



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case No: 3675/2023

In the matter between:

BOITSHOKO PERCIVAL DIKOKO

Applicant

and

TSWELOPELE MUNICIPALITY

1st Respondent

THE ACTING MUNICIPAL MANAGER

2nd Respondent

LEBOHANG SHADRACK MALOKASE

3rd Respondent

HEARD ON: 19 JULY 2024

JUDGMENT BY: MHLAMBI, J

APPLICATION FOR LEAVE TO APPEAL

[1] This an application for leave to appeal the judgment and order I granted on 08 January 2024 in which I granted the respondent's condonation application with costs and dismissed the main application with costs.

[2] The grounds of appeal are as follows:

"The learned Judge erred:

1. In finding that there was a proper application for condonation filed before court;

2. *In granting the application for condonation;*
3. *In finding that the replying affidavit contained new matter;*
4. *In find that the supplementary affidavit was necessary to cure the prejudice suffered by the respondents;*
5. *In not granting the applicant the opportunity to respond to the supplementary affidavit notwithstanding the third respondent's invitation to show and the agreement in court that if condonation is granted applicant will have an opportunity to file a further affidavit.*
6. *Not making any finding on the cover up in the organogram attached to the answering affidavit;*
7. *In not finding that the respondent did not qualify for the position."*

[3] Based on the above, the applicants submitted that the proposed appeal had reasonable prospects of success in that it is in the interest of justice that leave be granted as contemplated in section 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013, ("the Act").

[4] Section 17(1) of the Act provides that leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have prospects of success or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration. It is evident that the applicant's leave to appeal is predicated solely on the provisions of section 17(1)(a)(i) of the Act.

[5] In *Ramakatsa and other v African National Congress and another*,¹ it was held that the test of reasonable prospects of success postulated a dispassionate decision based on the facts and law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other word, the appellants needed to convince the court on proper grounds that they had prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.

[6] The relief sought and the only issue for adjudication (apart from a prayer for costs) was the setting aside of the appointment of the third respondent as the

¹ (424/2019) [2021] ZASCA 31 (31 March 2021)

technical service director of the first respondent.² This is contained in the grounds of appeal as the seventh ground. The applicant failed to set out facts in the founding affidavit which justified the granting of the relief sought.³ A perusal of the sparse heads of argument and the grounds of appeal show that the emphasis is more on the condonation application than in showing that the applicant had reasonable prospects of success in the appeal.

[7] I have dealt with the reasons for the granting of the condonation application and the admission of the supplementary affidavit in the judgment.⁴ The applicant failed to discharge the onus that reasonable prospects of success existed that he would succeed on appeal. The application for leave to appeal must therefore fail.

[8] I make the following order:

Order:

1. The application for leave to appeal is dismissed with costs.


MHLAMBI, J

On behalf of the Applicant: Adv. J Lubbe SC
Instructed by: Finger Attorneys
4 Captain Proctor Street

² Paragraphs 2 and 9 of the judgment.

³ Paragraphs 10 to 12 of the judgment.

⁴ Paragraphs 14 and 17 of the judgment.

Westdene
Bloemfontein

On behalf of the respondent: Adv. AE Ayayee

Instructed by: Rampai Attorneys
48 General Hertzog Street
Dan Pienaar
Bloemfontein