

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

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

Date: 30 June 2025 Signature: _____

Case no. **2022/ 050857**

In the matter between:

WILLEM HENDRIK ACKERMAN

APPELLANT

And

KALON VENTURES

RESPONDENT

Coram: Dlamini J

Date of hearing: 12 June 2025

Delivered: 30 June 2025 – This judgment was handed down electronically by circulation to the parties' representatives *via* email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:30 on 30 June 2025

JUDGMENT

DLAMINI J

Introduction

- [1] This is an application for leave to appeal the judgment and order that I handed down on 13 March 2025.
- [2] The applicant had launched an application seeking the final liquidation of the respondent. Having heard the matter, I dismissed the application with costs.
- [3] The applicant contends that the order was made erroneously and is therefore seeking leave to appeal against the entire order and my judgment.
- [4] This application for leave to appeal is opposed by the respondent.

Grounds of Appeal

- [5] The applicant's grounds of appeal, the parties' heads of argument, and this Court's judgment, including the entire record of appeal, must be deemed to be incorporated in this judgment.

Test for Leave to Appeal

- [6] The test for leave to appeal has been varied. Section 17 of the Superior Court Act provides that leave to appeal may only be granted where the judge or judges concerned are of the opinion that; –

6.1 The appeal would have reasonable prospects of success; or

6.2. There is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

Analysis

- [7] In general, meritless appeals may not be allowed. In ***Mothuloe Incorporated Attorneys v Law Society of the Northern Provinces and Another***.¹ The Court had this to say in this regard;

"[18]... therefore it would be advisable, when dealing with an application for leave to appeal, to look at the enabling statute to find guidance. It is important to mention my dissatisfaction with the court a quo's granting of the 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..."

*.... This court has in the past bemoaned the regularity with which leave is granted to this court in respect of matters not deserving its attention. (See **Shoprite Checkers (Pty) Ltd v Bumpers Schwarmas CC & Others**, 203(5) SA 354 (SCA) para23). This is one case where leave to appeal should have been refused for lack of reasonable prospects of success."*

- [8] This simply illustrates that a court may not grant leave to appeal where the threshold that warrants such leave to appeal has not been met by the applicant.

¹ (213/16) [2017] ZASCA 17 (22 March 2017).

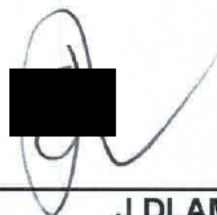
- [9] Having regard to the grounds of appeal, it seems to that the applicant has simply raised the same submissions that were argued during the hearing of the matter. Having carefully considered the applicant's grounds of appeal I am satisfied that I have dealt with extensively with all the applicant's submissions in my judgment and I found these to be meritless and were dismissed. Thus, It will serve no purpose for me to repeat my reasons herein.
- [10] In light of the above, based on Section 17 (1) (a) of the Superior Court Act, and the factual matrix of this matter, I am not persuaded that there are any reasons or extraordinary circumstances that warrant the grant of leave to appeal, which would have reasonable prospects of success. There are no compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration.
- [11] In my view, the applicant has not presented any facts that demonstrate that it has any prospects of success; therefore, it would not serve the interest of justice to grant leave to appeal to the applicant.

Costs

- [12] The trite principle of our law is that costs follow the results and are awarded to the successful party.
- [13] The respondent argues that the appeal is nothing more than an abuse of the court process and should therefore be met with costs on the scale as between attorney and client or, at the very least, costs in accordance with Scale C. The appeal is meritless; however, it does not justify an order on a punitive scale. I am of the view that costs in accordance with Scale C are justified under the circumstances.
- [14] In light of the above, I make the following order.

ORDER

1. The applicant's application for leave to appeal is dismissed with costs.

A handwritten signature in black ink, consisting of a large loop and a trailing flourish, positioned above a horizontal line.

J DLAMINI

*Judge of the High Court
Gauteng Division, Johannesburg*

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