

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NUMBER: 7573/2020

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
.....	
.....	
DATE 18 November 2025	SIGNATURE.....

In the matter between:

NICO VLADIMER KUCER

APPLICANT / PLAINTIFF IN
MAIN ACTION

-and-

DE KUILE BOERDERY CC

RESPONDENT / DEFENDANT
IN MAIN ACTION

Delivered : 18 November 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time

for hand down of the judgment is deemed to be **18 November 2025 at 10:00 am.**

Date heard : 3 November 2025

Coram : Bresler AJ

JUDGMENT

BRESLER AJ:

[1] The Applicant (Plaintiff in the main action) applies for Leave to Appeal against the judgment and order handed down by this Court on the 19th of February 2025 in terms whereof the Applicant's claim against the Respondent (Defendant in the main action). The grounds as per the Application for Leave to Appeal appears from the extensive Application for Leave to Appeal and includes *inter alia*:

1.1 Failing to consider that the dictum in ***Muhlman v Muhlman***¹ pertaining to the test to be applied in determining if a tacit agreement came into effect was overturned and substituted on appeal;

¹ 1981 (4) SA 632 (W)

1.2 Failing to consider the matter solely on the premise of a tacit partnership agreement whereas the Plaintiff testified that there was an express partnership agreement;

[2] An application for leave to appeal is governed by section 17(1) of the **Superior Courts Act**, Act 10 of 2013. Section 17(1)(a) provides:

‘17 Leave to appeal

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.’*

[3] In **MEC Health, Eastern Cape v Mkhitha**² the Supreme Court of Appeal said the following (reference to other authorities omitted):

‘[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

² **MEC Health, Eastern Cape v Mkhitha** (1221/15) [2016] ZASCA 176 (25 November 2016)

opinion that the appeal would have a reasonable prospect of success; or there is some other 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 arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

- [4] Leave should therefore be granted as there is a reasonable prospect of success on appeal, alternatively there is a compelling reason for the appeal to be heard in so far as the judgment relies on case law that was overturned on appeal (to wit **Muhlman v Muhlman**³). It is furthermore evident that the Plaintiff did in fact testify to an express agreement, as opposed to a tacit agreement, rendering the findings pertaining to the tacit agreement potentially flawed.

Order:

- [5] **In the result the following order is made:**

5.1 Leave to appeal is granted to the Full Court of the Limpopo Division of the High Court of South Africa;

³ 1981 (4) SA 632 (W)

5.2 Costs of this application will be costs in the appeal.



M BRESLER AJ

ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

FOR THE APPLICANT : Adv. D Marais

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