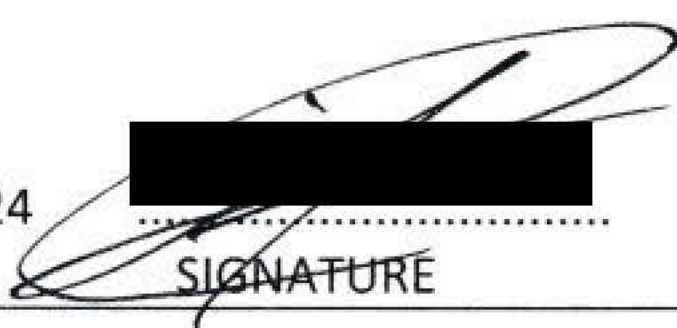




IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION: PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
22 November 2024	
DATE	SIGNATURE

Date: 22 November 2024

Case number: B1781/2024

In the matter between:

PASTOR RAYMOND SONO

FIRST APPLICANT

FOUNTAIN OF LIFE WORSHIP CENTRE

SECOND APPLICANT

(REGISTRATION NUMBER: 2012/115666/08)

And

SHERIFF OF THE HIGH COURT,

TSHWANE NORTH

FIRST RESPONDENT

SAVDEV LAND 1 (PTY) LIMITED

SECOND RESPONDENT

(REGISTRATION NUMBER: 2001/010246/07)

JUDGMENT

MINNAAR AJ.

[1] On 15 July 2024, I delivered judgment dismissing the applicants' urgent application. In the urgent application, the applicants sought an interim interdict with the following terms:

- a. Pending finalisation of a petition, under case number 51054/2013, the first respondent be interdicted from destroying any structures and/or buildings on the relevant immovable property ("the property").
- b. Pending finalisation of an application under case number B3740/2023, to declare the settlement agreement between the applicants and the second respondent *null and void*, the respondents are interdicted from evicting the applicants from the property.

[2] The applicants delivered an application for leave to appeal on 18 July 2024.

[3] On 26 July 2024, the second respondent's attorney delivered a notice to the applicants' attorney to inform the applicants' attorney that the second respondent will seek costs of the application for leave to appeal on attorney and client scale, *de bonis propriis*.

[4] There is no indication that the applicants took any further steps to get the application for leave to appeal ripe for hearing. On my insistence, Me Sekete (the secretary dealing with applications for leave to appeal in the

office of the Judge President) scheduled the hearing of the application via the virtual platform on Friday 8 November 2024 at 09h00. The parties were also directed to deliver heads of argument. The parties were informed of the date, time and mode of hearing well in advance.

[5] On 6 November 2024, heads of argument on behalf of the second respondent were uploaded to Caselines. The applicants failed to upload heads of argument.

[6] At around 16h15 on 7 November 2024, one day before the set down of the hearing of the application for leave to appeal, the applicants uploaded an application for postponement. The basis of the application is that the applicants await the typed record of proceedings to enable them to supplement their grounds for leave to appeal.

[7] On 8 November 2024 at 09h00, when the application was called, there was no representation on behalf of the applicants. The second respondent's counsel, Advocate J W Kloek, was present. I stood the application down to enable Me Sekete to get hold of the applicants' attorney. At 09h20, Advocate S Moses appeared for the applicants. Advocate Moses informed the court that he had been briefed at around 09h10 to stand in for Advocate Molopane.

[8] Advocate Moses confirmed to the court that he had only been briefed to move the application for postponement. Advocate Moses further confirmed that he was not briefed to argue the application for leave to

appeal. After hearing both counsels on the application for a postponement, the application for a postponement was dismissed (an *ex temporae* judgment was given).

[9] Even though Advocate Moses was not briefed to argue the application for leave to appeal, the court requested Advocate Moses to remain in attendance to observe the proceedings and to provide feedback to his instructing attorney. Whilst Advocate Kloek addressed the court on the merits of the application for leave to appeal, Adv Moses left the proceedings and did not come back onto the virtual platform.

[10] In their application for leave to appeal, the applicants aver that this court erred in:

- a. Refusing to grant the request for recusal and ignoring the allegation that the court was biased towards the applicants.
- b. Finding that the application was not urgent.
- c. Finding that annexure "RS6" to the founding affidavit (this is an unsigned and undated document which the applicants alleged was a notice to vacate) was not a notice in terms of the law and did not emanate from the Sheriff's office.
- d. Making a credible finding that neither the application for special leave to the Supreme Court of Appeal nor the application to declare the settlement agreement null and void, were valid, existing documents solely because those applications were not attached to the application. In doing so, the court usurped the

duties of the Registrar by denying the existence of the mentioned applications.

- e. Ignoring the fact that the mere attachment of copies to the application served as *prima facie* proof of their existence as the court was not invited to preside over such cases. The court's confirmation that such cases existed on Caselines was enough to prove the existence of those applications.
- f. Misinterpreting the provisions of the settlement agreement by finding that Judge Klein AJ ordered the applicants to vacate the said premises and for the demolition of the structures at the premises whereas Judge Klein AJ only made the so-called settlement agreement between the parties an order of court.
- g. Ignoring the applicants' assertion and submission that the second respondent is not the owner of the immovable property and thus not entitled to evict the applicants from the immovable property.
- h. Finding that the applicants had failed to establish *prima facie* rights over the said property and ignoring the fact that the applicants produced evidence from the Municipality to occupy and use the property. This fact was never denied by the second respondent.
- i. Finding that the applicants did not make out a proper case and ignoring the undisputed facts submitted on their behalf relating to urgency and that the applicants had no other alternative remedy.

