

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: **30469/2020**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
12 AUGUST 2024	
DATE	SIGNATURE

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In the matter between:

**THE BODY CORPORATE OF LOS
ALAMOS NORTE**

APPLICANT

And

MASHILO SHADRACK SEBOLA

FIRST RESPONDENT

MS SEBOLA LABOUR LAW

SECOND RESPONDENT

PRACTITIONERS *(In Final Deregistration)*

LIEBENBERG DAWID RYK VAN

THIRD RESPONDENT

DER MERWE

ROYNATH PARBOO N.O.

FOURTH RESPONDENT

THE MASTER OF THE HIGH COURT

FIFTH RESPONDENT

COMPANIES AND INTELLECTUAL

PROPERTIES COMMISSION

SIXTH RESPONDENT

FIRST NATIONAL BANK LIMITED

SEVENTH RESPONDENT

THE REGISTRAR OF DEEDS

EIGHTH RESPONDENT

SOUTH AFRICAN REVENUE SERVICES

NINTH RESPONDENT

NATIONAL TREASURY

TENTH RESPONDENT

DEPARTMENT OF PUBLIC WORKS

AND INFRASTRUCTURE

ELEVENTH RESPONDENT

THE MINISTER OF RURAL

TWELFTH RESPONDENT

DEVELOPMENT AND LAND REFORM

JUDGMENT

(Leave to Appeal Application)

SENYATSI, J

- [1] This is an application for leave to appeal the judgment handed down on 22 June 2023. The applicants, the first and second Respondents in the main application, raise several grounds which they contend the Court erred in finding for the applicants in the main application. The grounds are for instance that the declaratory order to the effect that the Second Respondent is liable for all levies, electricity, water and sewerage costs occurring from the date of deregistration. The respondents contend that the order is

overboard, unjust, inequitable, constitutionally invalid and incompetent because it is based on unliquidated claims, for the period from the date of deregistration and that the claims have prescribed and that the order has deprived the re-registered close corporation a defence of prescription. For the purposed of this judgment, I will not restate all other grounds.

- [2] The application is opposed on the grounds, *inter alia*, that it is brought in bad faith to delay the execution of the order. The applicant contends that since filing the application for leave to appeal the judgment, the respondents have not taken any steps to prosecute the appeal.
- [3] The requirement and the test for granting leave to appeal are regulated by section 17(1)(a) of the Superior Courts Act No. 10 of 2013 which states as follows:

“(1) Leave to appeal may only be given where the judge or judges concerned are 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] In Mont Chevaux Trust v Goosen and Others¹ Bertelsman J interpreted the test as follows:

“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...The use of the word ‘would’ in the new statute indicates a measure of

¹ 2014 2325 (LCC)

certainty that another court will differ from the court whose judgment is sought to be appealed against.”

- [5] In Acting National Director of Public Prosecutions and Others v Democratic Alliance: In re: Democratic Alliance v Acting National Director of Public Prosecutions² the court acknowledged the test by Bestertsman J.
- [6] In Mothule Inc Attorneys v The Law Society of the Northern Provinces and Another³, the Supreme Court of Appeal stated as follows regarding the trial court’s liberal approach on granting leave to appeal:
- “It is important to mention my dissatisfaction with the court a quo’s granting of leave to appeal to this court. The test is simply whether there are any reasonable prospects of success in an appeal. It is not whether a litigant has an arguable case or mere possible of success.”
- [7] Having considered the grounds of appeal and the heads of arguments by both Counsel, I am not persuaded that the requirements of section 17(1) (a) of the Act have been met. The respondents consented to or did not oppose orders (a) to (c) in the main application. The legal consequence of order (d) to (f) are inescapable conclusions. Accordingly, it is my view that there is no prospect that the appeal would succeed as envisaged by section 17(1) (a) of the Act. I am also not persuaded that there are compelling reasons why the application for leave to appeal should be granted.
- [8] It follows in my view that the respondents have failed to pass the muster on showing that the appeal would succeed.

² (Case no: 19577/09) ZAGPPHC 489 at para 25

³ (213/16) [2017] ZASCA 17 (22 March 2017)

Order

[9] As a result, the following order is issued:

- (a) The application for leave to appeal is dismissed.
- (b) The respondents are ordered to pay the costs of the application.



ML SENYATSI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Delivered: This Judgment was handed down electronically by circulation to the parties/ their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be **12 August 2024**.

Appearances:

For the applicant: Adv SJ Mushet

Instructed by AJ Van Rensburg Incorporated

For the first and Second respondents: Adv MS Sebola

Instructed by Sebola Nchupetsang Sebola Inc

Judgment reserved: 2 August 2024

Date of Judgment: 12 August 2024