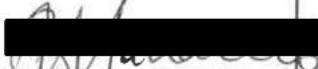


REPUBLIC OF SOUTH AFRICA



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

Case Number: 11262/2022

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
22 January 2025	
DATE	SIGNATURE

In the matter between:

THE MUNICIPAL EMPLOYEES PENSION FUND

Applicant

and

NTABANKULU LOCAL MUNICIPALITY

Respondent

This judgment was delivered electronically by circulation to the parties' legal representatives and uploading on caselines.

JUDGMENT - LEAVE TO APPEAL

MAHALELO, J

Introduction

- [1] On 7 October 2024 I handed down a judgment in this matter dismissing the rescission application brought by the applicant. The rescission application was launched in terms of Rule 42(1) of the Uniform Rules of Court, alternatively, the common law. The case is centered around the default judgment which was granted against the applicant wherein the applicant was ordered to pay to the respondent the following:
- (a) An amount of R 127 149.63 being the purported value of the pension contributions allegedly due to the respondent.
 - (b) All investment returns and on the purported pension contributions paid by the respondent to the applicant from 01 September 2018 to 30 June 2020.
 - (c) Interest on the aforesaid amount at the legally prescribed rate from 29 March 2019, alternatively from the date of the order to the date of payment, and
 - (d) the cost of the application for default judgment and the main action.
- [2] This is an application for leave to appeal against the judgment and order refusing rescission of the default judgment. The application was filed timeously. The applicant and the respondent filed written submissions and argued the matter in open court.
- [3] The respondent opposed the application and submitted that the grounds of appeal raised by the applicant are meritless and should be rejected by the court.

The grounds for leave to appeal

- [4] The applicant submitted that in determining whether to grant rescission, the court failed to properly consider the scope and requirements of rescission applications, both in terms of the common law and rule 42(1) and as a result, there are reasonable prospects that an appeal court would come to a different conclusion. The applicant also submitted that there are other compelling factors justifying

leave to appeal being granted in terms of section 17(1)(a)(ii) of the Superior Court Act¹ as there are conflicting judgments in as far as the requirements for rescission are concerned.

Test for Leave to Appeal

- [5] Section 17 (1) of the Superior Court Act deals with the relief for leave to appeal. In terms thereof, leave to appeal may only be granted (a) where a judge/s are of an opinion that (a) the appeal “*would*” not “*may*”, have reasonable prospects of success (b) there are some compelling reasons why the appeal should be heard, including the existence of conflicting judgments on the matter under consideration.
- [6] It has been confirmed that the use of the words “*only*” and “*would*” implies that the threshold is set too high to a point where this Court must only give leave in instances where a definitive prospect exist that the appeal would succeed.
- [7] The court held in the case of *The Mont Chevaux Trust v Tina Goosen & 18 Others*² that:

“It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see Van Heerden v Cornwright & Others 1985 (2) SA 342 (T) at 343H. The use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”

¹ 10 of 2013

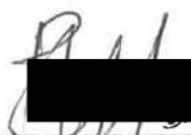
² 2014 JDR 2335 (LCC) at para 6

[8] I have had regard to the test for leave to appeal and I note that the application brought by the applicant raises issues which necessitate attention by the Supreme Court of Appeal. I have thus concluded that there are reasonable prospects of success on appeal.

[9] In the premises, the following order is granted:

1. The application for leave to appeal to the Supreme Court of Appeal is granted.

2. Costs in the appeal



MB MAHALELO
JUDGE OF THE HIGH COURT
JOHANNESBURG

Heard: 10 December 2024

Judgment: 22 January 2024

For the applicant: Mr V Movshovich

Instructed by: Webber Wenzel

For the respondent: Adv S Khumalo SC & Adv M Mtshali

Instructed by: T.L Luzipho Attorney