



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable

Case no: 2851/2024

In the matter between:

PETER WILLE

APPLICANT

and

THE SCHOOL GOVERNING BODY:

DR BÖHMER SECONDARY SCHOOL

FIRST RESPONDENT

THE FREE STATE DEPARTMENT:

EDUCATION

SECOND RESPONDENT

Neutral Citation: *Wille v The School Governing Body: Dr Böhmer Secondary School and Another* (2851/2024) ZAFSHC 280 (5 September 2025)

Coram: Opperman J

Heard: 26 August 2025

Delivered: The judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand down is deemed to be 5 September 2025 at 15h00

Summary: Application for leave to appeal – reasonable prospect of success – exceptions – application dismissed with costs.

ORDER

- 1 The application for leave to appeal is dismissed.
 - 2 The applicant to pay the costs to be taxed on scale A for the first respondent and scale C for the second respondent.
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JUDGMENT

Opperman J

[1] The application for leave to appeal that lies before this Court relates to a matter that served before Nemavhidi AJ.¹ On 14 March 2025 the court upheld some exceptions by the first and second respondent and ordered that:

‘[1] Plaintiff shall file an amendment of the particulars of claim within twenty (20) days in order to enable the first and the second defendants to file their pleadings.

[2] Plaintiff shall pay the costs which shall include the costs of two counsel on scale A of Rule 67A.’

[2] The cause of the action arose from proceedings instituted by the applicant (an educator) for damages arising from ‘malicious prosecution and resultant psychiatric injury’. The applicant was accused by a learner at the school of having been sexually harassed by him. The school governing body (SGB/first respondent) reported these allegations to the Department of Education (the Department/second respondent). The Department then instituted disciplinary proceedings against the applicant. The proceedings were later discontinued.

¹ The presiding officer’s term as acting judge lapsed and the matter is entertained in terms of s 17(2)(a) of the Superior Courts Act 10 of 2013 read with rule 49(1)(e) of the Uniform Rules of Court in that leave to appeal may be granted by the judge or judges against whose decision an appeal is to be made or, if not readily available, by any other judge or judges of the same Court or Division.

[3] The reasons for judgment in terms of rule 49(1)(c) by the Court indicate that the SGB excepted (first exception) to the fact that malicious prosecution does not extend to internal disciplinary proceedings – save in the very narrow circumstances where the proceedings are akin to criminal proceedings. The Department excepted (second exception) on the basis that:

‘[T]he allegations pleaded in the amended particulars of claim are materially deficient and do not support the damages claimed from the second defendant. The plaintiff failed to plead any basis in fact and/or in law upon which a cause of action may be sustained against the second defendant.’

Imperative is the factual reality that the SGB did not prosecute the applicant.

[4] Erasmus² depicts the matter of exceptions aptly:

- (a) An exception is a legal objection to the opponent’s pleading;
 - (b) it complains of a defect inherent in the pleading: admitting for the moment that all the allegations in a summons or plea are true;
 - (c) it asserts that even with such admission the pleading does not disclose either a cause of action or a defence, as the case may be;
 - (d) it follows that where an exception is taken, the court must look at the pleading excepted to as it stands together with facts agreed to by the parties, if any;
 - (e) no facts outside those stated in the pleading can be brought into issue — except in the case of inconsistency; and no reference may be made to any other document.
- This is precisely the difference between exceptions on the one hand, and pleas in bar, dilatory pleas, pleas in abatement and dilatory special pleas, on the other hand: the latter usually introduce fresh matter which requires to be proved by evidence.

[5] On the first exception, the court ruled that the disciplinary proceedings brought against the applicant are not analogous to a criminal prosecution by a statutorily created tribunal that is able to impose sanctions that are punitive in nature. The law of malicious prosecution does not extend to the disciplinary proceedings in this matter.

² Superior Court Practice, Volume 2: Uniform Rules and Appendices, Rules of Court, 23 Exceptions and applications to strike out, RS 26, 2025, D1 Rule 23-4, Jutastat.

Nor has the applicant pleaded any facts to support such an allegation. As such, no cause of action exists in common law against the SGB. The court proceeded to explain the finding with reference to the law.

[6] The reasons on the second exception by the court are that:

‘[12] The allegations pleaded in the amended particulars of claim are materially deficient and do not support the damages claimed from the second defendant. The Plaintiff failed to plead any basis in fact and/or in law upon which a cause of action may be sustained against the second defendant.

The amended particulars of claim are deficient as set forth hereunder:

(i) The Plaintiff in his amended particulars of claim alleges that in August 2018 the SGB intentionally, maliciously, and wrongfully set a disciplinary investigation against the Plaintiff in motion by laying a complaint of sexual harassment involving a learner at the school against the Plaintiff with the Department of Education.

