

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 34484/2017

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 31 July 2024 E van der Schyff

In the matter between:

MANDLA MACBETH NCONGWANE

FIRST APPLICANT

MACBETH ATTORNEYS INCORPORATED

SECOND APPLICANT

and

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

FIRST RESPONDENT

GAUTENG LEGAL PRACTICE COUNCIL

SECOND RESPONDENT

MPUMALANGA LEGAL PRACTICE COUNCIL

THIRD RESPONDENT

FIRSTRAND BANK LIMITED

FOURTH RESPONDENT

JUDGMENT: LEAVE TO APPEAL

Van der Schyff J

- [1] The applicants approached the urgent court for declaratory relief. A written judgment was handed down. The application was dismissed with punitive costs.

- [2] The applicants subsequently filed an application for leave to appeal the whole of the judgment and the order handed down on 17 July 2024.

- [3] The respondents oppose the application. Counsel for the respondents contends that the applicants have an automatic right of appeal to a Full Court of this Division as provided for in section 18(4) of the Superior Courts Act 10 of 2013 (the Act) and as a result they are in the wrong forum.

- [4] As is set out in the judgment, the applicants primarily sought declaratory relief in that they sought confirmation that the order granted on 4 June 2024 is stayed pending the finalisation of the appeal, as a result of the application for leave to appeal filed by them. The applicants contend that they did not launch the application for the primary relief in terms of the provisions of section 18 of the Act as the applicants' aim was to obtain a declarator that the order falls within the ambit of the provisions of section 18(1). If the applicants were successful and such a declarator was issued, the consequence of such an order would have been that the operation and execution of the order granted on 4 June 2024 was suspended when the application for leave to appeal was filed.

- [5] In prayer 2 of the notice of motion the applicant sought that the LPC respondents 'be interdicted and restrained from executing and/or enforcing the suspension order granted on 4 June 2024. The prayer can be viewed as a corollary to the preceding prayer- the declarator.

- [6] From the notice of the application for leave to appeal, it is evident that the applicants want to appeal the finding that the order handed down on 4 June 2024 is an interlocutory order *not having the effect of a final judgment*, the finding that underpins the dismissal of the application.

- [7] I set out the reasons for the order in the written judgment, and there is no need to revisit these reasons. Section 17(1) of the Act prescribes that leave to appeal **may only be granted** where the judge concerned is of the opinion that (i) the appeal **would have** a reasonable prospect of success or (ii) a compelling reason exists why the appeal should be heard.
- [8] Having regard to the reasoning underpinning my order, I am not of the view that the appeal '**would**' have a reasonable prospect of success if leave to appeal is granted. The Supreme Court of Appeal reiterated in *MEC for Health, Eastern Cape v Mkhitha*,¹ that leave to appeal, especially to the Supreme Court of Appeal, must not be granted unless there truly is a reasonable prospect of success. In *The Mont Chevaux Trust v Tina Goosen and 18 others*² Bertelsmann J concluded that the use of the word 'would' in section 17(1)(a)(i) indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.
- [9] Counsel for the applicant said because the issue at hand arises frequently is a compelling reason to obtain certainty. He could, however, not refer me to any conflicting judgment. Considering the submission made orally and in the heads of argument filed, the facts of the matter, the *sui generis* nature of the litigation, the public interest, and applicable legal principles, the jurisdictional requirements of section 17(1) have not been met.
- [10] As for costs, the LPC respondents do not act at their own behest but as guardians of the profession. They should not be left out of pocket for opposing this application, *albeit* that they sought it to be struck off the roll.

ORDER

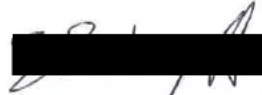
In the result, the following order is granted:

- 1. The first and second applicants' application for leave to appeal is dismissed;**

¹ (1221/2015) [2016] ZASCA 176 (25 November 2016) at para [16].

² (LCC14R/2014) 2014 JDR 2335 (LCC) at para [6].

2. The applicants, jointly and severally, the one paying the other to be absolved, are liable for the costs of the application on an attorney and client scale.



E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicants:

Adv. T. Kruger SC

Instructed by:

Moeti Kanyane Incorporated

For the first to third respondents:

Ms. S. L. Magardie

Instructed by:

Damons Magardie Richardson Attorneys

Date of the hearing:

30 July 2024

Date of judgment:

31 July 2024