office having made all the necessary arrangements for the parties to be heard and the hearing to be conducted, the First Applicant having come on record, virtually, in person moved for a postponement, on the ground that he could not prepare for this hearing and hence unprepared, because he was busy with his Labour Court Appeal case, against the same Respondent in that Court.

8. Mr Kloek appearing on behalf of the Respondent advised the Court that:

8.1 The First Applicant's appeal in the Labour Court in Johannesburg, was dismissed the previous day 9 or 10 February 2022; which was confirmed by the Applicant in casu;

8.2 His instructing attorney offered and made arrangements for the First Applicant to have access to an office/ offices of their colleagues, both in Johannesburg and Kathu - where the Applicant still resides, to enable him to have internet access and to conduct these proceedings virtually, which he, the First Applicant refused. The First Applicant disputed and denied that he had refused the offer of and by the said attorneys. He however did not dispute and/or deny that the offer was indeed extended; and

8.3 In the circumstances, and given the derogatory statements made, and attitude displayed by the First Applicant in his emailed correspondence to the Registrar's Office and his attorney of record, as well as accusing the presiding judge in these proceedings of bias without substantiation, this application for a postponement at this juncture was mala fide and an abuse of the process of Court, the said Applicant being fully aware that as long as these proceedings are pending the eviction order of/by this Court cannot be executed, and he would therefore remained and continue to occupy the Respondent's property, unlawfully so. In the circumstances the Respondent strongly object to the application for a postponement in as much as the Respondent is/was ready to proceed with the hearing in respect of the Applicant's application for leave to appeal and would therefore be seriously prejudiced in the event of a further postponement.

9. In answer to these submissions by Mr Kloek on behalf of the Respondent, Mr Mokotedi, for the Applicants, said that he had noted an appeal against that

judgment/order of the Labour Court the previous night, 10 February 2022, and as such could not properly prepare for this application before this Court, hence his application for a postponement. He also indicated that his phone, which he was using to be connected to this virtual hearing, might soon run out of data, and he would have to obtain more data. In the event the virtual connection with Mr Mokotedi was lost, and he disappeared from the screen.

10. Mr Kloek, on an invitation by the Court to make submissions given the present circumstances, on he further conduct of the proceedings, made the following submissions:

- 10.1 In as much as the Respondent is frustrated by the said Applicants' conduct in these proceedings and is desirous to proceed and finalise this Application for leave to Appeal before this Court, his client is prepared to waive certain rights and to this effect;

- a) would agree to the condonation of the Applicant's non-compliance with the Rules of Court and more particularly to the late filing of his (Applicant's) papers in the application for leave to appeal;
 - b) agree to the re-instatement of the Applicants' application for leave to appeal; and
 - c) costs to stand over for later determination; and

- 10.2. In the circumstances that this Court, having been provided with all papers and submissions in respect of the application for leave to appeal, determine that application on the papers and provide the parties with the Court's judgment once finalised. This, he submitted would obviate the need for an application for postponement and/or a decision on whether or not to grant such an application for postponement.

11. In the meantime the Applicants' Mr Mokotedi was reconnected and appeared on the screen, apologising for the interruption and indicating that he had to obtain data so as to enable him to be reconnected, which had been done.

12. The Court then advised Mr Mokotedi of the submissions and suggestions by Mr Kloek on behalf of the Respondent, and requested Mr Kloek to repeat those submissions and suggestions for the record and for the said Applicant to hear, which Mr Kloek did by repeating the above-stated submissions and suggestions verbatim.
13. After having heard the said submissions and suggestions, the Court then enquired from Mr Mokotedi what the Applicants' position was regarding same, and whether he fully understood it. Mr Mokotedi indicated that he understood those submissions and suggestions, and was in full agreement thereof and that this Court could proceed on that basis.
14. In the circumstances, having heard Mr Mokotedi on behalf of the First and Second Applicants and counsel for the Respondent, the following order was made:
 - 14.1 Condonation for the late filing of the Applicant's papers and non-compliance with the Rules and directives of Court, in respect of the application for leave appeal, is granted;
 - 14.2 The Applicants' application for leave to appeal is reinstated;
 - 14.3 The application for leave to appeal to be determined and decided by this Court on the papers and submissions filed of record; and
 - 14.4 Cost to stand over for later determination.

