



IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU – NATAL DIVISION
PIETERMARITZBURG

CASE NO: 4234/2024

Before: Honourable Ncube J

Head on: 11 August 2025

Delivered on:

DELETE WHICHEVER IS NOT APPLICABLE	
1. REPORTABLE: YES /NO	
2. OF INTEREST TO OTHER JUDGES: YES /NO	
3. REVISED YES /NO	
 SIGNATURE	05/03/2026 DATE

In the matter between

SNOWY OWL PROPERTIES

Applicant

and

MZIKI SHAREBLOCK (PTY) LTD

1st Respondent

NORMAN CELLIERS

2nd Respondent

Order

1. Leave to Appeal to the Supreme Court of South Africa is granted.
2. Costs to be costs on appeal.

JUDGMENT: LEAVE TO APPEAL

Ncube J

Introduction

[1] This is an application for leave to appeal. The applicant ("Snowy Owl") seeks leave to appeal to the Supreme Court of Appeal ("SCA") alternatively to the Full Court of the Kwazulu-Natal Division against the whole of the judgment and order of this court handed down on 19 March 2025, dismissing the application for the Respondents ("Mziki and Celliers") to be held in contempt of the order of the SCA handed down on 31 March 2023. Snowy Owl also sought the imposition of a sentence of six (6) months imprisonment, against the second Respondent ("Mr Celliers").

Background Facts

[2] Fagolweni No 16156 is a farm ("the farm") situated in the Umkhanyakude District Municipality in Hluhluwe in the Northern part of the KwaZulu Natal. Snowy Owl is the owner of portion 5 of the farm (Snowy Owl land). The First Respondent ("Mziki") is the owner of subdivision 1 of the farm ("Mziki's land"). Snowy Owl and Mziki entered into a Servitude Agreement, (*the servitude*) with regard to their respective lands. The Servitude was registered in the Deeds Office under No K1287/90 on 27 November 1990. It is registered in favour of Mziki. Therefore, Snowy Owl's rights of ownership in its land are limited to the extent allowed by the Servitude in favour of Mziki.

[3] The Servitude Agreement gave both Snowy Owl and Mziki reciprocal rights to traverse each other's land for purposes of viewing wild game. In terms of the Agreement in case Mziki,

and its members want to traverse Snowy Owl's land between the hours of sunset and sunrise, they have to obtain consent from either Snowy Owl or its duly authorized representatives. On 29 May 2015, Snowy Owl brought an interdict application against Mziki alleging that Mziki had traversed on Snowy Owl land after sunset and before sunrise in disregard for the provision of their Servitude Agreement. The interdict application was heard and dismissed by my Sister Justice Steyn. Snowy Owl applied for Leave to Appeal which was granted to the Full Court of this Division.

[4] On 24 May 2019, the Full Court of this Division upheld Snowy Owl's appeal. On 30 July 2019, Epstein- SC handed down his award in an arbitration between Snowy Owl and Mziki. The purpose of the arbitration was to determine the nature and scope of Mziki's rights under the Servitude in so far as off-road driving, picnicking and the use of structures on the servient land were concerned. During the months of August and September 2019, vehicles owned by Mziki traversed Snowy Owl land after sunset in contravention of the terms of the Servitude and in disregard of the Order of the Full Court. Consequently Snowy Owl brought the contempt application against Mziki. The application was dismissed by the High Court on the basis that Snowy Owl failed to identify the individual driver of the vehicle traversing its land after sunset. Snowy appealed the Order dismissing its contempt application, to the SCA. The appeal was upheld by the SCA.

[5] Mziki launched an application to appeal to the Constitutional Court against the Judgement and Order of the SCA. The Constitutional Court found that there was no reasonable prospect of success on appeal and accordingly dismissed the application with costs.

The Supreme Court Order.

[6] The Order of the SCA reads:

"1. The appeal succeeds

2. The order of the High Court is set aside and replaced by the following:

'(a.) The first and second respondents are found to be in contempt of the Order granted by the full court of the KwaZulu Natal Division of the High Court, Pietermaritzburg on 24 May 2019.

