

REPUBLIC OF SOUTH AFRICA



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

Case Number: 23724/2018

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

LOUIS LUUS

Applicant

and

ROAD ACCIDENT FUND

Respondent

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

NICHOLS, AJ

Introduction

[1] This is an application for leave to appeal by the plaintiff (in the main action), against the judgement and order dated 10 January 2022 (the judgment). Leave is sought to a full bench of this division. The application is unopposed and the respondent, the Road Accident Fund (RAF), was not represented at the hearing of this application for leave to appeal.

[2] For the sake of convenience, I shall refer to the parties as they are cited in the judgment.

[3] The matter came before me as a trial in which the RAF was unrepresented, having cancelled the mandate of its attorneys. The issues of quantum and liability were separated in terms of Uniform Rule 33(4) and the plaintiff sought judgment against the RAF on the issue of liability only.

[4] After hearing and considering the *viva voca* evidence of the plaintiff, I made the following order:

“The plaintiff’s case is dismissed with costs”

[5] The facts of the case are comprehensively set out in the judgment and full reasons have been provided for the judgment. These will not be repeated.

[6] Subsequent to the delivery of the judgment, the plaintiff delivered his notice of application for leave to appeal setting out the grounds of appeal. This notice is dated 24 February 2022. A date for the hearing of the application for leave to appeal was only sought during 2024.

[7] The grounds for the appeal are fully set out in the notice of application for leave to appeal and will not be repeated.

[8] It is now trite that the Superior Courts Act 10 of 2013 provides for leave to appeal to be granted only in two circumstances¹. The first envisaged circumstance is where the judge concerned is of the opinion that an appeal would have a reasonable prospect of success. The second envisaged circumstance is when/where there are some compelling reasons why the appeal should be granted.

[9] the legal principles applicable in an application for leave to appeal have been properly formulated and well established. As Plasket AJA stated in *S v Smith*:

¹ Section 17 of Act NO 10 of 2013.

“What the test of reasonable prospects of success postulates is 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 order to succeed, therefore, the appellant 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. 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

[10] In the Supreme Court of Appeal matter of *MEC for Health, Eastern Cape v Mkhitha and Another*³ it was held that-

“[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.”

[11] In the Supreme Court of Appeal matter of *Fusion Properties 233 CC v Stellenbosch Municipality*⁴, it was held that:-

“[18] Since the coming into operation of the Superior Courts Act, there have been a number of decisions of our courts which dealt with the requirements that an application for leave to appeal in terms of ss 17(1)(a)(i) and 17 (1)(a)(ii) must satisfy in order for leave to be granted. The applicable principles have over time crystallised and are now well established. Section 17(1) provides, in material part, that leave to appeal may only be granted ‘Where the judge or judges concerned are of the opinion that-

² *S v Smith* 2012 (1) SACR 567 (SCA) para 7.

³ [2016] ZASCA 176 (25 November 2016).

⁴ [2021] ZASCA 10 (29 January 2021).

*(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.'*

It is manifest from the text of s 17(1)(a) that an applicant seeking leave to appeal must demonstrate that the envisaged appeal would either have a reasonable prospect of success, or, alternatively, that 'there is some compelling reason why an appeal should be heard'. Accordingly, if neither of these discrete requirements is met, there would be no basis to grant leave.....".

[12] The plaintiff is therefore required to satisfy this Court that he has reasonable prospects of success on appeal and that based on the facts and the law another court will arrive at a conclusion different to that reached by this Court.⁵

[13] In considering whether another court 'would' come to a different conclusion, I have taken into account the grounds of appeal and the submissions advanced in support of the application.

[14] An order granting leave to appeal in the circumstances where the plaintiff has failed to clearly demonstrate that this Court has erred and/or misdirected itself and thus came to a judgment that no reasonable court could have made would serve no purpose; would be counter-intuitive and unreasonably clog the already overburdened court rolls.

[15] With reference to clearly established legal principles already mentioned I am obliged to determine whether another court would (*not might*) come to a different conclusion. I am not persuaded that another court would arrive at a different conclusion than that arrived at by this Court. I am also not persuaded that compelling reasons have been proffered for the application to be granted.

Order

[16] In the premises, the following order is made:

⁵ *S v Smith* 2012 (1) SACR 567 (SCA) para 7.

- (a) The application for leave to appeal is dismissed.



T NICHOLS

ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances:

Date of Hearing	:	9 October 2024
For the Applicant	:	Mr U Jordaan
Instructed by	:	Leon JJ Van Rensburg Attorneys
For the Respondent	:	Unrepresented