



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case number: **D5081/2023**

In the matter between:

JOHN STEPHEN BROOKS

APPLICANT

and

**THE TRUSTEE OF THE HILLCREST COUNTRY
RETIREMENT ESTATE BODY CORPORATE
THE BODY CORPORATE OF THE HILLCREST COUNTRY
JABULANI MAPHANGA N.O
THE CHIEF OMBUD**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT**

ORDER

I hereby make the following order:

1. The application for leave to appeal is to be dismissed with costs, such to be taxed upon the employment of senior counsel on scale C.

JUDGMENT

Gwagwa AJ

Introduction

[1] This matter was heard before me on 26 July 2024. Judgment was reserved on 26 July 2024, thereafter, the aforesaid judgment was delivered on 19 August 2024. Subsequently, the applicant lodged an application for leave to appeal against my judgment.

[2] The application for leave to appeal was set down on 3 April 2025 and was opposed by the second and the third respondents respectively. The applicant quoted s 17(1) of the Superior Courts Act 10 of 2013 (the Act), which provides:

‘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 reasons why the appeal should be heard, including conflicting judgment on the matter under consideration;’

[3] Section 17(1) of the Act emphasizes that for leave to be granted by the Court, the appeal must have a reasonable prospect of success.

[4] I refer to the nature and background of my judgment delivered on 19 August 2024 to expand on my decision in this leave of appeal application:

‘[21] The adjudicator dismissed the Applicant’s application based on the technical reason of lodging an appeal outside the period of 60 days and therefore he had no powers and duties to consider same. The decision by the adjudicator to dismiss the applicant’s complaint, was valid in law, given the fact that the applicant did not lodge a condonation application for the late filing of

his complaint against the adoption of the rules of conduct of the body corporate, in line with ss 41(10 and (2) if the CSOS At.

[22] The Applicant failed to lodge an appeal within the prescribed period, nor did he explain why condonation was not sought with the CSOS alternatively at the court, given the fact that the adjudicator's power and duties became functus officio as correctly argued by Mr Shapiro, I agree.

[25] In *Turley Manor Body Corporate* it was stated that an appeal must be lodged within the period of 30 days after date of delivery of the order. Furthermore, it is generally appropriate, that an appeal from an administrative order permits of a reconsideration of the merits of the order provided such appeal is done within a prescribed period.

[29] This Court could not grant relief as contemplated above, where the court considered a review of an administrative action to be set aside in term of s 6(1) of PAJA given the fact that the applicant failed to file condonation for his complaint'

[5] The applicant did not file a comprehensive condonation for failing to lodge a complaint within 30 days as stipulated in *Turley Manor Body Corporate* mentioned above.

[6] Grounds of appeal are summarized as follows:

That there is a reasonable prospect of success or realistic chance that another court will find that the elements of relief sought before CSOS by the applicant did not involved a challenge to the voidness of a law;

[6.1] That section 41 did not comply to those elements, furthermore that the CSOS adjudicator was wrong in law to apply section 41 of the CSOS to those elements, instead the adjudicator should have considered those elements of complaint by the applicant.

The applicable test

[7] I will now refer to case law dealing with an application for leave to appeal in *Van Zyl v Steyn*:¹

¹ *Van Zyl v Steyn* [2022] ZAGPPHC 302.

[3.2] The respondent submitted in its heads of argument-

"2.1 The test which was applied previously in applications of this nature was whether there were reasonable prospects that another court may come to a different conclusion.

2.2 What emerges from section 17(1) is that the threshold to grant a party leave to appeal has been raised. It is now only granted in the circumstances set out and is deduced from the words "only" used in the said section."

[4] Despite these submissions, I had to address the test to be applied in considering leave to appeal in this, as the respondent's counsel brought a judgment to my notice. That is by the Supreme Court of Appeal ("*the SCA*") and it may suggest a change in the current approach. That is **Ramakatsa and Others v African National Congress and Another** [2021] ZASCA 31 (31 March 2021). I revert to it later.

[5] I commence by saying what test is not applicable on the facts of this case. This is not a case where there is some "*other compelling reason*" why an appeal should be heard as contemplated in section 17(1)(a)(ii) of the Superior Courts Act, 10 of 2013 ("*the Act*"). The notice of application for leave to appeal and argument did not suggest otherwise. It is thus a case where the usual test applies, as set out in section 17(1)(a)(i) of the Act:

"17(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;"

[13] The **Ramakatsa** judgment Para 10 implicitly held that the bar has not been raised by the introduction of section 17(1)(a)(i). The question is if the **Ramakatsa** judgment lowered the threshold that a court must determine if an appeal would have a reasonable prospect of success:

"[10] Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act), leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice ... I am mindful of the decisions at high court level debating whether the use of the word 'would' as opposed to 'could' possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. ... The test of 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 in this matter 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."

[8] I am satisfied that another court would not come to a different conclusion from my judgment. The principles set out in *Van Zyl v Steyn* read with s 17(1) of the Act have not been satisfied by the applicant.

Order

[9] I therefore make the following order:

1 The application for leave to appeal is to be dismissed with costs, such to be taxed upon the employment of senior counsel on scale C.



Gwagwa AJ

APPEARANCES

Counsel for the applicant:

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Date of leave to appeal:

03 April 2025

Date of judgment:

21 July 2025