(b.) The First and Second respondents shall within 30 days of the date of this order:

- (i.) *Take such steps as may be necessary to introduce rules to prevent the second respondent and its members, and all persons who derive any right, privilege or title through the second respondent from contravening the order above in paragraph (a).*
 - (ii.) *Take such steps as may be necessary to ensure compliance with the rules so made.*
 - (c.) *the First and Second respondents together with the members of the Second Respondent and all persons who derive any right, privilege or title through the second respondent shall not engage in any conduct, which have the effect of non-compliance with the order in paragraph (a)*
 - (d.) *The First and Second respondents to pay the costs of the application in the High Court, jointly and severally, the one paying the other to be absolved. Such costs to be paid on Attorney and Client scale.*
3. *The First and Second Respondents to pay the costs of the appeal including the application for leave to appeal in the High Court jointly and severally, the one paying the other to be absolved. Such costs to be paid on Attorney and Client scale."*

Issues

[7] The existence and service of the SCA Order were not in dispute before this court. What was in dispute was whether Mziki and Mr Celliers had complied with the SCA order by introducing rules preventing a contravention of the order of the Full Court and whether they had taken steps to ensure compliance with such rules. This court found that the Respondents were not in wilful and mala fide disobedience of the order of both the SCA and the Full Court. This court found that the actions taken by Respondents were incompatible with a deliberate and intentional disregard of court orders.

Principles on Application for Leave to Appeal

[8] The starting point of exercise is section 17 of the Superior Courts Act¹ which provides:

"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;

(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] Commenting on the aspect of reasonable prospect of success, In *MEC Health Eastern Cape v Mkhitha*² Schippers AJA (as he then was), expressed himself in the following terms:

" An applicant for leave to appeal must convince this court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be sound rational basis to conclude that there is reasonable prospect of success on appeal."

[10] In *Smith v S*³ Plasket JA said the following :

¹ Act 10 of 2013

² (1221/2015) (2016) ZASCA 176 (25 November 2016) Para 17

³ 2012 (1) SACR 567 (SCA) para 7

"What the test of reasonable prospect of success postulates is 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 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."

[11] In the past, the test applied by courts in the determination of an application for leave to appeal, was whether there was a reasonable prospect that another court may come to a different conclusion to the one reached by the the court *a quo*⁴. With the coming into operation of section 17 above, the threshold to grant leave to appeal has been raised. In *Mont Chevaux Trust v Tina Goosen and 18 Others*⁵, it was held:

"It is clear that the threshold for granting leave to appeal against the judgment 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 at a different conclusion see Van Heerden v Cronwright and Others 1985(2) SA 342 (T) at 343 H. The use of the word 'would' in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against. This new standard is applied by section 37(4)(b) of the Restitution of Land Rights Act 22 of 1994 to this Court's duty to consider the prospects of an intended appeal"

[12] In *Notshokovu v S*⁶ it was said that an appellant faces a higher and stringent threshold under the Superior Courts Act. Therefore, in terms of section 17 the enquiry is not whether another court "may" come to a different conclusion, but "would" indeed come to a different conclusion.

[13] In *Four Wheel Drive CC v Leshni Rattan NO*⁷ Schippers JA expressed himself

⁴ *Commissioner of Inland Revenue v Tuck* 1989(4) SA 888(T) at 890-B

⁵ (LCC14R/2014) [2014] ZA LCC 20(3 November 2014)

⁶ (157/15) [2016] ZASCA (7 September 2016)

⁷ 2019(3) SA 451 (SCA) para 34

in the following terms:

"There is a further principle that the court a quo seems to have overlooked-leave to appeal should be granted only when there is a sound, rational basis for the conclusion that there are prospects of success in appeal. In the light of its finding that the plaintiff failed to prove locus standi or the conclusion of the agreement, I do not think that there was reasonable prospect of an appeal to this court succeeding or that there was a compelling reason to hear an appeal"

Grounds of Appeal

[14] The Applicant has listed six (6) grounds on which the application for leave to appeal is based.

