

REPUBLIC OF SOUTH AFRICA



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

Case No: 2021/50602

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED YES

SIGNATURE

28 Oct 2024
DATE

In the matter between

MUZI HANOCK VILAKATI

Applicant

and

STANDARD BANK OF SOUTH AFRICA LTD

Respondent

JUDGMENT (LEAVE TO APPEAL)

WANLESS J

Introduction

[1] In this application the Applicant, namely Muzi Hanock Vilakati,
seeks leave to appeal, either to the Supreme Court of Appeal (*“the*

SCA”) or the Full Court of this Division, against the judgment and order of this Court granted *ex tempore* 24 January 2024 and in written form on 1 August 2024. The application is opposed by Standard Bank (*“the Respondent”*).

- [2] The Applicant’s action against the Respondent was dismissed on the basis that the Applicant’s claim had prescribed.

- [3] The principles of law to be applied in such an application, in terms of section 17 of the *Superior Court Act 10 of 2013* (*“the Act”*), are trite. This brief judgment (*as necessitated by the very nature of the application itself*) will not be burdened unnecessarily by setting out same and referring to the authorities dealing therewith. Leave to appeal should *only* be granted if this Court is satisfied that an appeal court would (*not could*) come to a different finding than it did and would grant a different order.

Grounds of appeal

- [4] These grounds are set out in the Applicant’s *“Rule 49 Notice of Application for Leave to Appeal”*. In order not to burden this judgment unnecessarily, those grounds will not be set out *verbatim* herein. To do so would serve little or no purpose. Rather, these grounds will be dealt with (*broadly*) when considering the merits of this application.

Discussion

- [5] At the hearing of this application it was common cause between the parties that the Applicant's grounds for leave to appeal had been correctly set out in the Respondent's Concise Heads of Argument. The Applicant then "*narrowed down*" those grounds to those as set out hereunder.

First ground for leave to appeal

- [6] The allegations made by Du Plessis about the Applicant on 29 November 2011 and repeated in his email dated 28 December 2011 were false, not applicable, unfounded, contradictory and malicious. These allegations made by Du Plessis about the Applicant on 29 November 2011 and repeated in his email dated 28 December 2011 caused severe socio-economic damages to the Applicant.

Second ground for leave to appeal.

- [7] Du Plessis violated the Applicant's constitutional rights for equality before the law, fair labour practices and access to the courts in terms of the Constitution.

Third ground for leave to appeal.

- [8] The testimony of Paula Tavener of Misys at the arbitration proceedings held on 20 January 2012 regarding the meeting held between Du Plessis and Kuun on 29 November 2011 was hearsay evidence and not admissible.

Conclusion

- [9] When the Applicant addressed this Court at the hearing of this application it became clear that the entire application for leave to appeal was essentially based upon the fact that (a) this Court had based its finding that the Applicant's claim against the Respondent had prescribed upon hearsay evidence and (b) the allegations contained in this hearsay evidence had violated the various rights of the Applicant.
- [10] If regard is had to the judgment of this Court, it is clear that this Court made its finding that the Applicant's claim against the Respondent had prescribed on the basis of the pleadings in the said action; the common cause facts arising therefrom and as agreed between the parties; the applicable sections of the Prescription Act and the correct principles of law arising therefrom.
- [11] The question as to whether the Labour Court erred in accepting hearsay evidence (or even "*double hearsay*" evidence as argued by the

Applicant before this Court) is totally irrelevant to the present application. This is simply because this Court did not (*correctly*) take the probative value of that evidence into account. It did not do so since, not only would this have been incorrect but also (*most importantly*) it was unnecessary for this Court to consider that evidence at all, when deciding the sole issue raised in the Respondent's Special Plea, namely whether the Applicant's action had prescribed. That decision was based upon the factors as set out above.

[12] If the Applicant was dissatisfied with the decision of the Labour Court, his remedies clearly lay in terms of, *inter alia*, the Labour Relations Act. In addition thereto, those proceedings were between the Applicant's erstwhile employer (*Misys*) and the Applicant. They did not involve the Respondent at all.

[13] As to the submission made by the Applicant that the allegations contained in the alleged hearsay evidence before the Labour Court had violated the various rights of the Applicant, it must clearly follow that since this Court had no regard whatsoever (*either in the judgment or the order of this Court*) to the aforesaid that this ground for leave to appeal must also fail.

[14] This finding is supported by the fact that the decision of this Court was based upon, *inter alia*, the pleadings (*with particular reference to the facts pleaded by the Applicant and admissions made therein*) and the

common cause facts arising therefrom (*also confirmed at the hearing of the Special Plea*).

[15] Having carefully considered the submissions made by both the Applicant and the Respondent in this application for leave to appeal, it is the finding of this Court that the Applicant has clearly failed to show that another court would come to a different decision and that the Applicant should be granted leave to appeal. In the premises, this application by the Applicant for leave to appeal should be dismissed.

[16] The foregoing is applicable not only insofar as the application for leave to appeal is based upon subsections 17(1)(a)(i) and (ii) of the Act but also in terms of subsection 17(1)(c) thereof.

[17] This Court should also add that in making such an order, it further bears in mind the oft repeated narrative of the courts of appeal that the court *a quo* should be slow to grant applications for leave to appeal in matters where the prospects of success are not good. This avoids the unnecessary burdening of the rolls of the appeal courts.

Costs

[18] As to the issue of costs, there are no unusual circumstances pertaining to this matter that would cause this Court, in the exercise of its general discretion pertaining to the issue of costs, to deviate from the trite

principle that costs should normally follow the result. In the premises, the Applicant should be ordered to pay the costs of the application for leave to appeal.

Order

[19] This Court makes the following order:

1. The application for leave to appeal against the judgment and order of this Court under case number 2021/50602, granted *ex tempore* on 24 January 2024 and in written form on 1 August 2024, is dismissed.
2. The Applicant (*Muzi Hanock Vilakati*) in the application for leave to appeal, is to pay the costs of this application.



**B. C. WANLESS
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION
JOHANNESBURG**

Date of Hearing:	24 October 2024
Date of Judgment:	28 October 2024

Appearances

On behalf of the Applicant: In person.

On behalf of the Respondent: Adv. M. Edwards

Instructed by: Kate Burgess

On behalf of Tabacks Legal Litigation teams