IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION- MTHATHA

CASE NO: 962/2021

In the matter between:

MINISTER OF POLICE Applicant

And

LUBABALO GUNTU Respondent

JUDGMENT

APPLICATION FOR LEAVE TO APPEAL

MHAMBI AJ

[1] This is a judgment on application for leave to appeal the judgment of this court delivered on 18 October 2024.

[2] The applicant shall hereinafter be referred to as the Police, where necessary.

[3] In summary, the applicant's findings of fact and the law on which this application for leave to appeal anchored, in which the court, applicant, submits erred are:

3.1 The fact that the issue of non-service as regard the notice of set down the taxation was canvassed in reply and was a bar to the court dealing with the issue.

3.2 Due notice of taxation had been afforded to it in circumstances where a challenge in the true sense requiring review, when in proper context, all that they served to indicate was the good cause requirement for rescission.

3.3 The applicant had not willingly not participated in the taxation.

3.4 It was unnecessary to consider condonation in the light of merits.

3.5 Also, the court a quo erred in granting the orders as set out in paragraphs 1 and 2 of its judgment.

[4] The law is settled about the test to be applied in an application for leave to appeal .

[5] The test to be applied in an application for leave to appeal is set out in section 17 (1) (a) of the Superior Court Act[1] as follows: -

(i) 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) Where there is some **other compelling** reasons why the appeal should be heard, including conflicting judgments on the matter under consideration. (own emphasis added)

[6] In this application, I am not satisfied that there are compelling reasons why appeal should be heard, nor are there conflicting judgments on the subject of this application and therefore this application squarely falls within the question of whether the appeal has a reasonable prospect of success.

[7] The test to grant leave to appeal was set out by the SCA in *Cook v Morrison and Another*[2] as follows: -

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[1] 10 of 2013

"[8] The existence of reasonable prospect of success is a necessary but insufficient for the granting of special leave. Something more, by way of special circumstances, is needed. These may include that the appeal raises a substantial point of law or that the prospects are so strong that a refusal of leave would result in a manifest denial of justice, or that the matter is of very great importance to the parties, or to the public. This is not a closed list (Westinghouse Brake and Equipment (Pty) Ltd v Bulger Engineering (Pty) Ltd[3], Director of Public Prosecutions, Gauteng Division, Pretoria v Moabi[4]":

[8] The SCA in *MEC for Health, Eastern Cape, v Mkhitha*[5], emphasized the test for the leave to appeal as follows in paragraphs -16-17] thereof: -

"[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 Superiors Court's 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 compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. **A mere possibility of success, an argued case or one that is not hopeless, is not enough. There must be sound, rational basis to conclude that there is a reasonable prospect of success on appeal".** [own emphasis added].

In *Notshokovu v S (2016) ZASCA 112 at para 2,* the SCA indicated that an appellant faces a " higher and stringent" threshold under the Superior courts Act. Thus, in relation

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[2] 2019 (5) SA 51 (SCA) (8 March 2019)
[3] 1986 (2) SA 555 (A) at 564 H- 565E
[4] 2017 (2) SACR 384 (SCA); [2017] ZASCA 85 para 21
[5] (1221/2015) [2016] ZASCA 176 (25November 2016) paras 16-17

to the said section 17, the test for leave to appeal is not whether another court “may” come to a different conclusion, but “would indeed come to a different conclusion.

[9] In this matter the main judgment deals extensively with settled legal principle that the allocator is rescindable, the main judgment refers to authorities which I need not rehearse again on this point. The main judgment dealt with service of the notice of taxation, in this, it refers to Uniform rule 70 (4) (a), read together with sub-rule 3B of uniform rule 70. The rule only requires the taxing master to be satisfied that the party liable to pay the costs has received a due notice in terms of subrule 3B.The main judgment further assessed the chronology of email communication between the parties, before and after the taxation. This viewed together with the email from the applicant’s legal practitioner requesting certain information and undertaking to settle the impugned bill of costs. At that stage the service of the bill was never an issue, impliedly it was not contested.

[10] The main judgment is clear and correct on this point. I see no error or misdirection both on facts and the law as far as it relates to the service of the bill of costs.

[11] In respect of condonation, in circumstances where the application is void of merits, dealing with whether or not to grant condonation is simply waste of time, the main judgment is correct to not have dealt with condonation, where merits have been found to be unsuccessful. The court having dealt with the material issue, it was unnecessary to deal with condonation as prayed, the main application failed on the principal issue.

[12] I find nothing erroneous in the main judgment finding that the applicant willingly chose not to participate in the taxation process, the main judgment correctly refers to authorities in it’s reasoning, those authorities stands as the law and principle this court has to follow.

[13] It is the duty of this court to ensure that the meritless and hopeless application for leave to appeal does not burden the already overloaded work of the judiciary with scarce resources, in this case, the full bench of this division.

[14] In this application, I see no reasonable prospect of success that another judge would come to a different conclusion.

[15] This application should therefore fail with costs.

[16] In the result, the following order issues: -

ORDER

1. **The application for leave to appeal to the full bench of this division is refused with costs on scale A of amended rule 67 A.**

M. MHAMBI
Judge of the High Court (Acting)

APPEAREANCES :

Mr. Zilwa N.:	**counsel for the applicant**
Instructed by :	**Zilwa Attorneys Inc** **Mthatha**
Mr. Tsipa:	**counsel for the respondent**
Instructed by:	**Y. Tsipa Attorneys**

Butterworth

Date heard:	**11 June 2025**
Date of delivery:	**19 August 2025**
Date heard:	**20 February 2025**
Date delivered:	**29 April 2025**