

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 2020/40523

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
<u>22/7/2024</u>	
DATE	 MOKOSE SNI

In the matter between:

GENORAH RESOURCES (PTY) LIMITED

Applicant

and

NKWE PLATINUM LIMITED

1st Respondent

NKWE PLATINUM LIMITED

2nd Respondent

NKWE PLATINUM SA (PTY) LIMITED

3rd Respondent

THE MINISTER OF MINERAL RESOURCES AND ENERGY

4th Respondent

DG: DEPARTMENT OF MINERAL RESOURCES AND ENERGY

5th Respondent

REGIONAL MANAGER: LIMPOPO REGION OF DEPARTMENT

OF MINERAL RESOURCES AND ENERGY

6th Respondent

THE GA RATOUW 282 KT COMMUNITY

DEVELOPMENT TRUST

7th Respondent

THE KONEPHUTHI SOCI ECONOMIC DEVELOPMENT

GOVERNANCE CONSOLIDATED STRUCTURE

8th Respondent

LEAVE TO APPEAL - JUDGMENT

MOKOSE J

[1] The first and third respondents (“the respondents”) have applied for leave to appeal to the Supreme Court of Appeal, alternatively, the Full Court of this Division against the whole judgment and order I delivered on 30 January 2024 under the abovementioned case number.

[2] The respondents seek leave to appeal on several grounds as stated in their application for leave to appeal. Counsel for the respondents addressed the court on the salient points raised in the application. These points were opposed by counsel for the applicant on the grounds that I have reasoned out well in my judgment.

[3] Leave to appeal may be granted where a judge is of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. In the matter of *Caratco (Pty) Limited v Independent Advisory (Pty) Limited*¹ it was pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reasons would include an important point of law or an issue of public importance that will have an effect on future disputes in our courts. The court also emphasised that the merits remain vitally important and are often decisive.

¹ 2020 (5) SA 35 (SCA)

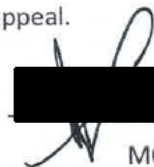
[4] The test laid down in Section 17 of the Act is now a subjective one and no longer an objective test. There must be a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.² The court held in the case of *The Mont Chevaux Trust v Tina Goosen & 18 Others (supra)* that:

"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."

[5] I had dealt in depth with all the issues raised in the application for leave to appeal in my judgement. After listening to submissions by both counsel for the applicants and counsel for the first and second respondents and after reading the application for leave to appeal, I am of the view that there are prospects that another court would come to a different conclusion.

[6] In the premises, the following order is granted:

- (i) leave to appeal is granted to the Supreme Court of Appeal; and
- (ii) the costs of the application for leave to appeal are costs in the appeal.


[REDACTED]
MOKOSE J

22 July 2024

² *The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others* 2014 JDR 2325 at para [6]