

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

CASE NO : 2023-082674

(1) REPORTABLE /NO
(2) OF INTEREST TO OTHER JUDGES /NO
(3) REVISED Yes

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SIGNATURE

DATE 20 February 2025

In the matter between:

CROSS-MED HEALTH CENTRE (PTY) LIMITED

Applicant

And

BOARD OF HEALTHCARE FUNDERS NPC

First Respondent

COUNCIL FOR MEDICAL SCHEMES

Second Respondent

MEDSCHEME HOLDINGS (PTY) LIMITED

Third Respondent

**AFROCENTRIC INVESTMENTS
CORPORATION LIMITED**

Fourth Respondent

BARLOWORLD MEDICAL SCHEME

Fifth Respondent

BONITAS MEDICAL SCHEME

Sixth Respondent

FEDHEALTH MEDICAL SCHEME

Seventh Respondent

SABC MEDICAL SCHEME

Eighth Respondent

**SOUTH AFRICAN POLICE SERVICE MEDICAL
SCHEME (POLMED)**

Ninth Respondent

**SOUTH AFRICAN MUNICIPAL WORKERS'
UNION NATIONAL MEDICAL SCHEME
(SAMWU MED)**

Tenth Respondent

MEDSHIELD MEDICAL SCHEME

Eleventh Respondent

CHWAYITA OMGANA YONGAMA YAKO

Thirteenth Respondent

**MUSTAFA MOHAMED N.O.
(cited in his capacity as liquidator of CROSS-
MED MTHATHA PRIVATE HOSPITAL (PTY)
LIMITED (IN LIQUIDATION))**

Fourteenth Respondent

**GONASAGREE GOVENDER N.O.
(cited in her capacity as liquidator of CROSS-
MED MTHATHA PRIVATE HOSPITAL (PTY)
LIMITED (IN LIQUIDATION))**

Fifteenth Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

THERON AJ:

[1] An application for leave to appeal is regulated by Section 17(1)(a)(i) and (ii) of the Superior Courts Act No. 10 of 2013 (“the Act”) which provides as follows:

“17(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;*"

[2] It has been held in various judgments binding on me that the Act has raised the bar for granting leave to appeal.¹

[3] In **S v Smith**², Plasket AJA explained the meaning of a "*reasonable prospect of success*" 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, the appellant must convince this court on proper grounds that he has a prospect of success on appeal and that these 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

¹ **Acting National Director of Public Prosecutions and Others v Democratic Alliance v Acting National Director of Public Prosecutions and Others** (19577/09) [2016] ZAGPPHC 489 (24 June 2016); **Mont Chevaux Trust v Goosen** 2014 JDR 2325 (LCC) and **S v Notshokovu** [2016] ZASCA 112 at paragraph 2

² 2012 (1) SACR 567 (SCA)

prospects of success on appeal.³

- [4] A liberal approach to the granting of leave to appeal by courts is discouraged as being inconsistent with Section 17 of the Act. For instance, in **Mothuloe Inc Attorneys v The Law Society of the Northern Provinces and Another**⁴, the Supreme Court of Appeal stated as follows regarding the trial court's liberal approach on granting leave to appeal:

"It is important to mention my dissatisfaction with the court a quo's granting of leave to appeal to this court. The test is simply whether there are any reasonable prospects of success in an appeal. It is not whether a litigant has an arguable case or a mere possibility of success."

- [5] After considering the submissions made in the application for leave to appeal, I find that the Thirteenth Respondent does not reach the threshold and that there is no sound rational basis to conclude that he does.

I therefore make the following order:

1. The application is dismissed with costs on scale C.

³ See also **Four Wheel Drive Accessory Distributors CC v Rattan NO** 2019 (3) SA 451 (SCA) at paragraph [34]

⁴ [2017] ZASCA 17



THERON AJ
Acting Judge of the High Court,
Gauteng Division, Johannesburg

Date of hearing: 13 February 2025

Date of judgment: 20 February 2025

Appearances:

Counsel for Applicant: R Blumenthal
Instructed by: Shaheed Dollie Inc

Counsel for Thirteenth Respondent: Adv D Z Kela
Instructed by: Yonela Bodlani Attorneys