



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

CASE NO: 24463/2013

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

Date: 12 August 2025

In the matter between:

VORSTER: SAMANTHA

VORSTER: STEVE CHRISTIAN

1st APPLICANT

2nd APPLICANT

and

MIA: DR RAFIK BALA

RESPONDENT

LEAVE TO APPEAL JUDGMENT

ALLY AJ

[1] This is an application for leave to appeal to the Supreme Court of Appeal, alternatively, the Full Court of the Gauteng Division of the High Court, against the whole of my judgment delivered on 15 August 2024. The application is opposed.

[2] The parties were represented, as at the trial by Adv. W. Munro for the Applicant and by Adv. S. T. Farrell for the Respondent.

[3] The Applicants' grounds of appeal¹ which were amended without objection will not be repeated here.

[4] It has now become trite that the test in applications for leave to appeal has changed to one which is heightened². The Applicant is accordingly required to convince this Court that another Court 'would' come to another conclusion.

The Supreme Court of Appeal³ has stated the test to be as follows:

"What the test of reasonable prospects of success postulates is 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 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 that there is a mere possibility of success, that the case is arguable on appeal or that the case

¹ CaseLines: Section 0000-22

² The Mont Chevaux Trust v Tina Goosen 3 November 2014 (unreported judgement LCC Case No: LCC14R/2014; The Acting National Director of Public Prosecution v Democratic Alliance (unreported case no: 19577/09 dated 24 June 2016); First Reality (Pty) Ltd v Mitchell & Others 2021 ZALCC 21 dated 23 August 2021 @ para 2

³ S v Smith 2012 (1) SACR 576 SCA @ para 7

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."

[5] It is appropriate to repeat the requirements for an application for leave to appeal. Section 17 (1) of the Superior Courts Act⁴ provides as follows:

"Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

(a) (i) the appeal would have reasonable prospects 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) ...

(c) ..."

[6] I have read and considered all the grounds of appeal as well as the submissions of both Counsel for the Applicants and the Respondent and I remain unconvinced that another Court would come to a different conclusion, the application thus has no reasonable prospects of success.

[7] Applicants' Counsel submitted that this Court should also consider that this case concerns a novel point insofar as the legal duty of care is concerned as well as what the convictions of society demand and on that basis should grant leave to appeal. I have considered this submission and this also does not amount to a

⁴ 10 of 2013, as amended

compelling reason to grant leave to appeal as the point is hardly a novel point but one that our Courts have dealt with before.

[8] In respect of the costs of this application, the normal rule of costs following the result will be applied. The costs of two Counsel as at trial is warranted and is determined to be at Scale C.

Accordingly, the following Order will issue:

- a). the application for leave to appeal is dismissed;
- b). the Applicants are to pay the costs of Counsel on Scale C, the one paying, the other to be absolved.

ACTING JUDGE OF THE HIGH COURT

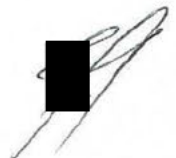
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Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and 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 for hand-down is deemed to be **12 August 2025**.

Date of virtual hearing: 24 June 2025

Date of judgment: 12 August 2025

**Appearances:**

Attorneys for the Plaintiffs: **CN SWEETNAM ATTORNEYS**

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Counsel for the Plaintiffs: **Adv. W. Munro**

Attorneys for the Defendant: **MacRobert Attorneys**

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Counsel for the Defendant: **Adv. S.T. Farrell SC**