

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

Case No: 012815/2024

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

19 December 2025

In the application between:

NEW MODEL PROJECTS (PTY)LTD

APPLICANT

And

**LEVENBRO CENTRE (PTY) LTD
SHERIFF OF THE COURT
THE REGISTRAR OF DEEDS**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT**

JUDGMENT

NHARMURAVATE AJ

INTRODUCTION

[1] The Applicant seeks leave to appeal against the judgment dated the 25th of April 2025 likewise the Respondent also seeks a cross appeal against this honourable court's judgement in its entirety.

[2] Both parties have accordingly filed their respective applications for leave to appeal, with the Applicant challenging the findings and orders made on 25 April

2025, and the Respondent seeking to contest certain aspects of the judgment through a cross-appeal. The applications were argued before this court, and the present judgment addresses the merits of both the main and cross applications for leave to appeal.

- [3] Both the leave to appeal and the cross-appeal were contested by the respective parties; for ease of reference, the parties will retain their original designations as in the main application.

THE LEAVE TO APPEAL

- [4] In terms of section 17 (1)(a)(i) and section 17(1)(a)(ii) of the Superior Courts Act 10 of 2013 directs that, leave to appeal may only be granted where the Judge or Judges concerned believe that:“(a) *The appeal would have a reasonable prospect of success, or there is some other compelling reason why the appeal should be heard, including if there are conflicting judgments under consideration.*”
- [5] The term ‘would’ as used in section 17 of the Superior Courts Act 10 of 2012, subsection 17(1)(a)(i), the been determined by courts to establish a stricter threshold under the Act when compared to the corresponding provisions of the now-repealed Supreme Court Act 59 of 1959¹.
- [6] In *MEC Health, Eastern Cape v Mkhitha* the test for section 17 (1) (a) (i) was set out as follows: “*An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of*

¹ The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others, *Bertelsmann J held as follow:* “It is clear that the threshold for granting leave to appeal against a judgement of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) 342 (T) at 343H. The use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgement is sought to be appealed against.

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 appeal².

- [7] This indicates that the threshold for granting leave to appeal is not only more demanding, but also places a greater onus on the Applicant to demonstrate that the appeal is not merely arguable, but has a real and substantial prospect of success. The courts have emphasized that this higher standard serves to filter out unmeritorious appeals at an early stage, thereby promoting judicial efficiency and certainty in litigation outcomes.

- [8] The Applicant's sole grounds for seeking leave to appeal rely on the unreported case of Chetty Cameran versus Erf 3[...] Southcrest CC (case number 2018/15109), dated June 23, 2019. This judgment was not introduced or even referenced, nor was the Alienation of Land Act mentioned by the applicant during the main proceedings.

- [9] The application submitted by the Applicant in the opposed motion was based on a distinct set of facts and sought a different relief . Moreover, no assertions were advanced that would meet the criteria established under the Alienation of Land Act, nor did they fulfil the requirements necessary to justify the relief or orders requested.

- [10] The matter which was before this Court concerned an application to compel the first respondent to transfer ownership of property as it had been fully paid for by the Applicant. This was the primary issue under consideration. Mr Moreriwa Counsel for the Applicant argued that the present case was analogous to the Chetty judgment, asserting that the Court erred in not adopting the same as its finding created a precedent for this division. Miss Gordon for the First Respondent opposed the leave to appeal sought as she highlighted that the

² 2016 ZASCA 176 para 17

Chetty judgment was based on a very different set of circumstances as those which were before this court. She further argued that it was not foreseeable how another court will come to a different finding.

[11] It is my view that, despite the Applicants' reliance on the Chetty Cameran judgment, it is important to note that the factual matrix and legal issues in that case differ materially from those presented before this court. References to judgments not raised during the initial proceedings cannot retrospectively cure deficiencies in the applicant's case or introduce arguments that were not previously advanced. Furthermore, the Alienation of Land Act was neither pleaded nor relied upon in the notice of motion filed, which further distinguishes the present matter from Chetty Cameran and undermines the Applicant's basis for seeking leave to appeal.

