



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

CASE NO: 13494/18

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

Date: 5 February 2025

In the matter between:

**THE MEMBER OF THE EXECUTIVE
COMMITTEE FOR HEALTH, GAUTENG PROVINCE**

APPLICANT

and

ALEXANDER: BRENDELYN OBO KSA

RESPONDENT

LEAVE TO APPEAL JUDGMENT

ALLY AJ

[1] This is an application for leave to appeal against the whole of my judgment delivered on 31 October 2024. The application is opposed.

[2] The parties were represented, as at the partial quantum trial by Adv. M. Dlamini SC for the Applicant and by Adv. S C Myburgh SC with Adv. C. Jacobs for the Respondent.

[3] The Applicant's three grounds of appeal amount to what Counsel for the Applicant submitted are misdirections or irregularities committed by the Court in assessing the case and the evidence led. I do not intend repeating the grounds which can be found in the applicant's notice of appeal¹.

[4] It has now become trite that the test in applications for leave to appeal has changed to one which is heightened². The Applicant is accordingly required to convince this Court that another Court 'would' come to another conclusion.

The Supreme Court of Appeal³ has stated the test to be as follows:

"What the test of reasonable prospects of success postulates is 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. 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

¹ CaseLines: Section V1 – V12

² The Mont Chevaux Trust v Tina Goosen 3 November 2014 (unreported judgement LCC Case No: LCC14R/2014; The Acting National Director of Public Prosecution v Democratic Alliance (unreported case no: 19577/09 dated 24 June 2016); First Reality (Pty) Ltd v Mitchell & Others 2021 ZALCC 21 dated 23 August 2021 @ para 2

³ S v Smith 2012 (1) SACR 576 SCA @ para 7

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.”

[5] It is appropriate to repeat the requirements for an application for leave to appeal. Section 17 (1) of the Superior Courts Act⁴ provides as follows:

“Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

(a) (i) the appeal would have reasonable prospects 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) ...

(c) ...”

[6] I have read and considered all the grounds of appeal as well as the submissions of both Counsel for the Applicant and Respondent and I remain unconvinced that another Court would come to a different conclusion, the application thus having no reasonable prospects of success and furthermore, that there are no compelling reasons why leave to appeal should be granted.

[7] I need to deal with an aspect mentioned by Counsel for the Respondent, namely, the conduct of Counsel for the Applicant. Save to state that I did not consider Mr Dlamini’s conduct to be unprofessional and or discourteous towards

⁴ 10 of 2013, as amended

the Court, what cannot be gainsaid is that Mr Dlamini showed passion for his client's case but not to a degree that can be said to be disrespectful to the Court.

[8] In respect of the costs of this application, the normal rule of costs following the result will be applied. The costs of two Counsel as at trial is warranted and is determined to be at Scale B.

Accordingly, the following Order will issue:

- a). the application for leave to appeal is dismissed;
- b). the Applicant is to pay the costs of two Counsel on Scale B.


GALLAGHER

**ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA**

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be **5 February 2025**.

Date of virtual hearing: 31 January 2025

Date of judgment: 5 February 2025

Appearances:

Attorneys for the Plaintiffs:

W BOSHOFF ATTORNEYSlaura@wb-inc.co.za

Counsel for the Plaintiffs:

Adv. S.J. Myburgh SC with Adv. C. Jacobs

Attorneys for the Defendant:

MOTSOENENG BILL ATTORNEYS INCsylvia@mbainincorporated.co.za

Counsel for the Defendant:

Adv. M.W. Dlamini SC