



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

CASE NO: 2023/32341

DELETE WHICHEVER IS NOT APPLICABLE

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

12 Nov 24



In the matter between: -

ANDISWA MLISA

Applicant

and

SOUTH AFRICAN NATIONAL SPACE AGENCY

First Respondent

CHAIRPERSON OF SOUTH AFRICAN NATIONAL SPACE AGENCY

SPACE AGENCY

Second Respondent

This judgment was handed down electronically by circulation to the parties' legal representatives via email and by uploading it to the electronic file of this matter on Caselines. The date of judgment is deemed to be 12 November 2024.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

MOGAGABE AJ

INTRODUCTION

[1] The applicant herein seeks leave to appeal against my judgment and order so delivered on 1 August 2024, premised on the grounds set out in the application for leave to appeal.¹ Leave to appeal is sought to the Supreme Court of Appeal alternatively the Full Court of this division.

[2] The leave to appeal is directed against my judgment and order insofar as it relates to the dismissal of the applicant's claim for damages.² In essence, then the application for leave to appeal is directed against my factual finding non-suited the applicant in respect of her claim for damages, on the basis that she

¹ Caselines 13- 1 to 13-5 Application for leave to appeal

² As foreshadowed in subpara [80.2] under para 68 of the Judgement, Caselines 12-43. It should be noted that the reference to subpara [80.2] is erroneous and should read subpara [68.2]

has failed to adduce sufficient factual relevant evidence or information to enable the court to properly assess and make a finding regarding the correctness of the damages she claimed in the globular sum of R6 476 415.22. In other words, the failure by the applicant to produce such evidentiary material precluded the court from making a finding relating to the propriety or correctness of the damages so claimed by the applicant herein. The respondents (SANSA) are resisting the application for leave to appeal based on the grounds outlined in the heads of argument filed on their behalf.³

[3] On the eve of the hearing of the matter on Friday 8 November 2024, SANSA filed an application to cross-appeal my judgment and order in terms of which I granted an order in favour of the applicant on the merits of the matter, to the effect that the decision of the board of SANAS in terminating applicant's fixed term contract of employment, constituted a breach and repudiation thereof. This application to cross-appeal was accompanied by an application condoning the delay (in the order of about two months) in filing such application to cross appeal. It is important to point out that such an application to cross-appeal is conditional upon the court granting the applicant leave to appeal as outlined in paragraph [2]above.

[4] Before the enactment of the Superior Courts Act 10 of 2013 (the Act), applications for leave to appeal were regulated by the Supreme Court Act of

³ CaseLines 14-1 to 14-11 SANSA's heads of Argument.

1959, in terms of which an application for leave to appeal was granted if the court was of the opinion that there exists reasonable prospects that another court might reach a different conclusion on the judgment appealed against i.e. on the basis of a mere possibility of success or an arguable case. However, since the commencement of the Act on 23 August 2013, an application for leave to appeal will only be granted in terms of section 17(1)(a) of the Act, when the Judge or Judges concerned is/are of the opinion that the appeal would have a reasonable prospect of success or there exists some other compelling reason(s) why the appeal should be heard by an appellate court.⁴ This entails that in terms of section 17(1)(a) the test in determining reasonable prospects of success postulates 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.⁵ In other words, leave to appeal should be granted only where an applicant has demonstrated and the court is convinced that a sound and rational basis exists for the conclusion that there are prospects of success on appeal.

[5] Having given due and proper consideration to all the submissions made by the parties, and in particular the argument and submissions by the applicant's counsel, I am of the considered view that there exists no reasonable prospects of success or other compelling reasons, why leave to appeal should be granted in the present matter.⁶ Overall, the applicant has failed to show that there exists

⁴ As per Section 17(1)(a)(i) and (ii) of the Act, regulating applications for leave to appeal.

⁵ **Ramakatsa v African National Congress [2021] ZASCA 31 (31 March 2021)** para [10].

⁶ **Mont Cheveaux Trust v Goosen** 2014 JDR 2325 (LCC) para 6; **MEC for Health, Eastern Cape v Mkhitha** [2016] ZASCA 176 para 17; **State v Smith** 2012 (1) SACR 597 (SCA) para 7;

a sound and rational basis for the conclusion that there are prospects of success on appeal.⁷

[6] In **Fusion Properties 233 CC v Stellenbosch Municipality**,⁸ the Supreme Court of Appeal held that:

“It is manifest from the text of s17(1)(a) that an applicant seeking leave to appeal must demonstrate that an envisaged appeal would either have a reasonable prospect of success, or alternatively, that ‘there is some compelling reason why an appeal should be heard’. Accordingly, if neither of these discrete requirements is met, there will be no basis to grant leave...”

[7] In the circumstances, there is no need to deal with SANSA’s conditional application for leave to cross appeal.

ORDER

[8] In the result, the following order is made:

8.1. the application for leave to appeal is dismissed;

8.2. the applicant to pay the costs thereof on scale B.

⁷ **Secona Freight Logistics CC v Samie & Others** [2023] 183 (22 December 2023) para [28].

⁸ [2021] ZASCA 10 (29 January 2021) para[18]


S J R MOGAGABE

Acting Judge of the High Court

Gauteng Division, Pretoria

Appearances:

Counsel for the applicant: G Quixley assisted by S Khoza

Instructed by Mohau Romeo Tsusi Law t/a MRT Law Inc

Counsel for respondents:

T Manchu SC

Instructed by: Mothle Jooma Sabdia Inc

Date of hearing: 11 November 2024

Date of judgment: 12 November 2024