



**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:

11/09/2024

DATE

SIGNATURE

CASE NO: 048177/2024

In the matter between:

DEWALT RYAN

Appellant

And

ESTATE LATE : MARGARET WOOD

Respondent

In re:

ESTATE LATE: MARGARET WOOD

Applicant

And

NADONIX (PTY) LTD

First Respondent

DEWALT RYAN

Second Respondent

DORIS RYAN

Third Respondent

OTHER OCCUPANTS OF PORTION

Fourth Respondent

MADIBENG LOCAL MUNICIPALITY

Fifth Respondent

JUDGMENT
(APPLICATION FOR LEAVE TO APPEAL)

MOGOTSI AJ

Introduction

1. This is an opposed application for Leave to Appeal to the full Bench of the High Court of South Africa by the second applicant against the judgement or order granted on 9 June 2024.
2. The Appellant, the Second Respondent in the main application, appeared in person and Adv CFJ Brandt SC together with Adv D Kock appeared for the Respondent. I shall, for convenience, refer to the parties as cited in the application for leave to appeal.

Leave to appeal

3. Leave to appeal is now governed by section 17(1) of the Superior Courts Act 10 of 2013 ("the Act"). The section provides 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.

4. Before the Act came into force, the test in an application for leave to appeal was whether there were reasonable prospects that another court may come to a different conclusion. Much debate has ensued as to whether s 17(1) imposes a more stringent and onerous test before leave to appeal can be granted.¹ I believe it is now authoritatively established that the position remains that if there is a reasonable prospect of success, leave to appeal should be granted. The different views and findings in this regard, in my view, essentially are now moot in light of the findings in *Ramakatsa and Others v African National Congress and Another*.²

¹ See *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) and *Marschall v. Schleyer and Others* 2022 JDR 3343 (GJ) where the Court held that an applicant now faces a higher and more stringent test.

² [2021] JOL 49993 (SCA) March 2021.

5. In *Ramakatsa*³, in interpreting the section, the SCA held that:

"If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates 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 other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal."

6. I, accordingly, consider this application for leave to appeal on the basis that leave should be granted if a reasonable prospect of success is established, or if there are some other compelling reasons why the appeal should be heard.

Grounds for leave to appeal

7. The Applicant's various grounds of appeal set out in its application for leave to appeal and, in summary form, are that the court erred in respect of practically all its findings.

8. The judgment is attacked on the following grounds:

- 8.1 The court erred in finding that the applicants were unlawful occupiers because they were granted occupation by the respondent on the 1st of June 2017 and were consequently bona fide occupiers.

³ At paragraph 10.

8.2 The court erred in not investigating allegations of forgery and fraud, although presented with irrefutable evidence thereof.

8.3 The court erred in not properly considering that the Second applicant and other occupants of the property were destitute and entirely dependent on the Old Age Grant by the Government, that they had spent all their resources and savings on the property, that their children were not in a position to provide any assistance because the daughter could hardly make ends meet, and lastly that their only son is unemployed and unable to find work.

8.4 The court erred in finding that the occupiers had no lien over the property before they became "illegal occupants".

Conclusion

9. After careful consideration, I am of the view that the numerous grounds of appeal lack merit.

10. I was not convinced during the argument that I erred in any way, nor was I convinced that in the exercise of its discretion, another Court would interfere with the judgment or order. I am, therefore, of the view that there exists no reasonable prospect that another Court might come to a different conclusion.

11. Because there are no compelling reasons why leave to appeal should be granted, and none were raised, it cannot be granted on this basis.

12. In the premises, the application for leave to appeal falls to be dismissed.

Order

HAVING HEARD the Appellant and the Respondent's counsel, it is ordered that:

1. The application for leave to appeal is refused with costs on the scale as between attorney and client.




P MOGOTSI

Acting Judge of the High Court

Gauteng Division, Pretoria

APPEARANCES:

For Appellant: Mr D Ryan

For Respondent: Adv C F Brandt SC with Adv D Kock

Date of hearing: 28 August 2024

Date of Judgment: 11 September 2024