

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 020175/2023

1.	REPORTABLE: YES/ NO
2.	OF INTEREST TO OTHER JUDGES: YES/NO
3.	REVISED: YES/ NO
DATE: 22 OCTOBER 2024	
SIGNATURE OF JUDGE: [REDACTED]	

In the matter between:

BAYER INTELLECTUAL PROPERTY GMBH

APPLICANT

And

**AUSTELL PHARMACEUTICALS
PROPRIETARY LIMITED**

FIRST RESPONDENT

REGISTRAR OF TRADE MARKS

SECOND RESPONDENT

JUDGEMENT

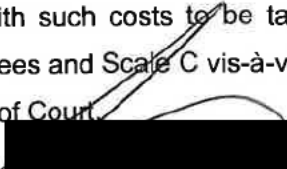
- [1] The First Respondent herein has applied for Leave to Appeal to The Supreme Court of Appeal against the judgment handed down by this Court on 11 June 2024.
- [2] For ease of reference, the parties are referred to as in the main Application.
- [3] Full reasons were provided in the Judgement that I compiled on 19 July 2024 and I do not propose to furnish further reasons, the First Respondent in its Leave to Appeal argued on 12 September 2024, not substantively advancing its propositions further.
- [4] Sec 17 (1) of the Superior Court Act No 10 of 2023 ("The Act") provides:
"Leave to Appeal may only be given where the judges concerned are of the opinion that:
- (i) The Appeal would have a reasonable prospect of success; or*
 - (ii) There is some compelling reason why the Appeal should be heard, including conflicting judgements on the matter under consideration".*
- [5] Sec 17(1)(a) of the Act provides a stringent test wherein the Court must be satisfied that the Appeal would have a reasonable prospect of success. (See **Mont Chevaux Trust (IT2012/28) v Tine Goosen**. Unreported, LCC Case No LCC 14R/2014, dated 3 November 2014, **Notshokovu v S**, unreported, SCA Case N0 157/15 dated 07 September 2016 and **Erasmus Superior Court Practice**. DE Van Loggenberg, Vol Part A, R512, 2020 A2-55.
- [6] In my opinion the First Respondent has not met this threshold.
- [7] Further, there are no conflicting judgments which would have to be considered by the Superior Court of Appeal in terms of Sec (17(1)(a)(ii) of The Act and the public interest will not be served by an Appeal in respect of which there is no legal uncertainty.

[8] In the circumstances, I am not persuaded that another Court will come to a different conclusion. The First Respondent's grounds of appeal and reasons therefor do not justify Leave to Appeal being granted and there is no compelling reasons to grant leave in terms of Sec 17(1)(a) of the Act.

ORDER

Having read the papers and heard counsel, it is ordered that:

- 1 The Leave to Appeal launched at the instance of the First Respondent be hereby denied and dismissed.
2. The First Respondent is directed to pay the costs of this Leave to Appeal Application, including the costs of two counsel with such costs to be taxed in accordance with Scale B vis-à-vis junior counsel's fees and Scale C vis-à-vis lead counsel's fees per Rule 69(7) of the Uniform Rules of Court.


**JOHN RICHARD MEADEN
ACTING JUDGE OF THE HIGH
COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA**

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on this 22ndth day of October 2024

Appearances

For Applicant /	Adv G Marriott / Adv Moshiane
Instructed by:	Adams & Adams
For First Respondant	Adv Michau SC
Instructed by:	Bouwers Inc
Date of Hearing:	12 September 2024
Date of Judgment	21 October 2024