



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No:1164/2021

(1) Reportable: No
(2) Of interest to other judges: No
(3) Revised: Yes
8 November 2024

8/11/2024
Date

In the matter between:

**SEHLWANE TEBOGO ADELAIDE
OBO SEHLWANE RETHABILE.**

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

LEAVE TO APPEAL JUDGEMENT

MATSETELA AJ.

1. This is an Application for leave to appeal against the Judgement which was handed down on the 31st July 2024, as the matter was heard on the 9th July 2024.
2. It is trite that for an application for leave to appeal to be successful, it is required for the party seeking same to demonstrate that there are

reasonable prospect that another court would come to a different conclusion to that reached in the judgement that is sought to be taken on appeal. This leave to appeal is sought in terms of Section 17 (1) (a) (ii) of the Superior Court's Act 10 of 2013. The applicant has laid the grounds of appeal on the notice of application for same on case lines under item 26 (1), and the Applicant and Respondent have submitted their respective heads of argument for the leave to appeal, see case lines 26 (13) and 27 (1). The applicant filed a condonation application condoning the late filing of the application for leave to appeal which is according to the applicant one (1) day late.

3. In *Member of the Executive Council for Health, Eastern Cape v Mkitha and Another* (2016) JOL 36940 SCA at paragraphs 16-17, the court applied the concept of reasonable prospects of success as follows: "An Application for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal". In view of the above dicta, leave to appeal should be granted only when there's a sound, rational basis for the conclusion that there are prospects of success on appeal. Further that even if court is persuaded of the prospects of success, it must still enquire whether there is a **compelling reason** for the appeal to be heard in the premises.
4. The first ground of appeal "Failure to recognize timing of Appointment" and that applicant's legal representative was appointed on the 8th July 2024, one day before the hearing of default judgement. And further that

this case was handled by another attorney who resigned from the RAF and further that Mr. Makhura was requested to assist in the matter. I indicate on this point that it cannot be a compelling reason the fact that the applicant's legal representative was appointed a day prior to the hearing despite summonses having being issued in 2021. There is no plausible explanation even at this stage of leave to appeal how this constitute a compelling reason. I should indicate that during a quo proceedings- no substantive application for postponement and condonation was brought by the applicant either to have the matter postponed, only submissions from the Bar by the applicant's legal representative indicating that a notice of intention to defend was filed in terms of Rule 19 and henceforth this matter ought to be removed and a tendering costs. I must point out during the application for leave proceedings, the court enquired from the applicant's legal representative as to why there was no substantive application in that regard except to submit that Rule 19 notice has been submitted and such this matter ought to be removed from the roll with costs by court a quo. On this point there are no reasonable prospect of success on appeal and another court not come to a different conclusion.

5. On the "Disregarding for Offer on Loss of Earnings". On this point I submit that once more the respondent seeks to have the matter postponed without bringing a substantive application and no reason except to say they wanted to appoint their own experts and no explanation under oath why since 2021 when summonses were issued same was not done. On this point again there are no prospect of success on appeal and another court will not come to a different conclusion.

6. On the "mischaracterization of the legal representative". On this point, I submit that the reason for leave to appeal raised by the applicant have been dealt with in my judgment and I stand by those reasons. See paragraphs 10-13 of my reasons for the judgement. I should indicate that even on this point, there are no prospect of success on appeal and another court will not come to a different conclusion.
7. On the "Improper Finding of Abuse of Court Processes". I submit that this aspect had been dealt with in my judgement¹ and I stand by those reasons. Further to elaborate, there are no prospect of success on appeal and another court will not come to a different conclusion, as there is no irregularity or misdirection that the court a quo committed in the premises. To add on this point, I submit again that no explanation was given even during leave to appeal proceedings why there was no substantive application for condonation/postponement. I should indicate that Rule 19 should be read together with Rule 27. See *Hugo V Raf*, decision of Justice Holland-Muter wherein he explained that Rule 19 (5) does not operate to the exclusion of the provisions of Rule 27 and further that explanation for the late filing of a Notice of Intention to Defend should be on oath and application for condonation. See further *Melanie v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532 B-E.
8. I indicate that on the proper conspectus of facts of the matter, and having had argument on leave to appeal by both parties, It is my view that the Applicant has not made out a case and that there are no reasonable prospects of success on appeal and that no other court will come to a different conclusion.

¹See Paragraph 14, 15 and 16 of the judgement.

9. The Application for leave to appeal is dismissed with costs on an attorney and client scale.

MD MATSETELA

Acting Judge of the High Court of South Africa

Gauteng Division, Pretoria

For the plaintiff

Adv Bam

Instructed by:

Wehmeyers Attorneys

For the defendant:

The State Attorney, Ms. MM Maphutha

Instructed by:

The Road Accident Fund

Date of hearing: 26th September 2024.

Date of leave to appeal Judgement: 8th November 2024.