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

Case Number:062949/2023

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHERS JUDGES: NO

(3) REVISED: NO

DATE 03 June 2025

SIGNATURE

In the matter between:

Promispace CC

Applicant

and

DRD Gold Limited

First Respondent

The City of Johannesburg
Metropolitan Municipality

Second Respondent

The City of Johannesburg
Company SOC Limited

Third Respondent

The Minister of Mineral Resources
And Energy

Fourth Respondent

Regional Manager Gauteng DMRE

Fifth Respondent

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 03 June 2025.

JUDGMENT

COLLIS J

Introduction

1] The applicant, has applied for leave to appeal against the whole judgment and order granted by this Court on 26 September 2024.

2] In the said judgment, this Court dismissed the applicants' application to be declared the lawful owner of the mine dump through appropriation situated on Farm Roodepoort, Portion 1[...], Farm Number [...], Registration Division QI.

3] In its judgment the Court identified the determinative legal issue of ownership, and applied the principle of accession to conclude that the mine dump had become part of the immovable property owned by the COJ. This finding so made by this Court was dispositive of the remaining issues to be determined by the Court and consequently, the application was dismissed with costs.

4] It is the applicant's assertion that the Court a quo was required to conduct a preliminary inquiry into res nullius or res derelicta before ownership could be determined. This reasoning employed by the applicant is simply misplaced, as the court found that ownership is the primary legal question upon which those doctrines rest.

5] The present application is premised on the grounds as listed in the Application for Leave to Appeal dated 8 October 2024.

Legal Principles

6] Section 17 of the Superior Court's Act provides as follows:¹

“(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) the decision sought to appeal does not fall within the ambit of section 16(2)(a);

and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.”

7] As to the test to be applied by a court in considering an application for leave to appeal, Bertelsmann J in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para 6 stated the following:

‘It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.’

8] ‘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

¹ Act 10 of 2013.

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 categorized as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.’²

9] The Supreme Court of Appeal further in *Ramakatsa v African National Congress* ³ held, that leave to appeal should only be granted where there is a compelling reason or a reasonable prospect of success.

10] The applicant and the respondent on request by this court had filed written Heads of Argument in order to facilitate the virtual hearing of the application.

11] Having read the papers and having carefully heard counsel I come to the conclusion that there is no reasonable prospect that another court would come to a different conclusion on the order of the court or that there exists a compelling reason why the appeal should be heard. The Applicant before Court, has demonstrated none.

Order

[12] Consequently I make the following order:

12.1 The application is dismissed with costs.

C COLLIS
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

² *S v Smith* 2012 (1) SACR 567 (SCA) at para 7.

³ 2021 ZASCA 31 at para 10.

Counsel for the Applicant: Adv. M R Maphuta

Instructing Attorney: Mphahlele and Masipa Inc. Attorneys

Counsel for the Second and Third Respondents: Adv. N Loopoo

Instructing Attorney: Kunene Ramaphala Inc.

Date of Hearing: 20 March 2025

Date of Judgment: 03 June 2025