



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED

DATE: 6 September 2024

SIGNATURE: [REDACTED]

Case No. 38767/2007

In the matter between:

**KGAPHOLA INVESTMENT HOLDINGS (PTY)
LTD**

PLAINTIFF

And

GREAT NORTH TRANSPORT LIMITED

DEFENDANT

JUDGMENT

MILLAR J

- [1] On 31 July 2024 I granted an order of absolution from the instance with costs. The Plaintiff has applied for leave to appeal against that order. It is opposed.

[2] For convenience I will refer to the parties as they were in the main case, as the plaintiff and the defendant respectively.

[3] The test for the granting of leave to appeal pertinent to the present matter is set out in section 17(1) of the Superior Courts Act¹ as follows:

“(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”

[4] The grounds upon which the application is brought are that the court misdirected itself in not accepting the evidence tendered on behalf of the plaintiff uncritically. Additionally, it is contended that notwithstanding their being an onus upon the plaintiff, the court ought to have *ad miseracordium* refused the application for absolution in the hope that the plaintiff's case would be made out on the evidence led by the defendant. The entire application is predicated upon a narrow and self-serving interpretation of the evidence led.

[5] It is trite that it is the party who makes an allegation who bears the onus of proving it. In the present matter the plaintiff fell woefully short of doing so, so much so that the test to overcome an application for absolution was not met. I dealt with this in the reasons.

[6] I have considered the grounds upon which the application has been brought and the reasons given by me in the judgment for the order granted. The grounds are a repetition of what was argued and considered before me initially and there is

¹ 10 of 2013.

3

no need to traverse this terrain again. I have also considered the submissions made by counsel for the granting of leave to appeal on the part of the plaintiff and those opposing the granting of leave to appeal on behalf of the defendant.

[7] I am not persuaded that another court would come to a different conclusion or that there is some other compelling reason why leave to appeal should be granted.

[8] The costs will follow the result.

[9] In the circumstances, I make the following order:

[9.1] The application for leave to appeal is refused with costs, which costs are to include the costs of counsel on scale C.


A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:

6 SEPTEMBER 2024

JUDGMENT DELIVERED ON:

6 SEPTEMBER 2024

COUNSEL FOR THE PLAINTIFF:

ADV. P MABILO

INSTRUCTED BY:

TYRON I PATHER INC.

REFERENCE:

MR. T PATHER

COUNSEL FOR THE FIRST DEFENDANT:

ADV. C RIP

INSTRUCTED BY:

ADV. T PILLAY

REFERENCE:

VENTER & DE VILLIERS

MR. W VENTER