

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case No. 2021/3925

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **NO**

23/05/2025

DATE

SIGNATURE

In the matter between:

CAMERON HARMSE

Plaintiff

and

CHARTWELL COUNTRY COLLEGE (PTY) LTD

First Defendant

THABA MORULA AVONTUUR KAMP CC

Second Defendant

This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to Court Online and by release to SAFLII. The date and time for hand- down is deemed to be on 23 May 2025.

JUDGMENT

BEYERS, AJ:

- [1] This is an application by the applicant (the plaintiff in the action) for leave to appeal against the judgment issued by Beyers AJ on 3 March 2025 (*“the judgment”*) in terms whereof, inter alia, the plaintiff’s claim against the first defendant was dismissed with costs. The first defendant opposes the application.
- [2] It is trite that leave to appeal may only be granted under section 17(1)(a) of the Superior Courts Act where the Court is of the opinion that there truly is a reasonable prospect of success on appeal. In *Mkhitha*¹ the Supreme Court of Appeal reiterated:

“[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear 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; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.”

- [3] The principal grounds proffered by the plaintiff in support of its application are summarised as follows in paragraph 4 of the plaintiff’s heads of argument:

“The grounds for this application are set out in the applicant’s notice of application for leave to appeal. In essence these are:

- (1) The failure to enforce the consequences of the evident failure by Mr Rabe to ensure that the three straps of the harness were all double backed so as to prevent the straps from unravelling;*
- (2) The finding that the negligence of Mr Rabe was not causally related to the incident when the applicant plunged to the ground after her harness unravelled;*

¹ MEC for Health, Eastern Cape v Mkhitha 2016 JDR 2214 (SCA).

- (3) *The finding that the causal negligence of the Mr Robertson effectively negated the causal negligence of Mr Rabe;*
- (4) *The failure to find that both Mr Rabe and Mr Robertson were causally negligent in relation to the incident, and thus the failure to find that the first and second defendant were both causally negligent and were joint wrongdoers and are jointly and severally liable to the plaintiff for her proven damages.”*

[4] The judgment addresses the factual background in relation to the incident in detail and this is accordingly not repeated herein.

[5] Paragraph 4 of the judgment found it to be common cause that, inter alia:

- “ j. *Mr Rabe assisted the Plaintiff to tighten the straps of her harness², and attached the harness to the ladder,³ after which the Plaintiff ascended the ladder to the top of the tower.⁴*
- k. *At the top of the tower Mr Robertson re-adjusted the Plaintiff’s harness, loosening the straps and tugging at the harness to tighten it.⁵ The straps of the harness were not taken off completely, Mr Robertson just loosened it and tugged at it to try and tighten it.⁶*
- l. *The Plaintiff indicated that she told Mr Robertson that she was not comfortable, but he attempted to reassure her.⁷ The Plaintiff indicated that she felt ‘something was not right’ because she felt the harness was too small for her.⁸*
- m. *After having re-adjusted the harness, Mr Robertson and the Plaintiff walked to the edge of the barricade at the top of the tower and Mr Robertson attached the Plaintiff to the abseiling rope.⁹*
- n. *Mr Robertson then described to the Plaintiff what was going to happen when she got to the edge of the barricade and then, once she was on the other side of the edge and facing Mr Robertson, he indicated that the Plaintiff could commence abseiling.¹⁰*

² Transcript, A13, lines 12 to 15.

³ Transcript, A13, lines 17 to 23.

⁴ Transcript, A14, lines 1 to 9.

⁵ Transcript, A14, lines 11 to 12.

⁶ Transcript, A14, lines 17 to 25.

⁷ Transcript, A14, lines 14 to 16.

⁸ Transcript, A15, lines 9 to 14.

⁹ Transcript, A16, lines 6 to 8.

¹⁰ Transcript, A16, lines 8 to 11.

- o. *The Plaintiff indicated that she still said to him that she did not feel comfortable, but he said for her to trust him, she will be fine.*¹¹
- p. *The Plaintiff commenced abseiling and shortly hereafter she fell. The Plaintiff's version is that 'I took my first push, and that is when I fell'.*¹² *However, this was disputed by the Defendants. The Second Defendant contends that the Plaintiff had abseiled some metres down from the top of the tower before she fell.*¹³
- q. *The Plaintiff fell when she became dislodged from the harness. The harness remained attached to the abseiling rope and no part of the harness itself failed. All three harness straps had pulled through the harness buckles, causing the Plaintiff to become dislodged from the harness.*
- r. *The Plaintiff fell some 16 metres to the ground, sustaining serious bodily injury."*

[6] Paragraphs 62 and 63 of the judgment found that:

"[62] It is common cause that, once the Plaintiff arrived at the top of the tower, Mr Robertson took responsibility for her safety from that point onwards and proceeded to make adjustments to the Plaintiff's harness.

[63] The evidence is that Mr Rabe had ensured that the straps were double-backed at the bottom of the ladder prior to the Plaintiff ascending the tower. As such, his conduct cannot be the cause of the Plaintiff's dislodgment from the harness. But even if he had not ensured that the harness straps were double-backed, such negligent conduct would be causally irrelevant to the Plaintiff's dislodgement, as Mr Robertson assumed full responsibility for the Plaintiff's safety at the top of the tower and thereupon proceeded to make adjustments to the harness."

[7] The principal finding on the level of the facts, as it related to the alleged negligent conduct of Mr Rabe (the first defendant's employee), was accordingly that Mr Rabe had ensured that the straps of the plaintiff's harness had been double-backed at the bottom of the ladder prior to the plaintiff ascending the tower, and

¹¹ Transcript, A16, lines 11 to 13.

¹² Transcript, A16, lines 14 to 15.

¹³ Transcript, A49, lines 3 to 6.

accordingly that his conduct could not have been the cause of the plaintiff's dislodgement from the harness.

[8] This factual finding was consistent with the evidence of Mr Rabe, the plaintiff, the plaintiff's expert (as one of two possibilities) and Mr Robertson. There was no evidence at all to suggest the contrary. There was accordingly no rational basis upon which the evidence of Mr Rabe in this regard could be gainsaid or rejected.

[9] There is no reasonable prospect that a court of appeal will make a different finding on this point.

[10] The plaintiff's challenge to the additional finding that, even if Mr Rabe had failed to double-back the harness, such conduct is causally irrelevant to the plaintiff's dislodgment, is misdirected: if the main finding on the level of the facts stands – namely that Mr Rabe had double-backed the harness – the plaintiff's claim stands to be dismissed.

[11] This is so even if, notionally, a court of appeal were to hold a different view in respect of the additional finding. I do not consider, in any event, that there are reasonable prospects that a court of appeal would hold a different view as far as the additional finding is concerned.

[12] I accordingly do not consider that the plaintiff (applicant) enjoys reasonable prospects of success on appeal.

ORDER:

[13] In the circumstances I issue the following order:

- a. The plaintiff's application for leave to appeal is dismissed; and

- b. The plaintiff is liable for the costs of this application on party and party scale
- C.

J BEYERS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Date of Hearing: 15 May 2025

Date of Judgment: 23 May 2025

APPEARANCES:

For the Plaintiff: Adv C Vallaro

Instructed by: Munro Flowers & Vermaak Attorneys

For the First Defendant: Adv Van Bergen SC

Instructed by: Ric Martin Inc

For the Second Defendant: Adv J du Plessis

Instructed by: Van Velden Duffy Inc