

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 37135/2012

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED:
12 December 2025	
DATE	SIGNATURE

In the matter between:

DURRANVALE TRADE AND INVESTMENTS (PTY) LTD

Plaintiff (Applicant)

and

ESTATE AGENCY AFFAIRS BOARD

Defendant (Respondent)

JUDGMENT: LEAVE TO APPEAL

MINNAAR AJ:

Introduction:

[1] The plaintiff instituted an action against the defendant, claiming delictual damages. The plaintiff is suing the defendant as cessionary of Mr Graham Carl Guthrie ("Guthrie").

- [2] Before me was the issue of the defendant's liability for damages suffered by the plaintiff arising from the defendant's failure, in December 2009, to renew the required Fidelity Fund Certificates to Guthrie and/or CRS Brokers CC.
- [3] Only Guthrie testified at trial, as the defendant called no witnesses. In my judgment, I dismissed the claim with costs on scale C, including the costs occasioned by the employment of two counsel.
- [4] The plaintiff has lodged an application for leave to appeal, which the defendant opposes.
- [5] In broad terms, the grounds for the leave to appeal centre on the applicability and consequences of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA").
- [6] The plaintiff submits that the appeal has a reasonable prospect of success. In this regard, it is the plaintiff's case that I incorrectly dismissed the plaintiff's action on the following broad grounds in:
- a. Accepting that PAJA was applicable as pleaded by the defendant.
 - b. Finding that the defendant took a decision, as defined in PAJA, not to issue the Fidelity Fund Certificates.
 - c. Ignoring that the *onus* was on the defendant to shed the onus on the alleged decision and that the defendant did not plead the *facta probanda* of the alleged decision.
 - d. Finding that something more than a mere negligent statutory breach of the Estate Agency Affairs Act 112 of 1976 ("the Act") necessarily required evidence of that something 'more'.
 - e. Failed to find that it is just and reasonable that a civil claim for damages be accorded to the plaintiff against the defendant.
 - f. Finding that the plaintiff's claim was not an appropriate remedy for the breach of administrative action.

Leave to appeal: test:

[7] Applications for leave to appeal are dealt with in terms of Rule 49 of the Uniform Rules of Court, read with sections 16 and 17 of the Superior Courts Act 10 of 2013 (“the Superior Courts Act”).

[8] Section 17(1) of the Superior Courts Act provides the test applicable to applications for leave to appeal. Section 17(1) reads as follows:

“(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;*
- (b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and*
- (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.”*

[9] Section 17(1)(a)(i) of the Superior Courts Act was dealt with in the decision of the Land Claim Court in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 (JDR 2325 (LCC); 2014 JDR 2325 in which Bertelsmann J held that the use of the word “would” (as opposed to could) in the provisions is an indication that the threshold for leave to appeal has been raised. It was further held that

the word “*would*” indicates a measure of certainty that another court will differ from the judgment appealed against.¹

[10] On the rigidity of the threshold, Plaskett AJA (as he then was), in which Cloete JA and Maya JA (as she then was) concurred, wrote the following *S v Smith* 2012 (1) SACR 567 (SCA) ([2011] ZASCA 15) at paragraph 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.'

[11] Under section 17(1)(a)(ii) of the Superior Courts Act, the Court determining an application for leave to appeal ought to enquire whether there is a compelling reason for the appeal to be heard.² The enquiry is factual and, therefore, each application ought to be decided on its own facts.

¹ *Mont Chevaux Trust* at par 6. See further *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (1957/09) [2016] ZAGPPHC 489 (24 June 2016) par 25

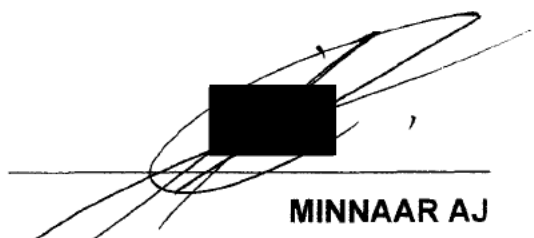
² Erasmus, *Superior Court Practice* (2021) A2-56 to 57

[12] Other considerations beyond the abovementioned statutory provisions would include where the material case is of substantial importance to the appellant, and where the decision sought to be appealed against involves an important question of law³ or where required by the interests of justice.⁴

[13] Applying the test for leave to appeal on the grounds raised by the plaintiff, especially on the onus that there was on the defendant, there is a reasonable prospect that another court would come to a different conclusion than mine. It follows that the application must be granted. In my view, it would be appropriate to grant leave to appeal to the Full Bench of this Division.

[14] Consequently, I make the following order:

1. Leave to appeal is granted to the Full Bench of this Division.
2. The costs of this application for leave to appeal shall be costs in the appeal.



MINNAAR AJ
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

³ Erasmus, *Superior Court Practice* (2021) A2-56 to 57

⁴ *City of Tshwane v Afriforum* 2016 (6) SA 279 (CC) par 40

For the Plaintiff:

Adv T Ossin instructed by Fairbridges
Wertheim Becker

For the Defendant:

Adv M P van der Merwe SC with Adv
PP Ferreira instructed by Matsobane
Ramalatso Inc.

Date of Hearing:

7 November 2025

Date of Judgment:

12 December 2025