



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

CASE NO: 40266/2024

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
<u>26/01/2026</u>	
DATE	SIGNATURE

In the matter between:

GUGU FAVOURITE SKOSANA obo

Applicant

TSHIMOLLO SKOSANA

and

MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH,

GAUTENG PROVINCIAL GOVERNMENT

Respondent

JUDGMENT

MBONGWE J:

INTRODUCTION

[1] This is an application for leave to appeal against the judgment delivered on

08 May 2025, in which the plaintiff's claim was dismissed.

- [2] The application is premised not on the merits of the dismissal itself, but primarily on allegations of bias said to have arisen during the course of the proceedings.

PROCEDURAL BACKGROUND

- [3] During the trial, the plaintiff brought an application for the recusal of the presiding judge. That application was opposed and dismissed.
- [4] A meeting was held, at my behest, in chambers the following morning with the legal representatives of the parties, including the plaintiff's attorney, to discuss the way forward and the possibility of an appeal against the recusal application dismissal. I communicated the intention to recall the order dismissing the recusal application and to proceed to recuse myself. Counsel for the plaintiff expressly advised that it was his decision to bring the recusal application and that there was not going to be an appeal against the dismissal thereof. Notably, he requested that the trial continues before me.
- [5] The hearing continued that morning until completion on the tenth day. The plaintiff's claim was dismissed on the merits in the judgment that followed.

GROUND FOR LEAVE TO APPEAL

- [6] In the present application, the plaintiff's counsel failed/refused to address the court on the merits, notwithstanding a direct question whether he was going to do so, choosing, instead, to limit his argument to:

6.1 The allegation of bias and antagonism by the court (ground in the recusal application).

6.2 An unfounded allegation that the judge, through his secretary, had improperly contacted the defence counsel and solicited the submission of heads of argument in opposition to the recusal application 'to assist in writing of the judgment'.

6.3 Handing in a copy of a judgment of the Supreme Court of Appeal delivered in 2015, unrelated to the present matter, criticising this court's handling of that trial.

ANALYSIS AND APPLICABLE LEGAL PRINCIPLES

- [7] The predications for granting leave to appeal are set out in Section 17 of the Superior Courts Act 10 of 2013. The main considerations are whether there is a reasonable prospect that another court would come to a different conclusion, or whether there are compelling reasons why the appeal should be heard.
- [8] The various bases for the alleged negligence of the Defendant espoused and advanced on behalf of the plaintiff to hold the defendant liable have been traversed individually in the impugned judgment, and respective reasons given for their rejection. The absence of merit on the written grounds for leave to appeal was exacerbated by the refusal by counsel for the Applicant to address the court on the merits and provide clarity thereon, if any. This was evidenced by the brief and constrained response and submissions of counsel for the respondent.
- [9] The contrived allegation that the Court had, through its secretary, solicited heads of arguments from the defence counsel, were correctly denounced in court by the defence counsel. This, together with the attempt to revive the recusal application, do not satisfy the test for granting leave to appeal set out in section 17 of the Act.

[10] The explicit waiver of the right of appeal against the dismissal of the recusal application, coupled with the request by plaintiff's counsel that the matter proceed before the same trial judge, disfranchised the applicant from reviving the recusal application after the return of an unfavourable outcome on the merits of the case. The case was decided on the merits/evidence that is on the record.

[11] Allegations of bias must be assessed objectively, from the perspective of a reasonable, informed observer, bearing in mind that judicial officers are entitled, and indeed obliged, to seek clarity of the evidence in the proceedings.

ANALYSIS

[12] Findings on the merits that are at odds with clear and factually grounded evidence of a party, or the law, underscore the basis for granting leave to appeal in terms of section 17(1) of Act 10 of 2013. Conversely, a finding that the appeal will have no prospects of success constrains the court from granting leave to appeal. It is inimical to the provisions of section 17(1) to grant leave to appeal in circumstances where there is absence of the prospects of success on appeal, or of compelling reasons for the appeal to be heard.

ABUSE OF PROCESS OF THE COURT

[13] It is apparent from what is stated in paragraphs [8], [9], [10], and [11] that the objective of this application was to secure the retrial of the matter before another judge. By all accounts, this points to an abuse of the process of the court. The explicit waiver of the right to appeal the dismissal of the recusal application brought finality insofar as the recusal application is concerned. The attempt to revive the grounds for recusal under the guise of a leave to appeal application in terms of Section 17 of Act 10 of 2013 constitutes an impermissible

collateral attack. In *Smith and Notshokovu v S*¹, it was laid down that leave to appeal is not a mechanism for retrial and that an application so disguised is, therefore, an abuse of process. In *Beinash v Wixley*² the court held that an abuse of process occurs when procedures intended for the pursuit of truth are used for extraneous purposes.

CONCLUSION

[14] Section 17 does not avail the seeking of a retrial. This application consequently, stands to fail.

ORDER

1. The application for leave to appeal is dismissed.


MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
PRETORIA

APPEARANCES:

For the Plaintiff:

Adv JF Mullins SC; Adv F Pauer (Ms)

Instructed by:

O Joubert Attorneys

¹ [2016] ZASCA 112

² (1997(3) SA 721 (SCA)

For the Defendant: Adv L Montsho-Moloiwane SC; Adv C Mnisi
Instructed by: State Attorney, Pretoria

Date of Hearing: 05 December 2025

Date of Judgement: 26 January 2026

THIS JUDGEMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES' LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINE ON 26 JANUARY 2026.