



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 20132/2021

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

SIGNATURE

17/07/25
DATE

In the matter between:

SANGA LANGISON

APPLICANT/ PLAINTIFF

and

ROAD ACCIDENT FUND

RESPONDENT/DEFENDANT

JUDGMENT – LEAVE TO APPEAL

JUDGEMENT: 29 MAY 2025

LEAVE TO APPEAL : 14 JULY 2025

DELIVERED: 17 JULY 2025

CORAM: NTHAMBELENI AJ

INTRODUCTION

- [1] This is an application for leave to appeal to the Supreme Court of Appeal, alternatively the Full Bench of this Division, in terms of Section 17(1) of the Superior Courts Act 10 of 2013 against the judgement I delivered in this matter on 29 May 2025 (the judgement "*a quo*").
- [2] In the judgement *a quo*, the matter was a Road Accident Fund claim brought by the applicant who was the plaintiff. The appeal is brought against the award of general damages in the amount of R 650,000.00 that the court *a quo* handed.

LISTED GROUNDS OF APPEAL

- [3] The first ground was the challenge on the award of general damages in the amount of R 650,000.00 and the second ground was not awarding generals in the amount of R 1,500,000.00 as sought by the applicant/plaintiff.
- [4] The third ground for leave was cited as not giving sufficient consideration to the evidence of Dr. Kelly (Neurosurgeon) that the plaintiff sustained a mild traumatic brain injury.
- [5] Fourth ground in finding that the plaintiff, having sustained, *inter alia*, a fracture of the right femur, a fracture of maxilla bone, severe permanent disfiguring

scarring and a mild traumatic brain injury, is not entitled to award in respect of general damages in excess of R 650,000.00.

[6] The fifth ground raised is not finding that the plaintiff, having sustained inter alia, a fracture of the right femur, a fracture of the left maxilla bone, severe disfiguring scarring, and a mild traumatic brain injury, is entitled to an award for general damages in the amount of R 1,500 000.00.

[7] The sixth ground raised is in not finding that the authority of **Masemola v Road Accident Fund**¹ was authority for the award of R 1,500,000.00 in general damages, and lastly, not sufficiently considering the combined effect of all the plaintiff's injuries as referred to on the fourth ground, in the determination of the amount of the award of the plaintiff's general damages.

TEST FOR LEAVE TO APPEAL IN TERMS OF THE RULES AND CASE LAW

[8] Therefore, the pertinent question to ask is whether the applicant has satisfied the test for leave to appeal in this matter based on the grounds as set out in his application for leave to appeal. In order to answer that question, it is important to look at the test in leave to appeal matters.

[9] Rule 49 of the Uniform Rules of Court dictates the form and process of an application for leave to appeal and the substantive law pertaining thereto is to be found in the provisions of section 17 of the Superior Court Act 10 of 2013.

¹ 2023 ZAGPPHC 553; 172336/2017 (23 July 2023).

The Superior Court Act raised the threshold for the granting of leave to appeal, so that leave may now only be granted if there is a reasonable prospect that the appeal will succeed. The mere possibility of another court holding a different view is no longer part of the test.

[10] The proper requirement now is that there must be a sound, rational basis for the conclusion that there are prospects of success on appeal. The interpretation of the rules and the law has changed and in various cases that have been cited in this judgement, the prevailing view is that the threshold for granting of leave to appeal was raised in the Superior Court Act 10 of 2013. Therefore, the former assessment that leave to appeal should be granted if *“there is a reasonable prospect that another court might come to a different conclusion”* has fallen by the wayside.

[11] The test to be applied in an application for leave to appeal is set out in section 17(1)(a) of the Superior Courts Act 10 of 2013 which provides that:

*“(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;*

[12] At paragraph 2 of the applicant’s heads of arguments, it is stated that *‘there is reasonable prospects that another court “may” come to a different conclusion’*,

and reference was made to **MEC For Health, Eastern Cape v Mkhitha**². Unfortunately for the applicant that is not the test as set out in terms of the provisions of section 17 (1) (a) of the Superior Courts Act 10 of 2013. The test is whether the appeal itself, “would” have reasonable prospects of success as set out below ;

“The test for 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. In other words, the appellants...need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist”; **Ramakatsa and Others v African National Congress and Another** [2021] ZASCA 31 (31 March 2021 at paragraph [10].

