



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

CASE NUMBER: 28472/2020

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

DATE: 17/9/21

In the matter between: -

PETER DODSON N.O.

(in his capacity as trustee for the time being of
THE GRIFFON RESIDENTS TRUST)

First applicant

THE BEST TRUST COMPANY (JHB) (PTY) LTD N.O.

(in its capacity as trustee for the time being of
THE GRIFFON RESIDENTS TRUST)

Second applicant

and

QUATTRO L CONSORTIUM (PTY) LTD

First respondent

GILHAR, ADRIANA BERTHEIL

Second respondent

CITY OF JOHANNESBURG METROPOLITAN

J U D G M E N T

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines. The date and time for hand-down is deemed to be 10h00 on 17 September 2021.

F. BEZUIDENHOUT AJ:

INTRODUCTION

[1] The second respondent ("*Ms Bertheil*")¹ applied for leave to appeal ("*the application for leave*") against the whole of my judgment handed down on 26 July 2021.

[2] The application was not opposed.

PRINCIPLES GOVERNING APPLICATIONS FOR LEAVE TO APPEAL

[3] Before dealing with the grounds of appeal, it is necessary to have regard to the basic principles governing applications for leave to appeal.

[4] In terms of the provisions of section 17(1) of the Superior Courts Act, 2013,

¹ In my judgment I referred to Ms Bertheil's married name, "Gilhar", but during the hearing of the application for leave, she indicated that she preferred her maiden name.

leave to appeal will only be granted if the court is 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 on appeal does not fall within the ambit of section 16(2)(a); and*
- (c) *whether 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 issue between the parties."*

[5] What emerges from section 17(1) is that the threshold to grant a party leave to appeal has been raised. It is now only granted in the circumstances set out and is deduced from the word "*only*" used in the section. In Mont Chevaux Trust v Tina Goosen and 18 Others² Bertelsman J held as follows: -

"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 and Others 1985 (2) SA 342 (T) at 343H. The use of the word 'would' in the new statute indicates a measure or certainty that another court will differ from the court whose judgment is sought to be appealed against."

[6] It has been repeatedly held in the analysis of the test that it involves considerations as to whether "*there is a reasonable prospect that another*

² 2014 JDR 2325 (LCC) paragraph [6].

court could come to a different conclusion"³ and not whether there is a possibility that another court could come to a different conclusion.

[7] The test therefore is whether there is a reasonable prospect that another court could come to a different conclusion. In Westinghouse Brake and Equipment (Pty) Ltd v Builder Engineering (Pty) Ltd⁴ the Appeal Court (as it then was) reiterated the general principle that in order for an applicant for leave to appeal to succeed, the applicant must demonstrate that it has a reasonable prospect of success on appeal. It was also stated that an appeal would be allowed where the matter is of great importance or where the matter is of public importance whether the court is of the view the decision might affect other questions.

[8] The procedural and substantive importance of applying for leave to appeal cannot be overstated. The Supreme Court of Appeal held in Dexgroup (Pty) Ltd v Trustco Group⁵ that: -

"The need to obtain leave to appeal is a valuable tool in ensuring that scarce judicial resources are not spent on appeals that lack merit. It should, in this case, have been deployed by refusing leave to appeal."

[9] It is against this legal backdrop that I consider the plaintiff's application for leave.

³ Woolworths Ltd v Matthews 1999 [3] BLLR 288 (LC).

⁴ 1986 (2) SA 555 (A).

⁵ 2013 (6) SA 520 (SCA) paragraph [24].

SUBMISSIONS ON GROUNDS OF APPEAL

- [10] Ms Bertheil filed a notice of application for leave to appeal containing various grounds of appeal. Although I have considered them all, I do not intend to deal with any of the grounds individually.
- [11] During the argument of the application for leave to appeal which lasted for more than an hour, Ms Bertheil, in many instances rehashed the points of argument raised by her in the main hearing.
- [12] Before the hearing, Ms Bertheil contacted my registrar and requested that I accept additional documentation that was not before me when the main application was first argued. I declined her request. Notwithstanding, Ms Bertheil uploaded the documents onto CaseLines and referred to them throughout the application for leave. When I asked Ms Bertheil whether these documents were included in her answering papers filed in opposition to the main application, she conceded that they were not, reason being that she had received bad advice and was told that the matter would be referred to trial where she would be able to disclose everything.
- [13] Ms Bertheil conceded when I asked her again, as I had done during the main hearing, that she had not paid any rentals since she occupied the Applicant's property. It was also her version that the utilities that she did pay for initially, was done under duress.
- [14] Ms Bertheil for the first time during the application for leave alleged that the offer to purchase was a fraudulent document, yet, she conceded in her answering affidavit and also in the application for leave to appeal itself, that

the sale agreement was cancelled by agreement.

- [15] It is clear that Ms Bertheil does not wish to remain in the property but wishes to vacate on her own terms. She submitted that she required more time to make the necessary arrangements to have her furniture and belongings packed and for her return to Israel. She maintained that she is of ill health, that she can hardly walk without physiotherapy and that she is concerned that if the covid-19 vaccination is administered to her before she leaves South Africa, it may have adverse effects.

DELIBERATION

- [16] When reading my judgment against the backdrop of the application and oral submissions submitted by Ms Berhteil, I am of the view that it cannot confidently be argued by her that I committed a misdirection on the facts. It is certainly not argued that I committed a misdirection on the law. In my analysis of the evidence I found the version of Ms Bertheil improbable in some instances and lacking in others. I have dealt with them in detail and do not intend to repeat them here.

- [17] In my view there is no reasonable prospect that another court could come to a different conclusion.

- [18] In the result, the application for leave to appeal is dismissed.



F BEZUIDENHOUT

**ACTING JUDGE OF
THE HIGH COURT**

Date of hearing: 26 August 2021

Date of judgment: 17 September 2021

APPEARANCES:

On behalf of applicants: No opposition.
Mervyn Taback Inc t/s Andersen
Sibusiso.mlangeni@za.andersen.com

**On behalf
second respondent:** Appearance in person.
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