

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 82982/2018

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHERS JUDGES: NO

(3) REVISED: NO

DATE: 23 September 2024

SIGNATURE

In the matter between:

ADV L BOSMAN N.O obo A R J[...]

Applicant

and

COLLINS PHUTJANE LETSOALO

First Respondent

THE ROAD ACCIDENT FUND

Second Respondent

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 23 September 2024.

JUDGMENT

INTRODUCTION

1. This is an application for leave to appeal against the judgment and order made on 26 June 2023.
2. The application is premised on the grounds as listed in the Application for Leave to Appeal dated 17 July 2023.
3. In anticipation for the hearing of the Application for Leave to Appeal, the parties were requested to file short heads of argument. They both acceded to this request so directed by the Court.

LEGAL PRINCIPLES

4. Section 17 of the Superior Court's Act provides as follows:¹

“(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;

*(b) the decision sought to appeal does not fall within the ambit of section 16(2)(a);
and*

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.”

¹ Act 10 of 2013

5. In *casu* the Applicant rely on the ground of appeal mentioned in section 17(1)(a)(i) of the Superior Courts Act 10 of 2013, namely, that the appeal would have reasonable prospects of success.

6. As to the test to be applied by a court in considering an application for leave to appeal, Bertelsmann J in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para 6 stated the following:

‘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 Cronwright & 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.’

7. ‘In order to succeed, therefore, the applicant 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. The Court must test the grounds on which leave to appeal is sought against the facts of the case and the applicable legal principles to ascertain whether an appeal court would interfere in the decision against which leave to appeal is sought. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorized as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.’²

8. In *Fair-Trade Independent Tobacco Association v President of the Republic of South Africa and Another*³ the Full Court of this Division observed that:

“As such, in considering the application for leave to appeal it is crucial for this Court to remain cognizant of the higher threshold that needs to be met before leave to appeal may be granted. There must exist more than just a mere possibility that another court,

² MEC for Health, Eastern Cape v Mkhita and Another (1221/2015) ZASCA 176 (25 November 2016) para 17.

³ Case no: 21688/2020 [2020] ZAGPPHC 311 (24 July 2020) at [6].

the SCA in this instance, will, not might, find differently on both facts and law. It is against this background that we consider the most pivotal grounds of appeal.”

9. In the present matter the Applicant brought review proceedings, on an urgent basis, against the Respondents in terms of which the following relief, *inter alia*, was sought:

9.1 a declarator that Applicant is entitled to the taking of the decision;

9.2 an order reviewing the alleged failure by the first Respondent to take the decision to “sign-off” and actuate payment as set out in the Court order dated 12 May 2022;

9.3 an order directing the First Respondent to take the decision and administrative action to “sign-off” and actuate payment;

9.4 Costs to be paid by both Respondents jointly and severally.

10. It is common cause between the parties that at the time when the application for leave to appeal had been launched that payment had not only been actuated but that the full capital had indeed been paid by the Respondents. As such the relief sought by the Applicant in the urgent application had become moot because there are no longer live issues between the parties.

11. As to the costs order being challenged by the Applicant, this Court exercised its judicial discretion on costs in awarding costs against the Applicant as the unsuccessful party in the urgent application.

12. On behalf of the Applicant the costs order awarded is being challenged on the basis of this Court making a finding that the application is to be enrolled as an urgent application and as a result of this finding, this Court should for this reason alone, have awarded costs in favour of the Applicant.

13. Now, the decision to enroll an application as an urgent application, will not out of necessity result in a costs award being made in favour of the party enrolling the

application. Differently put, the enrolment of the application stands different to the merits of the application and the outcome on the merits of the application will have a bearing on the costs to accompany the outcome.

14. This Court exercised its judicial discretion on awarding costs in the urgent application and no prospect of success lies in a challenge on the costs so made.

15. For these reasons I am not persuaded that the appeal would have a reasonable prospect of success and as a result the application for leave to appeal is dismissed with costs.

COLLIS J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
PRETORIA

APPEARANCES

Counsel for the Applicant: Adv. B.P. Geach SC
Adv. C. Strydom

Instructing Attorney: Savage, Jooste and Adams

Attorneys for the Respondent: Mr. T. Mukasi

Instructing Attorneys: Office of the State Attorney, Pretoria

Date of Hearing: 09 September 2024

Date of Judgment: 23 September 2024