- [13] The Supreme Court of Appeal set out the test to grant leave to appeal in **Cook v Morrisson and Another 2019 (5) SA 51 (SCA)** as follows:

“[8] The existence of reasonable prospects of success is a necessary but insufficient precondition for the granting of special leave. Something more, by way of special circumstances, is needed. These may include that the appeal raises a substantial point of law; or that the prospects of success are so strong that a refusal of leave would result in a manifest denial of justice; or that the matter is of very great importance to the parties or to the public. This is not a closed list (Westinghouse Brake & Equipment (Pty) Ltd v

² 2016 JDR 2214 (SCA) Paras 16-17.

Bilger Engineering (Pty) Ltd 1986 (2) SA 555 (A) at 564H – 565E; Director of Public Prosecutions, Gauteng Division, Pretoria v Moabi 2017 (2) SACR 384 (SCA) ([2017] ZASCA 85) para 21)."

[14] In the matter of **Independent Examination Board v Umalusi & Others**³ at para 2 Basson J set out the test for leave to appeal in the following manner:

"The merits of the application for leave to appeal must be considered against the background of the test for leave to appeal, it is now trite law that section 17(1) (a) (i) of the Superior Courts Act has raised the threshold for granting leave to appeal. Bertelsman J in the Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others explains:

[6] It is clear that the threshold for granting leave to appeal against a judgement of a High Court has been raised in the new Act. The former test whether the 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 judgement is sought to be appealed against".

³ 83440/2019 [2912] ZAGPPHC 12 (7 January 2021) at para [2]

- [15] In the matter of **Smith v S**⁴ the Supreme Court of Appeal had to consider what constituted reasonable prospects of success in section 17(a) (i) of the Superior Courts Act and held per Plasket AJA as follows:

“What the test of reasonable prospects of success postulates is 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. 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 there is 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”.

- [16] It is important to set the record straight that leave to appeal cannot be had for mere asking as stated in the matter of **Goodwin Stable Trust v Duohex (Pty) Ltd and Another**⁵:

“Whilst there be a tendency to seek to grant leave to appeal simply to allow outstanding questions to be finally determined, it seems to me that, in balancing the rights of the parties to the litigation, the Court’s responsibility is to avoid the temptation simply to take the opportunity to have the question answered and rather to apply its mind as to whether or not the answer will probably be in favour of the applicant for leave to appeal”.⁶

⁴ 475/10 [2011] ZASCA 15.

⁵ 1998 (4) SA 606 (C)

⁶ Goodwin Stable Trust v Duohex (Pty) Ltd and Another 1999 (3) SA 353 (C) 354-355

- [17] In the matter of the **MEC Health, Eastern Cape v Mkhitha**⁷ JDR 2214 SCA at paragraph 17 the court held;

“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 on appeal.”

CONCLUSION AND ANALYSIS

- [18] In the main judgement of the court a quo, this court identified the injuries that were suffered by the applicant/plaintiff in great detail. It is therefore, important to state that there was no misdirection in relation to the injuries as suffered by the applicant/ plaintiff and their *sequelae* as narrated by various experts of the applicant/ plaintiff.
- [19] The big elephant in the room is the award of general damages in the amount as sought by the applicant/plaintiff in the suggested figure of R 1,500,000.00 allegedly based on the decision of **Masemola v Road Accident Fund** cited in the application for leave to appeal.
- [20] It is trite law that each and every case must be tried on its merits and in this matter the referred authority is distinguishable. This Court dedicated a full paragraph on general damages and set out in greater details the reasons and

⁷ (2016) ZASCA 176 25 November 2016

case law as to why an appropriate award for general damages should be the amount of R 650 000.00 as awarded in this matter⁸.

[21] The applicant/plaintiff failed to pass the test for leave to appeal as set out in the uniform rule 49 as well as all cited binding legal authorities referred to in this judgement. The conclusion therefore is that the award for general damages in the main action was appropriate.

[22] Therefore, the applicant/plaintiff has failed to pass the threshold for leave to appeal the award for general damages in this matter.

ORDER

[23] I accordingly grant the following order:

1. The application for leave to appeal is dismissed with costs in scale C.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, is written over a solid black rectangular redaction box.

R.R NTHAMBELENI
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

⁸ A quo judgement of the 29 May 2025.

APPEARANCES:

COUNSEL FOR THE APPLICANT/ PLAINTIFF: Mr. SEAN MULLIGAN

INSTRUCTED BY: LEVIN TATANIS INC

REF: Ms I Hassalonidis L383

FOR THE DEFENDANT: NO APPEARANCE