



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

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

DATE: 9 May 2025

Case number: 5647/2019

In the matter between:

J[....] M[....] M[....]

APPLICANT

and

S[....] T[....] N[....] M[....]

RESPONDENT

JUDGMENT

MARX DU PLESSIS, AJ

Introduction

1. An order was granted by this court on 4 July 2024, following a hearing in the Family Court on 3 July 2024.
2. Subsequent to the granting of the order, the applicant sought reasons for the decision. However, a formal request for reasons as contemplated in Rule 49(1)(c) of the Uniform Rules of Court was not filed. Instead, the applicant uploaded correspondence to CaseLines, which included the request for reasons. This correspondence was only brought to my attention on 2 October 2024.
3. Written reasons for the order were furnished on 18 December 2024. The applicant now seeks leave to appeal the order and judgment.
4. I have considered the application for leave to appeal, together with the heads of argument filed on behalf of both parties. Save to note that the order granted was, to a significant extent, conceded and consented to by the applicant's counsel during oral argument in the Family Court, particularly when engaged on the matter by the court, the written reasons previously furnished, in my view, adequately address the issues in dispute and the relevant questions of law.

Legal principles applicable to applications for leave to appeal

5. Applications for leave to appeal are governed by the provisions of section 17 of the Superior Courts Act 10 of 2013. Section 17(1) provides as follows:

"(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 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;

(b) The decision sought to appeal does not fall within the ambit of section 16(2)(a); and

(c) Where the decision sought to be appealed does not dispose of all the issues in case, the appeal would lead to a just and prompt resolution of the real issues between the parties."

6. The traditional test applied by courts in applications for leave to appeal has been whether there is a reasonable prospect that another court may come to a different conclusion. With the enactment of section 17, the test for the granting leave to appeal has been codified and given statutory force, and the threshold for granting leave to appeal has been raised.
7. Section 17(1)(a)(i) now provides that leave to appeal may only be granted where the court is of the opinion that the appeal would have prospects of success—indicating a degree of certainty that a different conclusion would be reached by another court.

8. In ***The Mont Chevaux Trust v Tina Goosen and 18 Others***¹ at para 6, it was held that:

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

9. In ***Notshokuvu v S***² at para 2 it was stated that:

"An appellant, on the other hand, faces a higher and stringent threshold, in terms of the Act compared to the provisions of the repealed Supreme Court Act 59 of 1959. (See Van Wyk v S, Galela v S [2014] ZASCA 152; 2015 (1) SACR 584 (SCA) para [14].)"

10. The test is thus no longer whether another court may arrive at a different conclusion, but whether it would. This signifies a stricter threshold.

The parties' submissions

11. Having considered the parties' heads of argument, the oral submissions made during the hearing of the application for leave to appeal, and the requirements set out in section 17 of the Superior Courts Act, I am not persuaded that another

¹ 2014 JDR 2325 (LCC)

² [2016] ZASCA 112

court would come to a different conclusion. Accordingly, the application for leave to appeal falls short of the required threshold and stands to be refused.

Order

In the result, it is ordered that:

1. The application for leave to appeal is dismissed.
2. The applicant is to pay the costs of the application on scale B.

Z MARX DU PLESSIS

Acting Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 1 April 2025

Date of order: 9 May 2025

APPEARANCES

On behalf of the applicant: Adv T Buthelezi

On behalf of the respondent: Adv A Koekemoer