



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

CASE NO: 130616-2023

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: NO.

20 August 2025

Date

T ENGELBRECHT

In the matter between:

SNAID & MORRIS INCORPORATED

APPLICANT

and

SAYERS, JOHN MERRICK WILLIAM

RESPONDENT

This order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their

legal representatives by email. The Order is further uploaded to the electronic file of this matter on Caselines by the Judge his/her secretary. The date of this Order is deemed to be 20 August 2025.

JUDGMENT – LEAVE TO APPEAL

ENGELBRECHT, AJ

Introduction

[1] This is an application for leave to appeal against the judgment and order handed down herein on 8 July 2025. This application is opposed by the Respondent.

[2] The said order provides as follows

[14] *Therefore, the following order is made:*

14.1 *The Respondent is placed under final winding up in the hands of the Master of the High Court*

14.2 *The costs of the application are costs in the final winding up of the Respondent.*

[3] This application is based on the 16 grounds set out in the Notice of Appeal dated 10 July 2025.

APPLICABLE LEGAL PRINCIPLES IN AN APPLICATION FOR LEAVE TO APPEAL

[4] Applications for leave to appeal are governed by the provisions of section 17 of the Superior Courts Act 10 of 2013, which reads 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 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) 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.

[5] Once a judge forms such an opinion, leave to appeal should not be refused. Importantly, a judge hearing a leave to appeal is not called upon to decide on whether his or her decision was right or wrong.

[6] in ***Kwazulu Natal Law Society v Sharma and another [2017] 3 ALL SA 264 (KZP) (28 April 2017)***, Judge van Zyl held in paragraph [30] that the test enunciated in ***S v Smith (2012(1) SACR 567 (SCA))*** still remains valid in terms of the new Act. In paragraph 7 it was held that

“More is required to establish that there is a mere possibility of success, that the case is arguable on appeal, or that the case cannot

be categorized as hopeless. There must, in other words, be a sound rational basis for the conclusion that there are prospects of success on appeal”

- [6] In an orbiter dictum, the Land Claims Court **Mont Chevant Trust v Tina Goosen and 18 others (IT 2012/28)** held that the test for leave to appeal is more stringent under the Superior Courts Act of 2013 than it was under the repealed Supreme Court Act 59 of 1959. This was confirmed in the Supreme Court of Appeal by Shongwe JA in **Notskovu v The State (157/15) [2016] ZASCA 112 (7 September 2016)** and by Schippers AJA in **Member of the Executive Council for Health Eastern Cape v Mikitha and another, 1221/15 [2016] ZASCA 176 (25 November 2016)** where it was stated.

“[16] *Once again it is necessary to say that leave to appeal, especially to this Court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling reason why it should be heard.*

- [7] In **Ramakatsa and others v National Congress and another (724/2019) [2021] ZASCA 31 (31 March 2021)**, Dlodlo JA place the authorities in perspective where the learned judge of appeals stated:

[10] *“I am mindful of the decisions at the 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. Similarly, if there are some other compelling reasons why the appeal should be heard, leave 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*

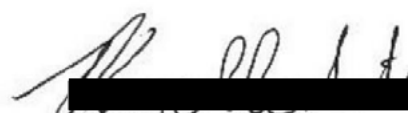
prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that they are prospects of success must be shown to exist”.

CONCLUSION

[8] After hearing Counsel for both the Applicant and the Respondent and considering the cases as mentioned above, facts of the matter and the arguments by both Counsel, I find that there is no reasonable prospect of success on appeal and I make the following order.

[8.1] The application for leave to appeal is dismissed.

[8.2] The costs of the application for leave to appeal are costs in the final winding up of the Respondent.


[REDACTED]
ENGELBRECHT T

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION

Delivered: This judgment and order were prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file

of this matter on Case Lines. The date of the order is deemed to be the 20 August 2025.

Appearances:

For the Applicant:	Advocate Hollander
For the Respondent:	Advocate Subel
Date of Hearing:	14 August 2025
Date of Judgment:	20 August 2025