



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

**Not reportable**

Case no: 5938/2024

In the matter between

**PORTIA HALIO TSHABALALA**

**APPLICANT**

and

**HARRIET MUTENGA**

**FIRST RESPONDENT**

**MOQHAKA LOCAL MUNICIPALITY**

**SECOND RESPONDENT**

**Neutral citation:** *Tshabalala v Mutenga and Another* (5938/2024) [2025] ZAFSHC 372 (24 November 2025)

**Coram:** NAIDOO J

**Heard:** Heads of argument filed for consideration in chambers

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 11h00 on 24 November 2025.

**Summary:** Civil law – urgent application removed from urgent roll for lack of urgency – applicant ordered to pay costs – application for leave to appeal against costs order – no prospect of success in application for leave to appeal.

---

## ORDER

---

The application for leave to appeal is dismissed with costs.

---

## JUDGMENT

---

### **Naidoo J**

[1] The applicant seeks leave to appeal against the judgment handed down by this Court on 1 November 2024. Initially, she sought leave to appeal only the costs order made against her, but subsequently filed additional grounds of appeal, which, in essence, also sought to appeal the court's ruling that the matter was not urgent and the removal of the matter from the roll of the urgent court.

[2] The applicant assails the costs order, in essence, on the grounds that the court committed errors of law and fact. With regard to the errors of law, the applicants allege that the court failed to exercise the discretion pertaining to costs judiciously in that:

- a) it failed to make no order as to costs, or an order reserving costs for later adjudication; and
- b) the court, as a result, incorrectly mulcted the applicant in costs

[3] With regard to errors of fact, the applicants assert that the court erred in:

- a) not having considered an earlier application by the applicant attacking the validity of the disciplinary proceedings;
- b) holding, in a grossly irregular manner, that the applicant was not forced to participate in the disciplinary proceedings of 21 October 2024; and
- c) not following numerous cases where an application for review was properly enrolled in the urgent court.

[4] The applicant proceeded to assail each and every reason for not hearing the matter as one of urgency, which in my view is impermissible, and the grounds of appeal

amount to argument rather than grounds of appeal.

[5] Section 17 of the Superior Courts Act 10 of 2013 regulates the test to be applied in an application for leave to appeal. The relevant provisions of s 17(1) provide 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;’

[6] It has been held in a number of cases that an applicant was, previously, merely required to show that there is a reasonable possibility that another court, differently constituted, would find differently to the court against whose judgment leave to appeal is sought. It is clear from s 17(1), set out above, that there has been a change in the threshold required to be met before leave to appeal will be granted. An applicant for leave to appeal is required to convince the court that there is a reasonable prospect of success and not merely a possibility of success.<sup>1</sup>

[7] In a decision of the Supreme Court of Appeal (SCA) in *Ramakatsa and Others v African National Congress and Another*<sup>2</sup> (*Ramakatsa*), the following extract from para 10 of the judgment is relevant:

‘I am mindful of the decisions at high court level debating whether the use of the word “would” as opposed to “could” possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. 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. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist’.<sup>3</sup>

[8] With regard to the issue of costs, it is well established in our law that a trial court,

<sup>1</sup> See in this regard *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR LCC, which was cited with approval in a number of cases, such as *Matoto v Free State Gambling and Liquor Authority* [2017] ZAFSHC 80, a decision emanating from this Division, and also a Full Court decision in *Acting National Director of Public Prosecutions and Others v Democratic Alliance* [2016] ZAGPPHC 489.

<sup>2</sup> *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31.

<sup>3</sup> *Ibid* para 10.

or court of first instance, has a wide discretion in awarding costs. However, it is equally trite that such discretion must be exercised judiciously, after taking into consideration all relevant factors. An appeal court will generally be reluctant to interfere with a costs order, and an appeal against a costs order is an exception. While as a general rule, the successful party should be awarded his costs, there are number of exceptions or reasons for a court to deprive such a party of his costs. With regard to the enrolment of the application on the urgent roll, the applicant was the unsuccessful party and costs were awarded to the respondents as the successful parties.

[9] Unless a court has misdirected itself or committed a gross misdirection, an appeal court will not easily entertain an appeal in respect of costs only. In the present matter, the applicant has not shown misdirection to the extent that an appeal court will be inclined to intervene. The application for leave to appeal in respect of costs must, therefore, fail.

[10] On the grounds set out by the applicant in respect of the court's ruling that the matter was not urgent, I am not persuaded that such grounds will enjoy success on appeal. I am, however mindful of what the SCA, in *Ramakatsa*, said further in para 10 of its judgement, that a court should take into consideration the provisions of section 17(1)(a)(ii) of the Superior Courts Act 10 of 2013, and even:

‘ . . . if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that ‘but here too the merits remain vitally important and are often decisive.’

In my view, the applicant has not shown any compelling reason why an appeal should be heard in this matter, nor am I able to find that any important question of law or issue of public importance exist in the present matter.

[11] In the circumstances, I make the following order:

The application for leave to appeal is dismissed with costs.

---

**NAIDOO J**  
**JUDGE OF THE HIGH COURT**

**Appearances**

For the Applicant:

Adv MD Maluleke with

Adv DF Msakhubele

Instructed by:

MM Baloyi Attorneys

c/o SMO Seobe Attorneys

Suite 6, Reid Plaza

Westdene

Bloemfontein

Ref: Baloyi/Y/PHT/343

For the First Respondent

Adv MC Louw

Instructed by:

Peyper Attorneys

101 Olympus Drive

Helicon Heights

Bloemfontein

Ref: Loius Radley/cj

For the Second Respondent:

Adv V Qithi

Instructed by:

Phambane Mokone Inc

c/o Mhlokonya Attorneys

53 Kellner Street

Westdene

Bloemfontein

Ref: Ms Phambane/MLM/ PHT/003