

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

CASE NO: 41584/18

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: **28 May 2024**

SIGNATURE

In the matter between:

**MEMBER OF THE EXECUTIVE COUNCIL
FOR HEALTH, GAUTENG**

Applicant/Defendant

and

**S [M...] [R...] on behalf of
S [Z...] [R...]**

Respondent/Plaintiff

APPLICATION FOR LEAVE TO APPEAL: JUDGMENT

BOTSI-THULARE AJ:

Introduction

[1] The respondent sued the applicant in her personal and representative capacity, as the mother and natural guardian of her minor child, Z[...] (the child), who was born on 15 September 2012 at the Natalspruit. Therefore, the matter came before this court in relation to the determination of the defendant's liability in so

far as it relates to the damages suffered by the plaintiff in her personal capacity as well as in her representative capacity on behalf of her child.

[2] On 26 January 2024 I made the following order:

- “a. The defendant is liable to compensate the plaintiff in her personal and representative capacity for 100% of the plaintiff’s agreed or proven damages arising from the brain injury suffered by S [Z...] [R...] (the Minor) at Natalspruit Hospital on 5 September 2012.
- b. The defendant shall pay the plaintiff’s taxed or agreed party and party costs of suit on the High court scale in respect of the determination of the issue of liability, which costs shall not be limited to —
 - i. the costs attendant upon the obtaining of the medico-legal reports and/or addendum reports and/or joint minutes, if any, of the expert witnesses in respect of which notices in terms of Rule 36(9) of the Rules of Court, were filed;
 - ii. the qualifying and appearance fees of the expert witnesses in respect of which notices in terms of Rule 36(9) of the Rules of Court, were incurred;
 - iii. The reasonable and necessary air transport and accommodation costs and expenses in respect of expert witnesses in respect of which notices in terms of Rule 36(9) of the Rules of Court were filed, where such fees were incurred; and
 - iv. The reasonable fees of 2 (two) counsel, where such services were engaged, including the preparation of heads of argument and running of the trial on a virtual platform and/or in Court.”

[3] This application for leave to appeal is opposed by the respondent. The grounds of leave to appeal are detailed in the notice of leave to appeal, thus, there is no need to repeat the same in this judgment.

[4] An application for leave to appeal is governed by Section 17(1) of the Superior Court Act 10 of 2013, which stipulates 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."

[5] The test for leave to appeal, as set out in the above section is now well known in our law. It is also well established that the test as envisaged in this section is more stringent or requires a higher standard than the previous test.¹ The correct threshold for leave to appeal is therefore whether there are reasonable prospects of success on appeal to be determined on a rational basis.²

¹ *Acting National Director of Public Prosecutions and 3 Others v The Democratic Alliance* [2016] ZAGPPHC 489 (24 June 2016).

² *Land and Agricultural Development Bank of South Africa and Another v Van den Berg and Others* [2021] ZAFSHC 285; [2022] 1 All SA 457 (FB) (8 November 2021).

[6] Applying the test for leave to appeal as envisaged in section 17 of the Superior Court Act, I am not satisfied that the applicant has made out a case that there are reasonable prospects of success on appeal.

Order

[7] The following order is made —

- a. The application for leave to appeal is dismissed with costs.

MD BOTSI-THULARE AJ
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

This judgment is handed down electronically by circulation to the Applicants and the Respondents' Legal Representatives by e-mail, publication on Case Lines and release to SAFLII. The date of the handing down is deemed to be 28th of May 2024.

APPEARANCES

For the Applicant: Adv S J Coetzee SC and Adv T A Mokadikoa
 Instructed by State Attorney

For the Respondent: Adv D Brown instructed by Jerry Nkeli & Associates Inc.

Date of Hearing: 22 May 2024

Date of Judgment: 28 May 2024