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

Case Number: 48483/2021

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

DATE

SIGNATURE

In the matter between:

JEREMIA ELCON NGWENYA

Applicant

And

MATSHEDISO ROSELINE NKOSI

First Respondent

**CITY OF EKURHULENI METROPOLITAN
MUNICIPALITY**

Second Respondent

APPLICATION FOR LEAVE TO APPEAL: JUDGMENT

Introduction

[1] This is an application for leave to appeal by Jeremia Elcon Ngwenya (applicant) against the eviction order of this court handed down on 5 May 2025. The

eviction order was granted against the applicant following on the eviction application which was instituted in this court by Matshediso Roseline Nkosi (first respondent). The applicant was the first respondent in the eviction application.

[2] The eviction order provided as follows:

“1. The First and Second Respondents, together with those occupying the property by, through or under them, be evicted from the properly situated at:

1[...] J[...] M[...] STREET

S[...]

KATLEHONG

and more fully described as:

ERF1[...] S[...] V[...]

EXTENSION 1 TOWNSHIP

(hereinafter referred to as "the property").

2. The First and Second Respondents, together with those occupying the property by, through or under them is hereby ordered to vacate the property on or before **5th OF JULY 2025**.

3. In the event that the First and Second Respondents, together with those occupying the property by, through or under them not vacate the property on the date set out above, the Sheriff of the Court or his lawfully appointed Deputy be authorised and directed to evict the First and Second Respondents, together with those occupying the property by, through or under them in the terms contained in this order and in the Notice of Motion, from the property.

4. The First Respondent is hereby directed to pay the costs of this application, including the costs of the Applications in terms of Part A hereof and in terms of Section 4(2) of the Prevention of illegal Eviction from and Unlawful Occupation of Land Act.”

- [3] The applicant contends that the eviction order was erroneously made and is accordingly seeking leave to appeal against the whole of the judgment and the above order. This application for leave to appeal is opposed by the first and second respondents.

Condonation application

- [4] Before dealing with the leave to appeal, it is apposite for me to first consider the applicant's condonation application for the late filing of his application for leave to appeal the eviction order. In this regard, the applicant contends that the reasons for the delay are that after the order was granted, he looked for an attorney who can help him as he was unrepresented during the hearing of the eviction application.
- [5] To this end, he stated that he was not employed for some period and as a result he could not afford to get an attorney as many of them were looking for exorbitant fees which he could not afford. Ultimately, he decided to bring this application for leave to appeal in his personal capacity.
- [6] It is trite that in all cases of time limitation, whether statutory or in terms of the rules of court, the High Court has an inherent right to grant condonation where principles of justice and fair play demand it and where the reasons for non-compliance with the time limits have been explained to the satisfaction of the court. The overriding consideration is that the matter rests in the judicial discretion of the court, to be exercised with regard to all the circumstances of the case.
- [7] In my view, the applicant has provided a reasonable explanation which justifies the granting of the condonation application by this Honourable Court. I now proceed to deal with the merits of the application for leave to appeal.

Leave to appeal

- [8] The grounds of leave to appeal are detailed in the notice of leave to appeal, thus, there is no need to repeat the same in this judgment. An application for leave to appeal is governed by Section 17(1) of the Superior Court Act 10 of

2013, which stipulates that:

"(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] The Supreme Court of Appeal in *MEC for Health, Eastern Cape v Mkhitha and Another* held that section 17(1)(a) of the Superior Courts makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.¹

[10] The correct interpretation of section 17(1)(a)(i) is therefore whether there are reasonable prospects of success on appeal to be determined on a rational basis.² In other words, there must exist a realistic chance of success on appeal based on proper grounds. Lastly, it was held that the section requires a truly reasonable prospect of success.³

[11] In the context of section 17(1)(a)(ii) of the Superior Courts Act, a "compelling reason" for an appeal to be heard, includes conflicting judgments on the matter under consideration, or other similar compelling circumstances that warrant a

¹ [2016] ZASCA 176 at para 16.

² See also *Land and Agricultural Development Bank of South Africa and Another v Van den Berg and Others* [2022] 1 All SA 457 (FB) (8 November 2021).

³ See also *MEC for Health, Eastern Cape v Mkhitha and Another* Footnote 1 above at para 17.

higher court's review. In *Van Zyl N.O and Another v Cometa Trading (Pty) Ltd*⁴ the court held that:

“... . Compelling reasons include, among others, the involvement of substantial public interest, an important question of law, differing judicial interpretations, or a discrete issue of statutory interpretation with implications for future cases.”

[12] It was held that where it is proposed that compelling reasons exist the court is required to consider the compelling reasons also in conjunction with the merits of the appeal, which it was held remain often decisive.⁵ In other words, in considering whether compelling reasons exist that warrant appellate interference, the court may grant leave on that basis, but not without due regard to the merits.

Analysis

[13] After considering the legal principles which requires the consideration of the reasonable prospects of success on appeal, it is my view that a court of Court of Appeal acting reasonably would not come to a different conclusion, and that the applicant has no reasonable chance of success on appeal.

[14] Having duly considered the submissions made by the applicant and the respondents as well as the applicable legal principles, it is my view that the threshold for section 17(1) has not been met and accordingly leave to appeal is refused.

⁴ [2025] ZAWCHC 112 (17 March 2025) at para 15. See also *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA) (25 March 2020) at para 2.

⁵ *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA) (25 March 2020) at para 2. See also *Van Zyl N.O and Another v Cometa Trading (Pty) Ltd* at para 15.

Order

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

1. The application for condonation of the late filing of the Application for Leave to Appeal is granted.
2. Application for Leave to Appeal is dismissed with costs.

**MD BOTSI-THULARE AJ
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

APPEARANCES

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Date of Hearing: 30 January 2026
Date of Judgment: 25 February 2026