

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	<u>NOT</u> REPORTABLE
(2)	<u>NOT</u> OF INTEREST TO OTHER JUDGES

CASE NO: 2023-046891

DATE: 26 FEBRUARY 2025

In the matter between:

SASRIA SOC LIMITED

Applicant

and

TUHF Limited

Respondent

Neutral Citation: *SASRIA SOC v TUHF* (2023-046891) [2024] ZAGPJHC ---
(26 February 2025)

Coram: Adams J

Heard: 26 February 2025 – ‘virtually’ as a videoconference on *Microsoft Teams*.

Delivered: 26 February 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 15:00 on 26 February 2025.

Summary: Application for leave to appeal – s 17(1)(a)(i) of the Superior Courts Act 10 of 2013 – an applicant now faces a higher and a more stringent threshold

– also s 17(1)(ii) – there are compelling reasons why the appeal should be heard given its importance to the parties and other litigants –

Leave to appeal granted to the Full Court –

ORDER

- (1) The respondent's application for leave to appeal succeeds.
 - (2) The respondent is granted leave to appeal to the Full Court of this Division.
 - (3) The costs of this application for leave to appeal shall be costs in the appeal.
-

JUDGMENT [APPLICATION FOR LEAVE TO APPEAL]

Adams J:

[1]. I shall refer to the parties as referred to in the original application by the applicant for a dismissal of the respondent's main action on the basis of an inordinate delay on the part of the respondent in prosecuting to finality the main action. The respondent is the applicant in this application for leave to appeal and the respondent herein is the applicant in the original application. On 23 December 2024 I granted the applicant's application and dismissed, with costs, the respondent's claim in the main action. The respondent applies for leave to appeal the whole of my judgment and the aforesaid order of 23 December 2024, as well as my reasons therefor.

[2]. The application for leave to appeal is based on the provisions of both sub-sections (i) and (ii) of section 17(1)(a) of the Superior Courts Act 10 of 2013, which reads as follows: -

'17 Leave to appeal

- (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)'.

[3]. The respondent submits that it is in the interest of justice that I allow the appeal, which is mainly against my legal and factual findings. So, for example, the respondent contends that I erred in finding that an abuse or bad motive on the part of a plaintiff is not necessary and that, instead of abuse, the decisive factors are prejudice and fairness. I accordingly, so the contention continues, exercised my discretion on an incorrect basis contrary to the test established by the Supreme Court of Appeal in *Cassimjee v Minister of Finance*¹. The Court did not exercise its discretion judicially, so the respondent argues, and exercised its discretion on a wrong principle of law or wrong facts.

[4]. The respondent also contends that I erred in finding factually that the respondent has no subjective intention of prosecuting the claim against the applicant further. The Court ought to have considered, but failed to do so, the undisputed evidence of the respondent that it was taking further steps to progress the matter further. These steps, so the respondent contends, are the antitheses of a party who does not want to prosecute the trial to finality.

[5]. It is also contended on behalf of the respondent that I erred in my finding that, all things considered, the delay in the prosecution of the claim was not inordinate. I erred similarly, so the respondent argues, in my finding that the delay was inexcusable, which implies a rejection of the respondent's explanation for the delay. Additionally, the respondent contends that the Court erred in finding that the time of the delay has caused significant prejudice to the defendant.

[6]. Nothing new has been raised by the respondent in this application for leave to appeal. In my original written judgment, I have dealt with most, if not all of the issues raised by the respondent in this application for leave to appeal and it is not necessary for me to repeat those in full. Suffice to restate what I say in the judgment, namely that, the conduct of the respondent in the main action to

¹ *Cassimjee v Minister of Finance* 2014 (3) SA 198 (SCA).

me does not suggest a claimant who seriously and *bona fide* intends prosecuting its claim to finality.

[7]. The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another court may come to a different conclusion to that reached by me in my judgment. This approach has now been codified in s 17(1)(a)(i) of the Superior Courts Act 10 of 2013, which came into operation on the 23rd of August 2013, and which provides that leave to appeal may only be given where the judge concerned is of the opinion that ‘the appeal would have a reasonable prospect of success’.

[8]. In *Ramakatsa and Others v African National Congress and Another*², the SCA held that the test of 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. These prospects of success must not be remote, but there must exist a reasonable chance of succeeding. An applicant who applies for leave to appeal must show that there is a sound and rational basis for the conclusion that there are prospects of success.

[9]. The ratio in *Ramakatsa* simply followed *S v Smith* 2012 (1) SACR 567 (SCA), [2011] ZASCA 15, in which Plasket AJA (Cloete JA and Maya JA concurring), held as follows at para 7:

‘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.’

² *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021);

[10]. In *Mont Chevaux Trust v Tina Goosen*³, the Land Claims Court held (in an *obiter dictum*) that the wording of this subsection raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. I agree with that view, which has also now been endorsed by the SCA in an unreported judgment in *Notshokovu v S*⁴. In that matter the SCA remarked that an appellant now faces a higher and a more stringent threshold, in terms of the Superior Court Act 10 of 2013 compared to that under the provisions of the repealed Supreme Court Act 59 of 1959. The applicable legal principle as enunciated in *Mont Chevaux* has also now been endorsed by the Full Court of the Gauteng Division of the High Court in Pretoria in *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others*⁵.

[11]. I am persuaded that the issues raised by the respondent in its application for leave to appeal are issues in respect of which another court is likely to reach conclusions different to those reached by me. I am therefore of the view that there are reasonable prospects of another court making factual findings and coming to legal conclusions at variance with my factual findings and legal conclusions. The appeal, therefore, in my view, does have a reasonable prospect of success.

[12]. Mr Green SC, who appeared in the matter for the respondent with Mr Ismail, also submitted that there are compelling reasons why an appeal should be heard given its importance to the parties and other litigants. The approach adopted by the Court, so the contention goes, encourages premature enrolment of cases that are not yet properly prepared in order to avoid an application such as the present one. There may very well be merit in this contention.

³ *Mont Chevaux Trust v Tina Goosen*, LCC 14R/2014 (unreported).

⁴ *Notshokovu v S*, case no: 157/2015 [2016] ZASCA 112 (7 September 2016).

⁵ *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2016] ZAGPPHC 489 (24 June 2016).

[13]. Leave to appeal should therefore be granted. In that regard, Mr Green urged me to grant leave to appeal to the Supreme Court of Appeal due to the importance of the issue to all the litigants. I disagree. Leave to the Supreme Court of Appeal is not warranted in this matter as it does not implicate a question of law of importance, whether because of its general application or otherwise.

Order

[14]. In the circumstances, the following order is made:

- (1) The respondent's application for leave to appeal succeeds.
- (2) The respondent is granted leave to appeal to the Full Court of this Division.
- (3) The costs of this application for leave to appeal shall be costs in the appeal.



L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	26 February 2025
JUDGMENT DATE:	26 February 2025
FOR THE APPLICANT:	C D A Loxton SC and A Milovanovic-Bitter
INSTRUCTED BY:	Edward Nathan Sonnenbergs Inc, Sandown, Sandton
FOR THE RESPONDENT:	I P Green SC and R Ismail
INSTRUCTED BY:	Cliffe Dekker Hofmeyr Incorporated, Sandown, Sandton