

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2022-046095

DATE: 15 October 2025

In the matter between:

MEDTRONIC (AFRICA) (PTY) LIMITED

Applicant

and

CAPITAL ENDOVASCULAR (PTY) LIMITED

First Respondent

**AFRICAN HEALTHCARE INVESTMENT
SOLUTIONS (PTY) LIMITED**

(formerly MANIPAL AFRICA (PTY) LIMITED)

Second Respondent

Neutral Citation: *Medtronic (Africa) v Capital Endovascular and Another*
(2022-046095) [2025] ZAGPJHC --- (15 October 2025)

Coram: Adams J

Heard: 15 October 2025

Delivered: 15 October 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 11:30 on 15 October 2025.

Summary: Application for leave to appeal – s 17(1)(a)(i) of the Superior Courts Act 10 of 2013 – an applicant now faces a higher and a more stringent threshold –

Leave to appeal granted to the Full Court –

ORDER

- (1) The first respondent's application for leave to appeal succeeds.
 - (2) The first respondent is granted leave to appeal to the Full Court of this Division.
 - (3) The costs of this application for leave to appeal shall be costs in the appeal.
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JUDGMENT [APPLICATION FOR LEAVE TO APPEAL]

Adams J:

[1]. I shall refer to the parties as referred to in the original application by the applicant for *inter alia* an order that the Arbitration Award dated 11 July 2022 by Mr Christopher Loxton SC be made an Order of Court. The arbitration award incorporated a settlement agreement concluded between the first respondent and the applicant on 29 June 2022, to be read with addendum 1 thereto dated 11 July 2022 ('the settlement agreement'). The first respondent is the applicant in this application for leave to appeal and the respondent herein is the applicant in the original application. On 5 August 2025 I granted the applicant's application and dismissed, with costs, the first respondent's counterapplication for rectification. I also ordered the first respondent to comply with the settlement agreement and to make payment to the applicant in terms thereof.

[2]. The first respondent applies for leave to appeal that portion of my judgment and the aforesaid order of 5 August 2024 which was in favour of the applicant and against the respondent, as well as my reasons therefor.

[3]. The application for leave to appeal is based on the provisions of sub-section (i) of section 17(1)(a) of the Superior Courts Act 10 of 2013, which reads as follows: -

‘17 **Leave to appeal**

(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)’.

[4]. The application for leave to appeal is against my legal finding that the settlement agreement should be interpreted such that the first respondent is liable to pay to the applicant the amount of about R48 million, as against R32 million, as contended for by the first respondent. The Court *a quo* erred, so the first respondent contends, in arriving at a conclusion that a proper interpretation of the settlement agreement, with reference to the factual matrix, led to the inescapable conclusion that the parties had agreed to a settlement amount of R48 million. I should have found, so the contention continues, that there was a patent error in the written agreement, which required to be rectified. The first respondent furthermore submits I erred in arriving at a conclusion that during the settlement discussions there was no mention of the R32 million between the parties. Such matters could only be determined by oral evidence and in any event involves reliance on pre-contractual negotiations which offends the *Parol* evidence rule.

[5]. The Court *a quo* ought to have arrived at a conclusion, so the case on behalf of the first respondent concludes, that its application for rectification ought to be referred for oral evidence or trial on the issue of whether the settlement agreement fell to be rectified by deletion of the numerical amount of R48 million in paragraph 1.1 of the agreement and the insertion of the numerical amount of R32 million in the place thereof or vice versa.

[6]. Nothing new has been raised by the first respondent in this application for leave to appeal. In my original written judgment, I have dealt with most, if not all of the issues raised by the first respondent in this application for leave to appeal and it is not necessary for me to repeat those in full. Suffice to restate what I say in the judgment, namely that, in my view, the settlement agreement

concluded between the parties, properly and purposively interpreted in context, provided for a settlement sum of R48 million plus value added tax. I reached the same conclusion if one is to regard the dispute between the parties as a factual one. All things considered, and having regard to the undisputed evidence before me, it can safely be said that the version of the first respondent can and should be rejected on the papers as being untenable and far-fetched.

[7]. The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another court may come to a different conclusion to that reached by me in my judgment. This approach has now been codified in s 17(1)(a)(i) of the Superior Courts Act 10 of 2013, which came into operation on the 23rd of August 2013, and which provides 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’.

[8]. In *Ramakatsa and Others v African National Congress and Another*¹, the SCA held that 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. These prospects of success must not be remote, but there must exist a reasonable chance of succeeding. An applicant who applies for leave to appeal must show that there is a sound and rational basis for the conclusion that there are prospects of success.

[9]. The ratio in *Ramakatsa* simply followed *S v Smith* 2012 (1) SACR 567 (SCA), [2011] ZASCA 15, in which Plasket AJA (Cloete JA and Maya JA concurring), held as follows at para 7:

‘What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the 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

¹ *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021);

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.'

[10]. In *Mont Chevaux Trust v Tina Goosen*², the Land Claims Court held (in an *obiter dictum*) that the wording of this subsection raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. I agree with that view, which has also now been endorsed by the SCA in an unreported judgment in *Notshokovu v S*³. In that matter the SCA remarked that an appellant now faces a higher and a more stringent threshold, in terms of the Superior Court Act 10 of 2013 compared to that under the provisions of the repealed Supreme Court Act 59 of 1959. The applicable legal principle as enunciated in *Mont Chevaux* has also now been endorsed by the Full Court of the Gauteng Division of the High Court in Pretoria in *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others*⁴.

[11]. I am persuaded that the issues raised by the first respondent in its application for leave to appeal are issues in respect of which another court is likely to reach conclusions different to those reached by me. I am therefore of the view that there are reasonable prospects of another court making factual findings and coming to legal conclusions at variance with my factual findings and legal conclusions. The appeal, therefore, in my view, does have a reasonable prospect of success.

[12]. Leave to appeal should therefore be granted.

² *Mont Chevaux Trust v Tina Goosen*, LCC 14R/2014 (unreported).

³ *Notshokovu v S*, case no: 157/2015 [2016] ZASCA 112 (7 September 2016).

⁴ *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2016] ZAGPPHC 489 (24 June 2016).

Order

[13]. In the circumstances, the following order is made:

- (1) The first respondent's application for leave to appeal succeeds.
- (2) The first respondent is granted leave to appeal to the Full Court of this Division.
- (3) The costs of this application for leave to appeal shall be costs in the appeal.



L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	15 October 2025
JUDGMENT DATE:	15 October 2025 – Judgment handed down electronically
FOR THE APPLICANT:	H C Bothma SC
INSTRUCTED BY:	DLA Piper South Africa (RF) Inc, Sandown, Sandton
FOR THE FIRST RESPONDENT:	I Pillay SC, with I Veerasamy and E Bredenkamp (Pupil)
INSTRUCTED BY:	Maynard Menon Govind Singh Inc, Westville, Durban, Kwazulu-Natal
FOR THE SECOND RESPONDENT:	No appearance
INSTRUCTED BY:	No appearance – Attorneys withdrew