

**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Not reportable

Not of interest to other Judges

CASE NO: **91022/2015**

In the matter between:

13/2/2017

TREVOR KEITH TOERIEN

Applicant

and

STANDARD BANK OF SOUTH AFRICA LIMITED

Respondent

J U D G M E N T (Leave to appeal)

MAKGOKA, J

[1] This is an application for leave to appeal against the judgment and order of this court handed down on 31 March 2016. In terms of the order of the judgment, the respondent's application for summary judgment was granted against the applicant (Mr Tourien). Mr Toerien's immovable property was also declared specially executable, and a warrant of execution was authorised against it.

[2] Both in the main application and the application for leave to appeal, Mr Toerien appeared in person.

[3] In his application for leave to appeal, he advances two generic grounds of appeal, namely that the court erred in not refusing summary judgment, and that the

court should have found that the matter should be referred to trial. During argument, nothing new was proffered by Mr Toerien, who only submitted to the effect that he was 'not a thing, but a living being.'

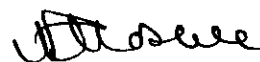
[4] The common law test in an application for leave to appeal has always been whether there are reasonable prospects that another court, given the same set of facts, might arrive to a different conclusion. That test has been codified by s 17(1)(a)(i) and(ii) of the Superior Court Act 10 of 2013, in terms of which leave to appeal may only be given where a judge is of the opinion that the appeal would have reasonable prospect of success, or that there is some compelling reason why the appeal should be heard. It is clear that by the use of 'would' in s 17, the legislature intended a heightened threshold than the common law one.

[5] I have had a careful and dispassionate regard to the judgment against which leave to appeal is sought. Given what has been considered there, I conclude that the appeal would not have any reasonable prospect of success. Neither is there is any compelling reason why the appeal should be heard. The sum total of the above is that the application for leave to appeal is unmeritorious and falls to fail.

[6] Before I conclude, I need to place on record and explain why this application is only heard now, about 8 months since the notice of application for leave was delivered. As stated earlier, Mr Toerien delivered his application for leave on 29 April 2016. Several attempts were made by my office, from June to November 2016, to communicate with Mr Toerien to arrange for a suitable date for the hearing of the application. They were all in vain, as Mr Toerien was either not available on suggested dates, or his communication channels had allegedly changed. Ultimately, I decided to enroll the matter for 10 February 2017. On being informed of the date, the respondent's attorneys caused a notice of set down to be served on Mr Toerien. Perhaps this explains Mr Toerien's attendance to argue the application.

[7] In the result the following order is made:

The application for leave to appeal is dismissed with costs.



PP TM Makgoka
Judge of the High Court

Date heard : 10 February 2017

Date of judgment : 13 February 2017

For the Applicant : In person

For the Respondent : Mr D. Raath (Attorney)

Firm : Van Hulsteyns, Sandton