

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2023-067528

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: NO
25 July 2025	
DATE	SIGNATURE

In the matter between:

FOURWAYS GARDENS HOMEOWNERS ASSOCIATION
(Registration No.: 1986/000615/08)

Applicant

And

GRAHAM RODNEY DUGGAN *N.O.* & OTHERS

Respondents

JUDGMENT

Noko J

[1] The applicant launched an application for leave to appeal the order and the whole judgment I handed down on 9 June 2025 wherein I, *inter alia*, granted an order declaring that a valid agreement has been entered into between the parties. Duggan family Trust duly represented is opposing the application.

[2] The factual matrix of the *lis* is set out comprehensively in the judgment handed down and need not be rehashed in this judgment. The applicant contends that I erred in arriving at conclusion on the legal issues which served before me regarding the legal principles apropos the following subject matters: (1) effect of the without prejudice correspondence, (2) impossibility of performance, (3) retrospective effect of the resolution of the members of the applicant, (4) jurisdiction of the Court versus CSOS Ombudsman.

[3] It is trite that where the application for leave to appeal, the applicant must demonstrate, *inter alia*, that the appeal has a reasonable prospect of success or that there are other compelling reasons why the appeal should be heard.

[4] It is also trite¹ that the Superior Court Act has introduced a higher threshold to be met in applications for leave to appeal, and the usage of the word ‘*would*’ require the applicant to demonstrate that another court would certainly come to a different conclusion.

[5] The mere possibility of success, an arguable case, or one that is not hopeless, is not enough.² There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.³

[6] I have considered the reasons underpinning the grounds for leave to appeal relative to the judgment I delivered and have noted that arguments advanced are, in general, in sync with those advanced on behalf of the applicant before the judgment. I

¹ See *Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325. *MEC for Health, Eastern Cape v Mkhitha* 2016 ZASCA (25 November 2016), *Acting National Director of Public Prosecutions and Others v Democratic Alliance: In Re Democratic Alliance v Acting Director of Public Prosecutions and Others* 2016 ZAGPPHC 489.

² *MEC for Health, Eastern Cape v Mkhitha* 2016 ZASCA (25 November 2016) at para 17.

³ *S v Smith* 2012 (1) SACR 527.

remain impervious that the applicant has met the required threshold that the appeal has reasonable prospects of success, and further that another court would come to a different conclusion, or that there is other compelling reasons to allow the appeal. To this end, the application for leave to appeal is bound to fail.

[7] With regard to the costs, I find no reason to deviate from the legal principle that the costs should follow the results.

[8] In the premises, I grant the following order:

That the application for leave to appeal is dismissed with costs on scale B including costs for counsel where so employed.



M V Noko
Judge of the High Court

This judgement is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **25 July 2025**.

Dates

Date of hearing: 17 July 2025.

Date of judgment: 25 July 2025.

Appearances

For the Applicant: U Ahir, instructed by BDF Attorneys.

For the Respondent: S Meyer, instructed by Harrington Johnson Wands att.