[12] Several distinguishing factors exist; for instance, in the Chetty judgment, the contract itself was not contested, and the attorney's account into which the money was deposited was acknowledged. It was also undisputed that the respondent in that case had paid the applicant an amount of 300,000. These are just a few examples and not an exhaustive list. When questioned about these differences, the applicant's counsel could not provide a clear response and continually referred the court back to its previous judgment, appearing quite evasive.

[13] It is my view that, another court will not come to a different finding leave to appeal should be refused. The Applicant has failed to demonstrate that there is a sound, rational basis upon which another court would come to a different conclusion. The arguments advanced do not raise any new issues that could alter the substantive findings of this court, nor do they show any compelling reason, as contemplated in section 17(1)(a)(ii), to warrant the granting of leave to appeal. In the circumstances, the application for leave to appeal stands to be dismissed.

THE CROSS APPEAL

[14] The First Respondent has presented several grounds suggesting that another court may reach a conclusion different from that of this court. In considering the relief sought by the applicants, and with reference to section 17 of the Superior Courts Act—which stipulates that leave to appeal should only be granted if there is a reasonable prospect that another court will arrive at a different finding—this principle has been carefully evaluated.

[15] Upon thorough consideration of the submissions made in respect of the cross appeal, the arguments presented by the First Respondent were carefully scrutinised against the statutory requirements of section 17 of the Superior Courts Act. The First Respondent's grounds for cross appeal, while detailed, did not sufficiently demonstrate that another court would likely reach an alternative conclusion on the substantive merits of the case. This court remains unconvinced that the factual or legal distinctions highlighted could influence a different outcome, except insofar as the point in limine of prescription was concerned.

[16] The Supreme Court of Appeal determined in *Notshokovu v S*³ that appellants are subject to a more rigorous threshold under the Act when compared to the criteria set forth in the now-repealed Supreme Court Act 59 of 1959. In *S v Smith*⁴, Plasket AJA stated that it is insufficient merely to demonstrate a possibility of success, argue that the case is debatable on appeal, or suggest that the case is not entirely without merit; rather, a sound and rational basis must exist for concluding that there are prospects of success on appeal. This interpretation was affirmed by the Supreme Court of Appeal in *Four Wheel Drive Accessory Distributors CC v Rattan NO*.⁵

[17] After considering both the application for leave to appeal and the cross appeal, it remains apparent that neither the Applicants nor the First Respondent have

³ 2016 ZASCA 112 para 2

⁴ 2012 (1) SACR (SCA) para 7

⁵ *Four Wheel Drive Accessory Distributors CC v Rattan NO* 2019 (3) SA 451 (SCA) para 34.

demonstrated sufficient grounds to satisfy the requirements set out in section 17 of the Superior Courts Act. The threshold for granting leave to appeal demands more than mere dissatisfaction with the court's findings; it requires a clear indication that another court would arrive at a different conclusion based on sound, substantive reasons. Both parties have failed to present arguments or evidence that would warrant such a departure from the judgment handed down by this court.

[18] The sole issue this court is prepared to grant leave to appeal on concerns the point in limine of prescription, which was not addressed in the judgment delivered. There are substantial grounds for granting leave to appeal on the raised point in limine regarding prescription. Another court may reason differently in consideration thereof which in my view can be dealt with by the full bench of this above honourable court.

CONCLUSION

[19] In conclusion, the following order is made :

1. The Application for leave to appeal is dismissed .
2. The Respondent's cross appeal is allowed only with respect to the preliminary issue of prescription.
3. Costs to be costs in the appeal.

**NHARMURAVATE, AJ
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

For the Applicant : Adv I Mureriwa

Instructed by. : Messrs Machingura Inc Attorneys

For the First Respondent: Adv C Gordon

Instructed by. : MDT Attorneys

Date of Hearing : 16 September 2025

Date of Judgment: 19 December 2025