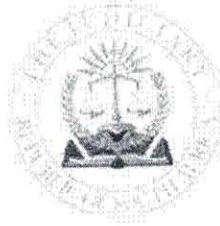


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2015/24931

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

14 May 2021

DATE

MOKOSE SNI

In the matter between:

ABF COETZEE N.O.

AJ COETZEE N.O.

GR COETZEE N.O.

(In their capacities as trustees of the AFG Familie Trust)

ERF 75 PECANWOOD ESTATE (PTY) LTD

AJ COETZEE

SOFTUSA (PTY) LTD

BROOKLYN CHAMBERS (PTY) LTD

GR COETZEE

LENCO ENTERPRISES (PTY) LTD

And

RMB PRIVATE BANK LIMITED

(A division of First Rand Bank Ltd)

1st Applicant

2nd Applicant

3rd Applicant

4th Applicant

5th Applicant

6th Applicant

7th Applicant

8th Applicant

9th Applicant

Respondent

LEAVE TO APPEAL JUDGMENT

MOKOSE J

[1] The applicants have applied for leave to appeal to the Supreme Court of Appeal, alternatively, a full Court of this division against the order I delivered on 18 March 2020 under case number 24931/2015.

[2] The applicants seek leave to appeal on several grounds as stated in their application for leave to appeal. Counsel for the applicants addressed the court on the salient points raised in the application, some of which points were being raised for the first time in the leave to appeal. These points were opposed by counsel for the respondent on the grounds that I have reasoned out well in my judgment as also on the ground that some of these points were being raised for the first time in the leave to appeal. Furthermore, submissions were made that there are no prospects that another court would have come to a different conclusion.

[3] The test for granting an application for leave to appeal is whether there are reasonable prospects that another court would have come to a different conclusion. Section 17 of the Superior Courts Act 10 of 2013 ("the Act") states that leave to appeal may only be granted where the judge or judges are of the opinion that:

- (a) (i) the appeal would have a reasonable prospect of success; or
- (ii) for some other compelling reason it should be heard, including conflicting judgements on the matter under consideration;
- (b) the decision sought does not fall within the ambit of Section 16(2)(a) of the Act; 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.

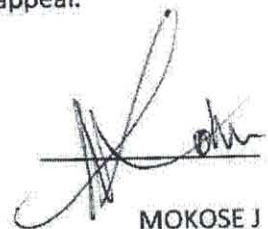


[4] The test laid down in Section 17 of the Act is now a subjective one and no longer an objective test. There must be a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.¹

[5] I had dealt in depth with all the issues raised in the application for leave to appeal in my judgement. After considering the submissions by both counsel for the applicants and counsel for the respondent and after reading the application for leave to appeal, I am of the view that there are prospects that another court would come to a different conclusion.

[6] Accordingly, the following order is granted:

- (i) leave to appeal is granted to the Full Bench of this Court; and
- (ii) the costs of the application for leave to appeal are costs in the appeal.



MOKOSE J

14 May 2021

¹ The Mont Cheveaux Trust (IT2012/28) v Tina Goosen & 18 Others (unreported judgment delivered on 3 November 2014)