- j. Finding that the order by Klein AJ is not challenged and ignoring the declaration of a settlement agreement being null and void is in itself a challenge to the said order.
- k. Ignoring the fact that the second respondent's failure to sign the so-called settlement agreement renders the settlement agreement unenforceable and as such a prospect of success exists to declare the said order null and void and void ab initio.

[11] It is further the case of the applicants that another court is likely to come to a different decision and as such leave to appeal should be granted.

[12] Applications for leave to appeal are dealt with in terms of the provisions of Rule 49 of the Uniform Rules of Court read with sections 16 and 17 of the Superiors Courts Act 10 of 2013 ("the Superior Courts Act").

[13] Section 17(1) of the Superior Courts Act provides the test applicable to applications for leave to appeal. Section 17(1) reads as follows:

"(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.”*

[14] Section 17(1)(a)(i) of the Superior Courts Act was dealt with in the decision of the Land Claim Court in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 (JDR 2325 (LCC); 2014 JDR 2325 in which Bertelsmann J held that the use of the word “*would*” (as opposed to *could*) in the provisions is an indication that the threshold for leave to appeal has been raised. It was further held that the word “*would*” indicates a measure of certainty that another court will differ from the judgment appealed against.¹

[15] On the rigidity of the threshold, Plaskett AJA (as he then was) in which Cloete JA and Maya JA (as she then was) concurred, wrote the following *S v Smith* 2012 (1) SACR 567 (SCA) ([2011] ZASCA 15) at paragraph 7:

¹ *Mont Chevaux Trust* at par 6. See further *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (1957/09) [2016] ZAGPPHC 489 (24 June 2016) par 25

'What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the 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 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.'

[16] Under section 17(1)(a)(ii) of the Superior Courts Act the Court determining an application for leave to appeal ought to enquire whether there is a compelling reason for the appeal to be heard.² The enquiry is factual and, therefore, each application ought to be decided on its own facts.

[17] Other considerations beyond the abovementioned statutory provisions would include where the material case is of substantial importance to the appellant and where the decision sought to be appealed against involves an important question of law³ or where required by the interests of justice.⁴

² Erasmus, Superior Court Practice (2021) A2-56 to 57

³ Erasmus, Superior Court Practice (2021) A2-56 to 57

⁴ *City of Tshwane v Afriforum* 2016 (6) SA 279 (CC) par 40

[18] If regard is had to my judgment, read with the application for leave to appeal, I conclude that, although subjectively to the applicants, the case might be of substantial importance, the application lacks any semblance of prospect of success, let alone reasonable prospect of success.

[19] No other compelling reason is advanced as to why the appeal should be heard and the interest of justice is not implicated. Neither is a valid important question of law raised.

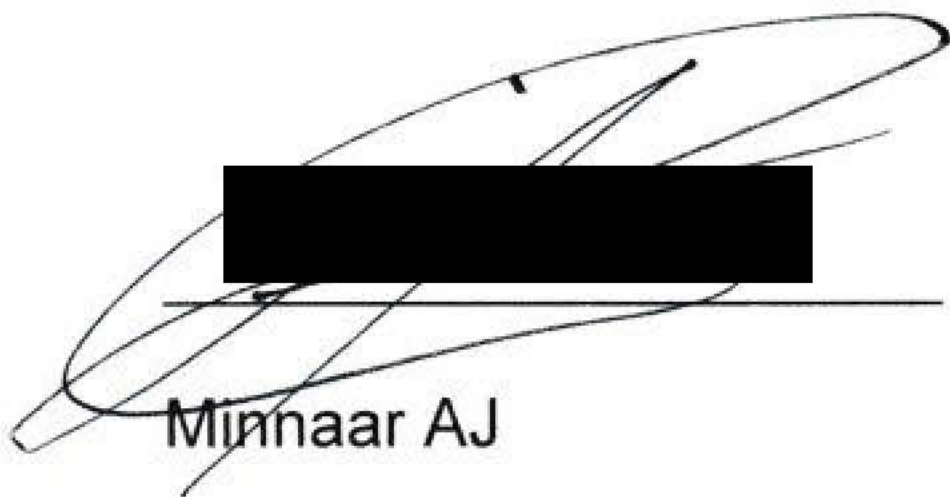
[20] As the provisions of section 17(1)(a) of the Superior Courts Act clearly demand, the application must be dismissed, as leave to appeal may only be given when the court believes that the intended appeal “would have” a reasonable prospect of success. The applicants have failed to make out a case that another court would reach a different conclusion or outcome to the judgment *in casu*.

[21] There is no basis upon which the second respondent should be out of pocket in opposing this application for leave to appeal. The applicants’ failure to pursue the application for leave to appeal, their election not to file heads of argument and not to ensure that counsel is properly briefed to argue the application for leave to appeal is frowned upon. Such actions would warrant costs on the scale as between attorney and client.

[22] The court had due regard to the second respondent's application for *de bonis propriis* costs. The court is however not inclined to grant costs *de bonis propriis*.

[23] Consequently, I make the following order:

1. The application for leave to appeal is dismissed with costs on the scale as between attorney and client.



Minnaar AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

Heard on	: 8 November 2024 (virtually)
For the Applicant	: No appearance
Instructed by	: Malatji Attorneys
For the Defendant	: Adv. J W Kloek
Instructed by	: Barnards Incorporated.
Date of Judgment	: 22 November 2024