

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

Case Number: 2024-037055

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

In the *ex parte* application of:

N[...] **C[...]** **L[...]**

Applicant

Identity Number: 8[...]

(For appointment as a legal guardian of the minor,
L[...] D[...] J[...])

JUDGMENT AND ORDER

ABRO AJ

[1] This in application for leave to appeal an order handed down by me dismissing the applicant’s application in open court on 3 June 2024 and my subsequent Judgment and reasons therefore dated 4 June 2024 (stamped 5 June 2024). The Judgement was uploaded to CaseLines on 9 June 2024.

[2] Whilst the notice of application for leave to appeal was filed out of time on 2 August 2024 and whilst no proper explanation was provided or condonation sought in terms of Rule 27, I elected to hear the application.

[3] The application which I dismissed concerned the appointment of the applicant as the minor child's guardian, which was later amended to include granting her full parental responsibilities and rights.

[4] The minor child who was born on 13 December 2006 was 17 years old on the date on which the application was heard. She turns 18 and will attain majority on 13 December 2024, in approximately 5 weeks' time.

[5] The provisions of the Children's Act 38 of 2005, as amended, in respect of the best interests of the child standard and the assignment of parental responsibilities and rights, including those of guardianship, only apply to minor children, meaning persons under the age of 18 years as defined in section 28(3) of the Constitution of The Republic of South Africa Act 108 of 1996.

[6] The consideration of whether or not to consider an application for leave to appeal is regulated by rule 49(1)(b) and section 17(1)(a) of the Superior Courts Act 10 of 2013.

[7] Section 17(1) of the Superior Courts Act provides as follows:

"17(1)(a) 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 or 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." (my emphasis)

[8] The provisions of the Act as set out above are prescriptive.

[9] Mr Nwedo, appearing for the applicant, in his submissions and heads of argument contended that the applicant had satisfied the provisions of section 17 and 'that another court, presented with the same facts and evidence as this Court, could come to a different conclusion than the one arrived at by this Court.'

[10] I disagree.

[11] It is clear that in light of the fact that the minor child will attain majority on 13 December 2024, the decision sought on appeal falls within the ambit of section 16(2)(a)(i) of the Superior Courts Act which provides that:

"16(2)(a)(i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone."

[12] As such and from 13 December of this year no court will appoint a guardian to the minor child or assign parental responsibilities and rights to the applicant in respect of her. Clearly the appeal would not be determined before this date, and therefore the decision sought on appeal will have no practical effect or result.

[13] In the premises, and in accordance with the provisions of section 17(1)(b) of the Act, the application for leave to appeal must not be granted.

[14] Whilst I permitted Mr Nwedo to address me on some of the applicant's grounds of appeal, I am not persuaded that even in the absence of the provisions contained in sections 16(2)(a)(i) and 17(1)(b) of the Act the applicant would have reasonable prospects of success and that the appeal would succeed. It is thus not necessary for me to deal with the applicant's grounds herein.

[15] As such and regard being had to the provisions of sections 17(1) and 16(2)(a) of the Superior Courts Act and the fact that the minor child will attain majority on 13 December 2024, rendering the relief sought by the applicant on appeal of no

practical effect or result, there is no basis that an appeal court would come to a different conclusion.

[16] Consequently, the application for leave to appeal cannot succeed.

ORDER

[17] The application for leave to appeal is refused.

**M ABRO
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

For the Applicant: E Nwedo

Instructed by: Lebea & Associates Attorneys