(ii) Because of the SGB's conduct, the Department suspended the Plaintiff on 10 September 2018 based on allegations of sexual harassment involving the said learner and instituted disciplinary proceedings against the Plaintiff.

(iii) The Plaintiff failed to plead any facts in support of the allegation that the Department did not have probable cause to do the foregoing,"nor did it have any reason to believe in the truth of the information on which it based its decision..."

(iv) No facts are pleaded by the Plaintiff as to why the disciplinary proceedings were baseless and that there were no reasonable prospects of securing a guilty finding.

(v) The Plaintiff claims that the charges were withdrawn on 29 August 2022 but withholds that the reason for the withdrawal was that the learner who was the complainant had absconded.

(vi) Sexual harassment of a learner constitutes serious misconduct for which an educator must be dismissed if he is found guilty as prescribed in s17(1)(b) of the Employment of Educators Act, 76 of 1998 (the Act).

In s17(2) of the Act, if it is alleged that an educator committed a serious misconduct contemplated in subsection (1), the employer must institute disciplinary proceedings in accordance with the disciplinary code and procedures provided for a Schedule 2 to the Act.

The second Defendant was obliged to institute disciplinary proceedings as enjoined by s17(2) of the Act.

(vii) The Plaintiff failed to plead any facts and/or circumstances in terms of which the second Defendant was entitled to ignore.

- (viii) It is not competent to bring a claim against the second Defendant based on the disciplinary proceedings instituted against the Plaintiff where this was done in the execution of a statutory duty.
- (ix) The Plaintiff failed to plead facts to support a claim for malicious prosecution.
- (x) The second Defendant is not the National Prosecuting Authority, and the Plaintiff is not competent to sue the second Defendant for malicious prosecution.

The Plaintiff failed to plead malice/animus injuriandi (sic) on the part of the second defendant.'

[7] The elaborate grounds of appeal³ as depicted in the application for leave to appeal were summarised by counsel for the applicant in paragraphs 3.1 to 3.11 of their heads of argument. It was now limited from 23 issues, in the notice for leave to appeal to 11. The applicant contended that the court erred in its previous findings regarding the law of malicious prosecution and related issues arising from the disciplinary proceedings. These grounds are as follows:

(a) Malicious Prosecution and Disciplinary Proceedings

It is argued that the court erred in concluding that the law of malicious prosecution does not apply to the disciplinary proceedings at issue in this matter. The applicant maintains that a cause of action in common law exists against the respondents in respect of such proceedings.

(b) Approach to Allegations in the Pleadings

The applicant submits that the court erred in law by not considering that, when determining an exception, all allegations of fact in the particulars of claim must be accepted as true. Furthermore, the court should not have relied on extraneous facts

³ In *Himunchol v Moharom* 1947 (4) SA 778 (N) para 780 the court held: 'What the rule contemplates is that, in framing his grounds of appeal, an appellant shall specify the findings of fact he appeals against, and the rulings of law, and the object is that his opponent shall be made aware of points taken by the appellant and the court of appeal shall be apprised of the issues which it is asked to decide... it is essential that the grounds of appeal should be framed in such a way that the issues to be decided by the court of appeal are clear.' Also see *Hing and Others v Road Accident Fund* (A440/2011, A139/2012) [2014] ZAWCHC 15; [2014] 2 All SA 186 (WCC); 2014 (3) SA 350 (WCC) (13 February 2014) para 4: '...The effect of the notice of application for leave to appeal was to suggest that he had misdirected himself at every turn in making any findings adverse to their claims. In the context of his detailed and fully reasoned judgment, it could not reasonably have been assumed by the appellants or their legal representatives that by granting leave to appeal in the terms he did, the judge meant to be understood to be acknowledging that such wide-ranging error and misdirection on his part might reasonably be established on appeal. On the contrary, the manifestly indiscriminate formulation of the grounds on which the application for leave to appeal was brought brings to mind the observation of a US Appeals Court judge that when he sees 'an appellant's brief containing seven to ten points or more, a presumption arises that there is no merit to any of them'.'

outside of those pleadings.

(c) Wrongfulness of the First Respondent's Conduct

The applicant contends that the court erred in finding that the applicant failed to plead sufficient facts to support the allegation that the first respondent's conduct was wrongful.

(d) Vagueness of Allegations Regarding Malicious Initiation

It is further argued that the court erred in concluding that the applicant's allegation—that the first respondent intentionally, maliciously, and wrongfully initiated a disciplinary investigation against the applicant by lodging a complaint of sexual harassment involving a learner at the Department—was vague.