The Application for leave to Appeal

15. In the circumstances, the crisp issue for determination is whether or not the Applicants have demonstrated that there is a reasonable prospect of success on appeal and hence ought to be granted leave to appeal the judgment and order of this Court dated 29 October 2021. (See section 17(1)(a) of the Superior Court's Act, 10 of 2013 - :the Superior Court Act")

16. It is trite that section 17(1) (c) of the Superior Court's Act introduced a different and higher threshold since its inception to be granted leave to appeal than before its enactment, when that threshold or test was a reasonable prospect that another Court might come to a different conclusion. See: *Van Heerden vs Cronwright & Others* 1985 (2) SA 341(J) 343 H. See also: *Smith v S* 2012 (1) ZACR 56 SCA para [7].
17. It is in this context that the First and Second Applicants application for leave to appeal must be determined by this Court being mindful of the fact that the First Applicant, Mr John Panti Mokotedi, is a layperson prosecuting this application, in person, on behalf of the said Applicants.
18. The gist of the Applicant's application for leave to appeal seems to be summarised in the conclusion of their application, which is quoted herein verbatim:

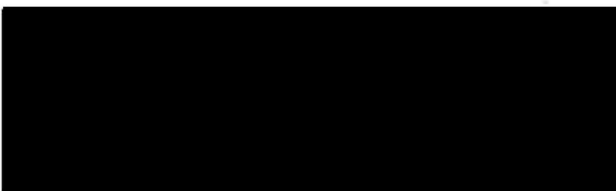
“The 1st and 2nd appellants seek an order in terms of the notice of appeal and an order that set aside summary of evidence order based on legal reasons:

 - Excusable neglect on the 1st and 2nd appellants part.
 - 1st and 2nd appellants were mis represented by attorney and counsel.
 - 1st appellant is permanently leaving with disability, Pie Act section 4(7) protect the 1st appellant.
 - Evidence of procedure which respondent did not follow when automatically dismissing 1st appellant.
 - The summary of eviction order is void because during hearing proceeding 1st, 2nd appellants and 3rd respondent were not present.
 - The summary of eviction order has been satisfied of moving out of 1st and 2nd appellants which will result in 1st and 2nd appellants been homeless.
 - 1st appellant labour court matter set for trial on the 07 February 2022 which the 1st appellant request relief of been reinstated by respondent after been automatically dismissed unfairly.”

19. Apart from, and preceding the conclusion as above-stated, the Applicants have also listed numerous "Grounds of appeal" in paragraph 3 of their papers. There was nothing of substance advanced on behalf of the Applicants in addition to the above-stated which had a bearing on the above-stated judgment of this Court dated 19 October 2021, and which ought to be considered in this application for leave to appeal, apart from the undisputed fact that the First Applicant's Labour Court Review Application was dismissed on or about 7 – 10 February 2022. It is common cause that the said Labour Court matter is/was the one referred to by the First Applicant at all relevant times in these proceedings before this Court.
20. This Court has carefully considered the submissions, including the reasons, grounds and statements advanced by the First Applicant on the Applicant's behalf, in support of their application for leave to appeal.
21. This Court has also carefully considered the Respondent's submissions made in opposition to this application for leave to appeal, including its written submission dated 9 November 2021, with which this Court fully agrees.
22. In the circumstances the Applicants have failed to demonstrate that they have a reasonable prospect for success on appeal. I find accordingly.

IT IS ORDERED

The Application for leave to appeal is dismissed with costs.



J.J. MOSES

ACTING JUDGE OF THE HIGH COURT

NORTHERN CAPE DIVISION, KIMBERLEY

For the Applicant: Mr J.P. Mokotedi

Instructed by: In Person

For the Respondent: Adv. J.W. Kloek

Instructed by: Elliot Maris Wilman and Hay Attorneys