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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 35287/2017

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

29/10/2024

DATE

SIGNATURE

In the application for leave to appeal between:

SIMELANE, JEROME GIFT

Applicant for leave

[Identity Number: 8[...]

and

SANTAM LIMITED

Respondent

In re:

SANTAM LIMITED

Applicant

and

SHIKITA TRADING (PTY) LTD

First Respondent

[Registration Number: 2015/096956/07]

SIMELANE, JEROME GIFT

Second Respondent

[Identity Number: 8[...]]

MZIMELA, SIZAKELE PETUNIA

Third Respondent

[Identity Number: 6[....]]

MZIMELA, SALAM IVAN

Fourth Respondent

[Identity Number: 6[....]]

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

McCAFFERTY AJ

1. This is an opposed application by which the applicant for leave ("the applicant"), who is the second respondent in the main application, seeks leave to appeal to the Supreme Court of Appeal, *alternatively* to the Full Court of the Gauteng Local Division of the High Court of South Africa Johannesburg against the whole of the judgement and order delivered by me on 5 September 2024.

2. The application for leave was heard virtually on the morning of Friday, 25 October 2024. Both the applicant and the respondent in this application were represented by counsel. The applicant had delivered a notice of application for leave. Both parties submitted heads of argument. I had regard to all of these documents and of course, to the arguments made orally before me.

3. In section 17(1) of the Superior Courts Act, 2013, the legislature states the substantive test to be applied in determining whether leave to appeal ought to be granted:

“17. Leave to appeal

(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 on 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.”*

4. The present application is pursued in terms of section 17(1)(a)(i); or (ii).
5. In the respondent's heads of argument, it was put that the Act has raised the threshold for the granting of leave to appeal and cited various authorities in support of that contention.
6. However, in this Division, in *Smartpurse Solutions (Pty) Ltd v Firstrand Bank Ltd* (35882/2022) [2024] ZAGPJHC 961 (26 September 2024), Meiring AJ, following upon a careful examination of the historical development of the decisions of leave to appeal found as follows:

"[65] ...In sum, the test is – and appears always to have been – whether there is or will be a reasonable prospect of success on appeal, or, in other words, that another court might reasonably find differently

[66] The Superior Courts Act did not bring with it a new test for leave to appeal.

[67] What the applicant must demonstrate is that there is a “reasonable prospect of success”. The notion of success is qualified by the words “reasonable prospects of”. Something has “reasonable prospects” where, as the Supreme Court of Appeal has held, “[a] sound rational basis for the conclusion that there are prospects of success ... exist”.¹

[68] Considered in the round, to establish a “reasonable prospect of success” on appeal, the applicant must demonstrate that there exists some sound, cognisable reason why an appeal court would find differently to the court of first instance. In other words, there must be a reasonable possibility, not a certainty, of success on appeal. This possibility must exist (it must not be hopeless) and must be reasonable (based on logic).

[69] For example, the applicant must show that there is some aspect of the reasoning in the judgment that has the potential to lead a different court to a different conclusion. There must be some factual finding or issue of law that the applicant can demonstrate might, as a matter of law, lead to a different conclusion or in other words, success on appeal.

¹ *Ramakatsa v African National Congress*, fn 40, para 10.

7. Having regard to the applicable test, as set out above, the question is whether the applicant has demonstrated that he has a reasonable prospect of success.
8. The first ground of appeal relates to res judicata. The second ground of appeal relates to the application of the National Credit Act, No. 34 of 2005.
9. The applicant contends that the appeal has reasonable prospects of success. Further, that legal questions raised are not only pivotal to this case but to the interpretation of relevant legislation or legal precedent and that the interests of justice are served by granting leave to appeal.
10. After careful consideration of the grounds of appeal, the written and oral arguments, I have concluded that a court of appeal may reasonably arrive at conclusions different from those arrived at by me.
11. In the result, the following order is made:
 - 11.1 Application for leave to appeal to the Full Court of the Gauteng Local Division of the High Court of South Africa, Johannesburg is granted.
 - 11.2 The costs of the application for leave to appeal are costs in the appeal.

S McCafferty AJ

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

JOHANNESBURG

APPEARANCES:

For the applicant: K Mitchell, Chambers Sandton

Instructed by:

Frese Gurovich Attorneys, Johannesburg

For second respondent: T Seboko, Maisels Chambers

Instructed by:

Mabuza Attorneys, Houghton

Date of hearing: 25 October 2024.

Date of judgement: 29 October 2024.