

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION,
PRETORIA**

CASE NO: 21480/2014

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED.

DATE: 02 April 2024

SIGNATURE

In the matter between:

H[...] B[...] (NEE D[...] J[...])

APPLICANT

ID NO: 5[...]

and

R[...] J[...] B[...]

RESPONDENT

ID NO: 5[...]

JUDGMENT - LEAVE TO APPEAL

CEYLON AJ

A. INTRODUCTION:

[1] This is an application for leave to appeal against the judgment and Order handed down herein on 15 November 2023. This application is opposed by the Respondent.

[2] The said Order provides as follows:

"[101] In the result, the following order is made:

(1) the point in limine is dismissed

(2) the application is granted with costs."

[3] This application is premised on the grounds set out in the Notice to Appeal dated 05 December 2023.

[4] In anticipation of the hearing of this application, the parties' legal representatives were required by this Court to file brief Heads of Argument ("HOA") to which they acceded and the Court expresses its gratitude to the legal representatives for doing so.

B. LEGAL PRINCIPLES:

[5] Applications for leave to appeal are governed by the provisions of section 17 of the Superior Courts Act 10 of 2013. Section 17(1) provides as follows:

"(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that:

(a) (i) the appeal would have 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 case, the appeal would lead to a just and prompt resolution of the real issues between the parties."

[6] The traditional test that was applied by the Courts in considering leave to appeal applications have been whether there is a reasonable prospect that another Court may come to a different conclusion to the one reached by the Court *a quo* [Commissioner of Inland Revenue v Tuck 1989 (4) SA 888 (T) at 890B]. With the enactment of section 17, the test obtained statutory force. In terms of section 17(1)(a)(i) leave to appeal may now only be granted where the Judge or Judges concerned is of the view that the appeal would have a reasonable prospect of success, which made it clear that the threshold to grant leave to appeal has been raised. In Mont Chevant Trust v Tina Goosen and 18 Others *supra*, at para 6, it was held that:

"It is clear that the threshold or 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 at a different conclusion, see Van Heerden v Cronwright & others 1985 (2) SA 342 (T) at 342H. 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." In Notshokuvu v S (2016) ZASCA 112 at para 2, it was indicated that an Appellant faces a "higher and strigent" threshold under the Superior Courts Act. Thus, in relation to said section 17, the test for leave to appeal is not whether another Court "may" come to a different conclusion, but "would" indeed come to a different conclusion.

[7] With regard to the meaning of reasonable prospects of success, it was held in S v Smith 2012 (1) SACR 567 (SCA) 570, at para 7, as follows:

"What the test of reasonable prospects of success postulates is a dispassionate decision, based on the fact and the Law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. 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 words, be a sound, rational basis for the conclusion that there are prospects of success on appeal."

[8] In the decision of Ramakatsa v ANC which it was [(724/2019)[2021] ZASCA 31 (31 March 2021)] it was held that:

"I am mindful of the decision at High Court level debating whether the use of the word "would" as opposed to "could" possible mean that the threshold or granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted... The test of reasonable prospect of success postulates a dispassionate decision based on the facts and the law that a Court of Appeal could reasonably arrive at a conclusion different to that of the trial court' [at para 10].

[9] In Van Zyl v Steyn [(83856/15) [2022] ZAGPPHC 302 (3 May 2022) the Court considered the decision of Ramakatsa, para 10, *supra* against the background of, *inter alia*, MEC for Health, Eastern Cape v Mkhitha and Another [2016 ZASCA 176 (25 November 2016) para 16-18], Notshokovu v S, *supra*, Van Wyk v S, Galela v S [(2014) ZASCA 152; 2015 (1) SACR 548 (SCA), para 14], Four Wheel Drive Accessory Distributors CC v Rattan No [2019 (3) SA 451 (SCA), para 34], Zuma v Office of the Public Protector and Others [2020] ZASCA 133 (30 October 2020), para 19], Nwafor v Minister of Home Affairs and Others [(2021) ZASCA 58 (12 May 2021) para 25 and Khatide v S [(2022) ZASCA 17 (14 February 2022) at para 4] and concluded that the Ramakatsa judgment did not lower the threshold as generally applied and that all courts must still determine if an appeal could have a reasonable prospect of success [at para 15 thereof].

C. THE CONTENTIONS OF THE PARTIES:

[10] The Applicant's contentions are mainly set out in the grounds detailed in the Notice of Appeal dated 05 December 2023.

[11] The Respondent's main contentions, in opposing this application for leave to appeal, is contained in his Heads of Argument. In relation to the Application's submissions regarding prospects of success, the Respondent contended that the present application enjoys no such prospects and there exist no compelling reasons

why the application for leave to appeal should not be dismissed with costs, citing various authorities, including section 16 and 17 of the Superior Courts Act 10 of 2013 the Mont Chevaux Trust v Goosen & 18 Others, Notshokovu v S, *supra*, Acting National Director of Public Prosecutions & Others v Democratic Alliance in re: Democratic Alliance v Acting National Director of Public Prosecutions & Others [(19577/09)[2016] ZAGPPHC 489 (24 June 2016)], Burger v Central SAR 193, Van Dyk v Du Toit, *supra*, decisions.

D. CONCLUSION:

[12] Having read the papers, considered the submissions made on behalf of the parties and the legal principles cited herein, this Court is of the view that there are reasonable prospects that another Court would come to different conclusions to those reached in the judgment herein.

E. ORDER:

[13] In the result, the following order is made:

- (i) leave to appeal is granted to the Full Court of this Division;
- (ii) costs to be costs in the appeal.

B CEYLON
ACTING JUDGE OF THE HIGH
COURT, GAUTENG DIVISION, PRETORIA

Hearing date: 01 February 2024

Judgment date: 02 April 2024

APPEARANCES:

For the Applicant: Adv BR Mathlape

Instructed by: Du Toit Attorneys

Pretoria

For the Respondent:

AM Laas

Instructed by:

Laas Doman Inc
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