

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 090041/2023

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
1 August 2024	[REDACTED]
DATE	SIGNATURE

In the matter between:

MKULULI MTHETHELELI

Applicant

And

UNIVERSITY OF SOUTH AFRICA

FIRST RESPONDENT

**PRINCIPAL AND VICE-CHANCELLOR
OF THE UNIVERSITY OF SOUTH AFRICA**

SECOND RESPONDENT

JUDGMENT – LEAVE TO APPEAL

MOTHA J

Introduction

[1] This judgment was delivered *ex tempore* and deals with the application for leave to appeal my judgment and order handed down on 18 June 2024. Save for the reference to two paragraphs, it would be idle to regurgitate the facts which are comprehensively outlined in the judgment.

The law

[2] When dealing with an application for leave to appeal, it is trite that Courts examine s 17(1) of the Superior Courts Act 10 of 2013 (“SC Act”) which provides that:

“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;”

[3] The Courts have had occasions to unpack this section of the SC Act in various judgments. I referred the parties, first, to the case of *Ramakatsa and Others v African National Congress and Another*¹ where the court held that:

“Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act), leave to appeal may only be granted where the judges concerned are 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. This Court in *Caratco*, concerning the provisions of s 17(1)(a)(ii) of the SC Act 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 reason would of course include an important question of law or a discreet issue of public importance that will have

¹ [2021] ZASCA 31

an effect on future disputes. However, this Court correctly added that 'but here too the merits remain vitally important and are often decisive'..."²

[4] From the case law, it is evident that the threshold for granting leave to appeal has been raised. Second, I referred the parties to paragraph 6 of *Mont Chevaux Trust (IT 2012/28) v Tina Goosen*.³ Lastly, in *Fusion Properties 233 CC v Stellenbosch Municipality*⁴, the court held that:

"Since the coming into operation of the Superior Courts Act, there have been a number of decisions of our courts which dealt with the requirements that an applicant for leave to appeal in terms of ss 17(1)(a)(i) and 17(1)(a)(ii) must satisfy in order for leave to be granted. The applicable principles have over time crystallised and are now well established..."⁵

[5] In the recent SCA judgment, *Ramthal v S*,⁶ the court referred to *S v Smit*⁷ with approval, especially in respect of the principle pertaining to reasonable prospects of success, where it held:

"What the test of Reasonableness prospect postulates is 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. 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... There must in other words be a sound, rational basis for the conclusion that there are prospects of success on appeal"⁸

Submissions

[6] Having listened to the submissions and perused the contents of paragraph 3 of the application for leave to appeal, I am not persuaded that another court would arrive

² Supra para 10

³ 2014 JDR 2325 (LCC), [2014] ZALCC 20.

⁴ [2021] ZASCA 10

⁵ Supra para 18

⁶ [1] (704/2023) [2024] ZASCA 124 (13 September 2024)

⁷ 2011 ZASCA 2012 (1) SACR 567 (SCA).

⁸ Supra para 7.

at a different conclusion nor is there a sound basis to decide otherwise. At paragraph 25 of the judgment, the court said:

“In the tutorial letter 103/2/2022:

For assignment 2 you will submit a draft research paper. You will continue to work on improving the draft even after submission thereof. Once you have received feedback on your draft research paper you will further improve your research report by heeding and responding to the comments and suggestions. The final product will be submitted as Assignment 3, which constitutes your summative assessment. You will not write an examination in this module.”

[7] Hence, I battle to comprehend the logic of submitting that the court erred in stating that: “It would neither be reasonable nor sensible to separate the marks of essentially the same scholarly work. This was a continuum; therefore, he fails at the second hurdle of reasonableness as well ..”⁹

[8] It is self-evident from the above-mentioned paragraph that in this module there was no requirement to undertake an examination. Consequently, Assignments 2 and 3 were inherently joined at the hip, since the progression to Assignment 3 was contingent upon the submission of Assignment 2.

[9] If you like, Assignment 2 was a tributary of Assignment 3. Without Assignment 2 there was no Assignment 3. With that in mind, it is this Court’s opinion that the applicant has failed to meet the test set out in s 17(1) of the SC Act.

Conclusion

[10] Accordingly, the application for leave to appeal to the Full Court of this Division stands to be dismissed with party and party costs on Scale C.

Order

1. The application for leave to appeal is dismissed with costs on scale C.

⁹ Judgment para 26



MUTHA J
JUDGE OF THE HIGH COURT
PRETORIA

This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand- down is deemed to be 1 August 2024.

Date Heard: 1 August 2024

Judgment handed down: 1 August 2024

Appearances:

The Appellant: M. M. Mbali

On behalf of the Respondents: Adv T. Moneri

Instructed by: S Pearl Ndaba Attorneys

