

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION, MTHATHA)**

Case No.: 4521/18

In the matter between:

**MEMBER OF THE EXECUTIVE COUNCIL
FOR HEALTH, EASTERN CAPE**

Applicant

and

NELISWA MBOLA obo ASAVELA MBOLA

Respondent

**JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL
(EX-TEMPORE)**

MBENENGE JP

[1] Even though this is an application and the parties should ordinarily be referred to as the applicant and the respondent, respectively, I will for purposes of this judgment, use the appellations by which they were referred to during the related action proceedings.

[2] The defendant seeks leave of this Court to appeal against my judgment holding the defendant liable in 100% of proven or agreed damages to the plaintiff, in her representative capacity and an order granting other ancillary relief. The judgment was delivered on 6 December 2018.

[3] The grounds of the application need no repetition as indeed they are succinctly set out in the relevant notice.

[4] In terms of section 17 of the Superior Courts Act 10 of 2013 leave may only be give where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success, or there is some other compelling reason why the appeal should be heard.

[5] In *MEC for Health, Eastern Cape v Mkitha*¹ the Supreme Court of Appeal held that an applicant for leave to appeal must convince the court on proper grounds that there is a reasonable or realistic chance of success on appeal. A mere possibility of success, an arguable case, or one that is not hopeless, is not enough. There must be a sound rational basis to conclude that there is a reasonable prospect of success on appeal.

[6] I listened carefully to the argument presented to me on behalf of the parties this morning. I cannot pitch the defendant's cause in this instance as being higher than that of an arguable case. In my view, the application does not meet the requisite threshold.

[7] I am accordingly of the view that there is no reasonable prospect or realistic chance of the appeal sought being successful.

[8] In these circumstances, **the application for leave to appeal is dismissed with costs.**

S M MBENENGE

¹ (1221/2015) [2016] ZASCA 176 (25 November 2016).

JUDGE PRESIDENT OF THE HIGH COURT

Counsel for the applicant (defendant): *EAS Ford SC (with V Kunju)*

Instructed by : The State Attorney
Mthatha

Counsel for the respondent (plaintiff): *J Wessels SC*

Instructed by : Nonxuba Inc.
Johannesburg
c/o Potelwa & CO
Mthatha

Date heard : 18 March 2019

Date delivered : 18 March 2019