

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: 2020-44579

DATE: 20 November 2025

In the matter between:

SELETJE CONSTRUCTION & MANAGEMENT CC

Applicant

and

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

Respondent

Neutral Citation: *Seletje Construction & Management v City of Ekurhuleni Metropolitan Municipality (2020-44579) [2025] ZAGPJHC ---*
(20 November 2025)

Coram: Adams J

Heard: 19 November 2025

Delivered: 19 November 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 19 November 2025.

Summary: Application for leave to appeal – s 17(1)(a)(i) and (ii) 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 respondent's application for leave to appeal succeeds.
 - (2) The 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 3 July 2021 by the Arbitrator, Mr P F Rossouw SC, and handed down / published by him on 1 September 2021, be made an Order of this Court. The respondent is the applicant in this application for leave to appeal and the respondent herein is the applicant in the original application. On 17 September 2025 I granted the applicant's application and dismissed, with costs, the respondent's counterapplication for an order in sum declaring the agreement entered into between the parties on 4 April 2019, which was the subject of the arbitration, to have terminated through effluxion of time.

[2]. The respondent applies for leave to appeal the whole of my judgment and the aforesaid order of 17 September 2025 in favour of the applicant 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), as well as sub-section (ii), 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) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;'

[4]. The application for leave to appeal is in the main against my factual and legal findings that there is no merit in any of the grounds raised by the respondent in opposition to the applicant's application to have the arbitral award made an Order of Court. The respondent contends that I erred in finding that the applicant should be permitted to continue with the contract, which expired in 2021 through no fault on their part. I erred, so the contention goes, in not finding that no case was made out by the applicant which entitled it to continue with the contract which expired on 30 June 2021. I should have found that the contract had in fact expired on or about 30 June 2021. Moreover, so the respondent submits, I erred in finding that the only grounds upon which applicant's application could be opposed are those relevant to an application for review of an arbitration award as provided for in section 33 of the Arbitration Act 42 of 1965, and I should have found that the normal principles *inter alia* regarding the values of fairness, reasonableness, constitutionality and justice apply in determining whether an order sought ought to be made an order of Court.

[5]. The respondent also submits that I erred in finding that the applicant was entitled to a revision of the date of practical completion, whilst I ought to have found that the applicant has no such entitlement. I erred in my factual finding that the respondent obstructed the dispute resolution and unlawfully removed the applicant from site. I ought to have found, so the respondent argues, that the applicant is currently still in possession of the site.

[6]. Importantly, the contention on behalf of the respondent is that the court *a quo* erred in not finding that making the arbitral award an order of court would be contrary to public policy and would encroach upon respondent's constitutional and statutory obligations. I should have found, so the contention

on this aspect continues, that the conduct of the applicant through its breach of the agreement, inclusive of the anticipatory breach thereof, entitled respondent to cancellation of the contract.

[7]. Further grounds for the leave to appeal are also raised by the respondent. So, for example, the respondent avers that I erred in finding that the dispute between the parties ought to be referred back to arbitration, whilst I ought to have found that it could not be so referred back as the contract had terminated through the effluxion of time. The respondent furthermore contended that important questions of law and/or issues of public importance have been raised in the matter that warrant the granting of leave to appeal herein as envisaged by 17(1)(a)(ii) of the Superior Courts Act.

[8]. I do not deem it necessary to list in detail all of the other grounds on which the respondent applies for leave to appeal.

[9]. Nothing new has been raised by the 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 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 the parties had limited the grounds of interference in their contract by the courts to the procedural irregularities set out in s 33(1) of the Arbitration Act. By necessary implication, they had waived the right to rely on any further grounds of review, whether at common law or otherwise. In any event, if the City believes this issue to be a dispute between them at this stage, then they are required, in accordance with *Telcordia Technologies*¹, to refer this matter back to arbitration.

[10]. 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

¹ *Telcordia Technologies Inc v Telkom SA Limited* 2007 (3) SA 266 (SCA).

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’.

[11]. In *Ramakatsa and Others v African National Congress and Another*², 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.

[12]. 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 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.’

[13]. In *Mont Chevaux Trust v Tina Goosen*³, 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

² *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021).

³ *Mont Chevaux Trust v Tina Goosen*, LCC 14R/2014 (unreported).

by the SCA in an unreported judgment in *Notshokovu v S*⁴. 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*⁵.

[14]. I am persuaded that the issues raised by the 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.

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

Order

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

- (1) The respondent's application for leave to appeal succeeds.
- (2) The 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.

⁴ *Notshokovu v S*, case no: 157/2015 [2016] ZASCA 112 (7 September 2016).

⁵ *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).



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

HEARD ON:	19 November 2025
JUDGMENT DATE:	19 November 2025 – Judgment handed down electronically
FOR THE APPLICANT:	D Thumbati
INSTRUCTED BY:	Ledwaba Zwai Attorney, Pretoria
FOR THE RESPONDENT:	J C Uys SC
INSTRUCTED BY:	Klopper Jonker Incorporated, New Redruth, Alberton