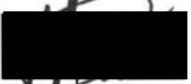




**HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

Case No.: 81435/2019

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED
<u>10.06.2024</u> DATE	 SIGNATURE

In the application between:

SAMUEL MARUTLA NTHINTE.

Plaintiff

MADILA BASHLEY

Plaintiff

and

THE MINISTER POLICE

GAUTENG PROVINCIAL

1st Defendant

COMMISSIONER OF POLICE

2nd Defendant

JUDGMENT

NHARMURAVATE AJ:

INTRODUCTION

[1] The Applicants Madila Bashley (Madila) and Marutla Samuel Nthite (Nthite) seek leave to appeal against the judgement dated 18th December 2023.

[2] The issue to be determined is whether the Applicants have made out a case for the court to consider the application favorably. The Applicants have raised several grounds in their request for leave to appeal. Seeking leave to appeal is really based on the notion of section 17 of the Superior Courts Act, Act 10 of 2013 ("the Act"). The Act regulates applications for leave to appeal. It directs as follows that:

'(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 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) 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.'

[3] The test in an application for leave to appeal prior to the Superior Courts Act was whether there were reasonable prospects that another court may come to a different conclusion¹. However, the amendment of section 17(1) has raised the

¹ Commissioner of Inland Revenue v Tuck 1989 (four) SA 888(T) at 890B

bar, as Bertelsmann J, correctly pointed out in *The Mont Che Vaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para [6]:

'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 Cornwright & Others 1985 (2) SA 342 (T) at 343H. 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.'

- [4] Therefore, a crucial question when it comes to a party seeking leave to appeal is if another court would come to a different finding under the circumstances. The threshold to grant a party seeking leave to appeal has been raised. It is now only granted in circumstances set out and is deduced from the word only used in the said section.
- [5] Our courts have had the opportunity to interpret the meaning of section 17 of the Act in so far as it relates to the test to be applied when considering leave to appeal. In the *MEC Health, Eastern Cape v Mkhita & Another* the court held as follows: -
[17] an application for leave to appeal must convince the court on proper grounds that there is a reasonable prospect 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] The argument raised by the Applicants herein is misplaced in that the version led in court was totally different from the Respondents case. In fact, it was not clear from the particulars of claim what case the Respondents had to meet. The version led by the Respondents could not be disputed. The Applicants could not even dispute the documentary evidence used to support the Respondents case. The Applicants failed to dispute a number of issues raised by the Respondent's police officer.

- [7] The Applicant in its argument is relying on the SCA decision of the *Minister of Police and Another v Du Plessis*² which was based on the legality of the continued detention of Du Plessis. The Applicants matter did not concern a continued detention. The appeal focused on the independent role that prosecutors should play in the public interest against the pressures which they operate under, which was not a concern here in as there was no evidence led in this regard. This case also examined the legal duties resting on the police and on the prosecution after an arrest has been made. The SCA pronounced that: *"In respect of Du Plessis's claim against the police we are faced with a position where it is accepted that a basis existed for the arrest, but it is contended that a most cursory investigation by the police immediately thereafter and that this ought to have led to his release."*
- [8] In the Du Plessis, the police were criticized for failing to do a brief investigation not a detailed investigation (a telephone call). Whereas in this scenario we have the Applicants who did not stop when the police officers stopped them, the police had to force them to stop. Secondly, the police asked to search the bakkie as it was covered, they were permitted, upon finding liquor they asked for the receipt which the Applicants did not have. The Respondents then asked where they bought the liquor. The Applicant's answer was through a diplomat known as Mamazala. The Respondents asked to be taken to Mamazala place the Applicant's refused. This was all not disputed.
- [9] Further when they were in the police station, the police officer called Mamazala to come and produce the receipts for the liquor confiscated. Mamazala did come but she brought invoices which did not match the liquor confiscated. The Respondents undisputed testimony which was also supported by his statement (done immediately after the arrest) is that he thereafter gave Mamazala an opportunity to come back with the correct invoices which she did not do. It is then that he decided to detain the Applicants as for such matters, he had no powers to grant bail. In my view the Defendant's arrest was reasonable and all attempts

² 2014 (1) SACR 217 (SCA)

were made prior and post the arrest amounts to a pre-liminary investigation. The matter was extensively investigated thereafter, this was not a fishing expedition.

[10] Consequently, I am of the view that the grounds raised in the application do not meet the requirement as prescribed in section 17 (1) and would not succeed in appeal. Therefore, the application for leave to appeal must fail.

ORDER

[11] The following order is made:

(a) Application for leave to appeal is refused with costs.



JUDGE OF HIGH COURT

Counsel for the 1st Plaintiff:

Adv Hlakudi Mpe

Attorney for the 1st Plaintiff:

Ramaesele Mphahlele Attorneys

Counsel for the 2nd Plaintiff:

Adv Makhene

Attorneys for the 2nd Plaintiff:

Ramaesele Mphahlele Attorneys

Counsel for Defendants:

Adv Ngoetjana

Attorney for the Defendants:

The State Attorney Pretoria

Date of judgment: