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

Not reportable

Case no: 4312/2021

In the matter between

**MEC for the Free State Department of Police,
Roads and Transport** **APPLICANT**

And

L[...] J[...] D[...] T[...] **FIRST RESPONDENT**

M[...] D[...] T[...] **SECOND RESPONDENT**

L[...] J[...] D[...] T[...] N.O, **THIRD RESPONDENT**
(In his capacity as the biological father and
Guardian Of I[...] C[...] D[...] T[...])

**Neutral citation: MEC for the Free State Department of Police, Roads and
Transport**

Coram: Gusha AJ

Heard: 2 August 2024

Delivered: This judgment was handed down and released to SAFLII. The
date for hand-down is deemed to be 22 August 2024.

Summary: Leave to appeal – application for leave to appeal the judgment

and order granted on 12 February 2024 – issue to be decided – whether the appellant has reasonable prospects of success on appeal.

ORDER

The application for leave to appeal is dismissed with costs on scale B.

JUDGMENT

[1] This is an application for leave to appeal to the full bench of this Division against the whole judgment I delivered on 12 February 2024 (the judgment) wherein I found in favour of the respondents on the merits. Aggrieved by that, the applicants on 7 March 2024 filed a notice of application for leave to appeal. The application is opposed by the respondents.

[2] I interpose here to remark that, by the aforementioned date, my erstwhile acting stint had come to an end. The matter was accordingly allocated to the Honourable Van Zyl J. On 22 July 2024 I was, however, once more appointed as an Acting Judge of this Division. Pursuant thereto, the application was reallocated to me on 29 July 2024.

[3] As per the applicant's notice of application for leave to appeal, the judgment is assailed on a number of grounds which are fully set out in the aforementioned notice.¹ Truncated the applicant avers that the court erred on a number of factual and credibility findings it made. The assailed judgement deals extensively with the aforesaid aspects.²

¹ Pages 1-4 paras 13 of the applicant's notice of appeal.

² Pages 8-12 of the judgment.

[4] The test for an application for leave to appeal is now settled.³ Section 17 of the Act states:

‘Leave to appeal

17. (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.

[5] With the advent of s 17 of the Act, the threshold for granting leave to appeal is now elevated to an applicant satisfying the court that there is a reasonable prospect of success and not merely a possibility of success in the appeal. It has been held that the use of the word ‘would’ in the new Act denotes a measure of certainty that another court will differ from the court whose judgment is assailed.⁴

[6] In *Smith v S*⁵ the court held that:

‘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

³ *Cook v Morrisson and Another* [2019] ZASCA 8; 2019 (5) SA 51 (SCA) para 8; *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] ZASCA 176 paras 16-18.

⁴ *The Mont Chevaux Trust v Tina Goosen & 18 others* 2014 JDR 2325 (LCC), *Matoto v Free State Gambling and Liquor Authority* [2017] ZAFSHC 80, *Acting National Director of Public Prosecutions and Others v Democratic Alliance* [2016] ZAGPPHC 489.

⁵ *Smith v S* [2011] ZASCA 15; 2012 (1) SACR 567 (SCA) para 7.

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 categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.⁶ (Footnotes omitted.)

[7] The parties have filed comprehensive written submissions in support and in opposition of the application, largely restating the evidence led during the trial and essentially advancing similar arguments traversed during trial, for that reason I shall not repeat same herein.

[8] The grounds raised in the notice of appeal center largely on the evaluation of the evidence as well as its probative value and have already been traversed and comprehensive reasons therefor given in the assailed judgment. In view of the factual and credibility findings made in the judgment and the settled principles of our law with regards thereto I hold the view that the application for leave to appeal ought to fail as there are no reasonable prospects of success.⁷

[10] In the circumstances, I make the following order:

The application for leave to appeal is dismissed with costs on scale B.

NG GUSHA, AJ

Appearances

On behalf of the Applicants:

Adv. T.L. Manye

⁶ Ibid para 7.

⁷ *Mashongwa v Passenger Rail Agency of South Africa* [2015] ZACC 36, *City of Cape Town v Mtyido* (1272/2022) [2023] ZASCA 163 (1 December 2023).

Instructed by:
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On behalf of the Respondent:
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