First Ground:

"Failure to properly Evaluate the Adequacy of Rules"

Introduction:

Under this ground the Applicant contends that this court failed to evaluate the rules as the steps taken by Mziki and Celliers did not fulfil the SCA order. The Applicant contends that Mziki and Celliers relied on old rules which had been in existence for decades. The SCA ordered Mziki and Celliers to " *introduce the rules to prevent* " future contraventions of the Full Court's order. The steps taken by Mziki and Celliers consisted in the calling of meetings. At the meeting, they disseminated a memorandum and a code of conduct. In my view, the problem is with the interpretation of the SCA order. What does it mean to "*introduce the rules*"? The SCA order did not require Mziki and Celliers to make new rules but they had to make the rules known to their members which is what they did at the meeting, Interpretation remains a problem. People understand certain words and phrases differently. What stands out in this case is that the existing rules were made known to people at the meeting.

Second Ground:

Disregarding the Full Court's Finding and Ambiguity on "sunset"

The Applicant contends that this court erred in disregarding the Full Court's definitive interpretation of the terms "sunset" and "sunrise" and that this court's judgment did not meaningfully engage in with that issue.

There was no need for this court to deal with the interpretation or the definition of those two terms in a contempt of court application. In the Full Court hearing, Snowy abandoned the application for the determination of the precise times. Consequently, the Full Court did not interpret those two terms. The argument in that regard is misplaced.

Third Ground

"Undermining Judicial Authority"

Snowy submits that this court undermined Judicial Authority by allowing Mziki and Celliers to rely on the interpretation which was previously rejected. This ground is similar to the second ground and it is not necessary to deal with it any further. Snowy contends further that this court failed to draw inference of non compliance from the facts and that the non compliance was wilful and *mala fide*. There was no proof that Mziki and Celliers were in deliberate and intentional disregard of the SCA order. Therefore, there was no need to draw inference. There must be proof beyond a reasonable doubt.

Fourth Ground

"Application of the Contempt Test and Burden of proof"

Snowy contends that this court misdirected itself in the application of the legal test for a civil contempt. I disagree. In paragraph 10 of the judgment this court referred to the case of *Fakie*. This court found in paragraph 17 that Mziki and Celliers genuinely believed that they were entitled to act in the manner in which they acted. Under those circumstance, it cannot be said that they deliberately and intentionally disobeyed the SCA order.

Fifth Ground

"Erroneous Application of the Criminal Standard"

The applicant argues that since a committal was sought against Mr Celliers a Criminal standard of proof beyond a reasonable doubt was justifiable. That is correct. This court correctly applied the test and referred to *Matjhabeng Municipality v Eskom* 2018(1) SA 1(CC) para 67.

Sixth Ground

"Misapplication of the Evidentiary Burden and Standard as to Celliers"

This ground overlaps with the previous ground. Snowy contends that even under the stricter standard Celliers should have been found to be in contempt. This issue is fully dealt with in

my judgment and nothing further is to be said on this point.

[15] The First ground of appeal is upheld. The second, third, fourth, fifth and sixth grounds are dismissed.

Findings

[16] I find that there is no reasonable prospect of success on appeal. However, there is a compelling reason why appeal should be heard in that the SCA will be asked to give the correct interpretation of its order of 31 March 2023 and to determine if Mziki and Celliers wilfully and *mala fide* breached that order.

Order

[17] In the result, I make the following order:

1. Leave to Appeal to the Supreme Court of South Africa is granted.
2. Costs to be costs on appeal.



M.T Ncube

JUDGE OF THE HIGH COURT OF SOUTH AFRICA
KWAZULU – NATAL DIVISION PIETERMARITZBURG

Date of hearing: 11 August 2025

Date of judgment: 5 March 2026

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