



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 3254/2024

In the matter between

ELIZABETH JOHANNA LIEBENBERG

APPLICANT

and

HENDRIK JOHANNES CHRISTIAAN LIEBENBERG

RESPONDENT

Neutral citation: *Elizabeth Johanna Liebenberg v Hendrik Johannes Christiaan Liebenberg*
(3254/2024) [2025] ZAFSHC 166 (06 June 2025)

Coram: Mpama AJ

Heard: In Chambers

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 14H00 on 06 June 2025

Summary: application for leave to appeal – section 17(1) of the Superior Courts Act 10 of 2013 – no reasonable prospects of success – application dismissed

ORDER

The application for leave to appeal is dismissed with costs on Scale B as contemplated under rule 67A of the Uniform Rules of the Court.

JUDGMENT

Mpama AJ

[1] This is an opposed application for leave to appeal against my judgment and the order I granted on 29 November 2024. The applicant and respondent filed their heads of argument. I directed the parties to file additional heads of argument as I intended to dispense with the hearing of oral arguments. Accordingly, the application was considered in chambers and on the papers, including the written heads of argument.

[2] Section 17(1) of the Superior Courts Act 10 of 2013 stipulates that leave to appeal may only be granted where the judge concerned is of the opinion that the appeal would have reasonable prospects of success or there are some other compelling reasons why the appeal should be heard, including conflicting judgment on the matter under consideration.

[3] The bar for granting the application for leave to appeal has been raised and leave to appeal should be granted only when there are reasonable prospects of success. This court has as per Daffue J in *Hans Seuntjie Matoto v Free State Gambling and Liquor Authority and Three Others*¹ at para 5 expressed as follows:

'There can be no doubt that the bar for granting leave to appeal has been raised. Previously, the test was whether there was a reasonable prospect that another court might come to a different conclusion. Now, the use of the word "would" indicate a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against. See *Acting National Director of Public Prosecutions and Others V Democratic Alliance* (19577/2009) [2016] ZAGPPHC 489(24 June 2016). The use by the legislature of the word "only", emphasized supra, is a further indication of a more stringent test.'

[4] The grounds of appeal are set out in the notice of application for leave to appeal. I do

¹ *Hans Seuntjie Matoto v Free State Gambling and Liquor Authority and Three Others* [2017] ZAFSHC 80.

not intend to overburden this judgment by repeating them.

[5] The existence of a valid court judgment is a matter of common cause between the applicant and respondent. The judgment dealt with the reasons why the court is of the view that the applicant is bound by the court order despite his pending application in the magistrate's court for the variation of the order and why his conduct of non-payment is contemptuous. New issues were raised by the applicant in his heads of argument. It is trite that such is not permissible.

[6] My opinion is that there are no prospects of success. I am satisfied that there is no other court that will come to a different conclusion given this set of circumstances. It is not the case of the applicant that despite this, there are some other compelling reasons why the appeal should be heard, including conflicting judgment on the matter under consideration. In my view, the application should fail.

[7] Accordingly, I make the following order:

The application for leave to appeal is dismissed with costs on Scale B as contemplated under rule 67A of the Uniform Rules of the Court.



MPAMA AJ

Appearances

For the applicant: Schoeman Steyn Inc, Bloemfontein

For the respondent: Christo Faber Attorneys Inc, Kimberley
c/o Stander & Associates, Bloemfontein.