



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

**Reportable /  
Not reportable**

Case no: 2409/2015

In the matter between

**ARMAND ERNEST LE HANIE**

**APPLICANT**

and

**METSIMAHOLO LOCAL MUNICIPALITY**

**RESPONDENT**

**Neutral citation: Armand Ernest Le Hanie v Metsimaholo Local  
Municipality**

**Coram: Chesiwe J**

**Heard:** On the papers as per the directive with heads of argument filed on 11 October 2024 and 18 October 2024 respectively.

**Delivered:** This judgment was handed down in open court and electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 15 November 2024.

**Summary:** Application for leave to appeal –Dismissal of Plaintiff's claim in respect of future medical expenses and payment for loss of earnings - Test to be applied as regulated by s 17 of the Superior Courts Act 10 of 2013 – Leave to appeal sought and to be heard by the Full Bench of the Free State Division of the High Court.

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## ORDER

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1. Leave to appeal is granted to the Full Bench of this Division against the judgment and order dated 31 May 2024.
  2. Costs to be costs in the appeal.
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## LEAVE TO APPEAL JUDGMENT

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### Chesiwe J

[1] The Applicant seeks leave to appeal to the Full Bench of this Division against the judgement and order granted on 31 May 2024, specifically with reference to paragraph 1 of the order, in terms of which the court *a quo* dismissed the Applicant's (Second Plaintiff in the court *a quo*) claim for future medical expenses and payment for loss of earnings. The application is opposed by the Respondent (Defendant in the court *a quo*)

[2] The Applicant listed several grounds for the leave to appeal and these are listed in the notice of the application and will not be repeated herein.

[3] The Applicant contends that he has good prospects of success and that another court on appeal would come to a different conclusion as the court *a quo* erred in not considering the evidence of Dr Agbazue (orthopaedic surgeon) and also erred in rejecting the evidence of Dr Ziervogel (orthopaedic surgeon) that the injuries sustained were due to the accident and not due to sport and being overweight.

[4] The Respondent contends that the Applicant failed on the balance of probabilities the extent of the injuries and whether there was a causal connection between the Applicant's pre-accident conditions and the injuries sustained in the accident on 20 July 2014.

[5] The test to be applied in an application for leave to appeal is regulated by s 17 of the Superior Courts Act 10 of 2013 (the Act). Section 17(1)(a) provides as follows:

- i. Leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have reasonable prospects of success or;
- ii. There is some compelling or other reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[6] S 17 has changed the position somewhat in respect of the test to be applied. Previously, an Applicant was merely required to show that there is a reasonable possibility that a court differently constituted, may come to a different conclusion from that of the court *a quo*.

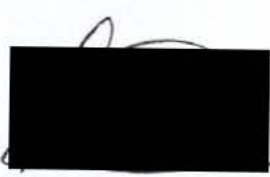
[7] The courts have in several matters reiterated this view (See Hans Seuntjie Matoto v Free State Gambling and Liquor Authority 4629/2017[ZAFSHC] 8 June 2017; Wesrup Beleggings CC v Ferriers and Another (1264/2012) [2017] ZAFSHC 128 (3 August 2017))

[8] The Applicant's injuries and sequelae were considered in the joint minutes of the experts, those of Dr Agbazue and Dr Preddy. The Applicant therefore makes out a case that another court would come to a different conclusion different from that of the court *a quo* as there lies two different versions from Dr Agbazue and Dr Heyns for which this Court has taken note of.

[9] In my view, I am satisfied that there are reasonable prospects that another court would find that the court *a quo* erred by dismissing the Applicant's claim in respect of future medical expenses and loss of earnings.

[10] In the circumstances, the following order is made:

1. Leave to appeal is granted to the Full Bench of this Division against the judgment and order dated 31 May 2024.
2. Costs to be costs in the appeal

  
S. CHESIWE, J

## Appearances

On behalf of the Plaintiff: Adv. M D J Steenkamp  
Instructed by: Symington De Kok  
BLOEMFONTEIN

On behalf of the Defendant: Adv. L Makua  
Instructed by: Ponoane Attorneys  
BLOEMFONTEIN