(e) Instigation Versus Institution of Proceedings

The applicant asserts that the court failed to appreciate that, for a claim of malicious proceedings, it is sufficient for the applicant to allege that the respondent set the law in motion, whether by instigating or instituting the proceedings. The particulars of claim alleged that the first respondent instigated the proceedings, and it was therefore not necessary to allege that the first respondent actually instituted them.

(f) Causation Regarding the First Respondent

The applicant submits that the Court erred by finding that the applicant did not plead adequate allegations to satisfy the requirement for causation in relation to the first respondent.

(g) Sufficiency of Allegations Against the Second Respondent

It is also argued that the Court erred in determining that the allegations in the particulars of claim are materially deficient and do not support the applicant's claim for damages against the second respondent.

(h) Facta Probandia and Particulars of Claim

The applicant contends that the Court failed to consider that the facts relating to the reasons why the disciplinary proceedings were baseless constitute facta probantia, which are not required to be included in the particulars of claim.

(i) Execution of Statutory Duty

The applicant argues that the Court erred in finding that the disciplinary proceedings were instituted against the applicant in the execution of a statutory duty.

(j) Pleading Facts for Malicious Prosecution

It is further submitted that the Court erred in finding that the applicant did not plead the requisite facts to sustain a claim for malicious prosecution.

(k) Competency to Sue the Second Respondent

Finally, the applicant argues that the Court erred in finding that, because the second respondent is not the National Prosecuting Authority, the applicant could not competently sue the second respondent for malicious prosecution.

[8] The first and second respondents discuss the law and facts of the exceptions and grounds of appeal on each of the above issues in the utmost detail in their heads of argument. Their deduction of the law and facts, as well as submissions are correct. It negates the grounds of appeal by the applicant completely. It needs not be repeated since it is clear and unambiguous and supported by the prevailing law and corroborates the judgment *a quo*.

[9] Meritless appeals may not be allowed. The test in an application for leave to appeal is simply whether there are any reasonable prospects of success in an appeal, not whether a litigant has an arguable case or a mere possibility of success. The Supreme Court of Appeal has, in the past, criticized the regularity with which leave to appeal is granted in matters not deserving its attention. Marais AJ stated that: 'The inappropriate granting of leave to appeal to this court increases the litigants' costs and results in cases involving greater difficulty and which are truly deserving of the attention of this court having to compete for a place on the court's roll with a case which is not.'⁴

[10] The right to appeal is, among others, managed by the application for leave to

⁴ *Shoprite Checkers (Pty) Ltd v Bumpers Schwarmas CC and Others* (231/2002) [2003] ZASCA 57; [2003] 3 All SA 123 (SCA); 2003 (5) SA 354 (SCA) (30 May 2003) para 6.

appeal. It may not be abused but the hurdle of an application for leave to appeal may never become an obstacle to justice in the post-constitutional era. Section 17 of the Superior Courts Act 10 of 2013 is the law here. The test demands a greater measure of certainty of a different outcome on appeal. The stipulation should not be interpreted as setting the bar so high as to deny an applicant any chance of being granted leave to appeal. This is not what the legislature intended. *H.B (Nee D.J) v R.J.B (Leave to Appeal)*⁵ clarified the case law that developed after the legislation was enacted; I will not reiterate it.

[11] With regard to the meaning of reasonable prospects of success, it was held, in *S v Smith*,⁶ that:

‘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 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.’

[12] The respondents are justified, given the facts in *casu*, the law and the judgment *a quo*, in the submission that the applicant’s remedy was to amend their particulars of claim to remove the lawful complaints as ordered in the court *a quo*. The application for leave to appeal must be dismissed. Costs must follow the cause and it will be so ordered.

Order

[13] It is ordered as follows:

⁵ *H.B (Nee D.J) v R.J.B (Leave to Appeal)* (21480/2014) [2024] ZAGPPHC 401 (2 April 2024).

⁶ *S v Smith* [2011] ZASCA 15; 2012 (1) SACR 567 (SCA) para 7.

- 1 The application for leave to appeal is dismissed.
- 2 The applicant to pay the costs to be taxed on scale A for the first respondent and scale C for the second respondent.

 
ML OPPERMAN

JUDGE OF THE HIGH COURT

Appearances

For the applicant:

J Els

Instructed by:

Blair Attorneys, Bloemfontein

For the first respondent:

E Webber

Instructed by:

Horn & Van Rensburg Attorneys, Bloemfontein

For the second respondent:

R T Williams

Instructed by:

Office of the State Attorney, Bloemfontein.