

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 YES

15 FEBRUARY 2021

DATE

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

SIGNATURE

CASE NO: 8420/2018

In the matter between:

GRASPAN COLLIERY SA (PTY) LTD

APPLICANT

And

THE COMMISSIONER FOR THE SOUTH

AFRICAN REVENUE SERVICE

RESPONDENT

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 his/her

Secretary. The date of this judgment is deemed to be 15 February 2021.

JUDGMENT APPLICATION FOR LEAVE TO APPEAL

COLLIS J

INTRODUCTION

[1] This is an application for leave to appeal against the judgment and order I made on 11 September 2020. The full order of the court reads as follows:

1.1 “The application is dismissed with costs, including costs consequent upon the employment of two counsel.”

[2] The application is premised on the grounds as listed in the Application for Leave to Appeal dated 5 October 2020.

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-

¹ Act 10 of 2013

(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

(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] 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.'

[5] '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 word, be a sound, rational basis for the conclusion that there are prospects of success on appeal.'²

[6] 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.

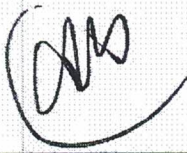
[7] Having read the papers and having carefully heard counsel I come to the conclusion that there is no reasonable prospect that another court would come to a different conclusion on the order of the court.

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

ORDER

[8] Consequently I make the following order:

8.1 The application for leave to appeal is dismissed with costs, such costs to include the costs of two counsel.



C. J. COLLIS

JUDGE OF THE HIGH COURT

GAUTENG DIVISION PRETORIA

APPEARANCES:

FOR APPLICANT:

ADV. J.P. Vorster SC

INSTRUCTED BY:

MACROBERT ATTORNEYS

FOR RESPONDENT:

ADV. M. Chohan SC &

ADV. L. Haskins

INSTRUCTED BY:

THE STATE ATTORNEYS

DATE OF HEARING:

08 FEBRUARY 2021

DATE OF JUDGMENT:

15 FEBRUARY 2021

Judgment electronically transmitted.