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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 6012/2024

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 11-03-2026

SIGNATURE:

In the matter between:

TEBOGO FRANK MATHIBEDI

APPLICANT

And

**CAPRICORN TECHNICAL, VOCATIONAL
EDUCATION AND TRAINING COLLEGE**

1ST RESPONDENT

LEKAU MAMABOLO N.O

2ND RESPONDENT

LUCKY THEKISHO INC ATTORNEYS

3RD RESPONDENT

In re:

TEBOGO FRANK MATHIBEDI

PLAINTIFF

And

**CAPRICORN TECHNICAL, VOCATIONAL
EDUCATION AND TRAINING COLLEGE**

1ST DEFENDANT

LEKAU MAMABOLO N.O

2ND DEFENDANT

LUCKY THEKISHO INC ATTORNEYS

3RD DEFENDANT

JUDGMENT

MASHAMBA AJ

INTRODUCTION

[1] This is the application for leave to appeal ("the application") against the whole judgment and orders granted *ex tempore* on the 08th December 2025.

[2] The court *a quo* dismissed the Applicant's application for default judgment with no order as to cost.

[3] The first, and second Respondent opposed the Applicant's application, on the basis that the appeal does not have a reasonable prospect of success and that no compelling reasons why the appeal should be heard.

[4] The grounds of appeal are precisely contained in the application, the briefly summary of the Applicant's grounds of appeal are as follows;

4.1 that the court *a quo* erred and /or misdirected itself in the exercise of its discretion on costs by ignoring fundamental fact that the Applicant, as a successful party must be awarded costs;

4.2 that the court *a quo*, in the exercise of its discretion on costs, failed to exercise same judicially or at all by ignoring, or downplaying, the guidelines and/ guiding factors on costs;

4.3 that the court *a quo* erred by approaching the issue of its discretion on costs in a manner that ignored the pleaded facts in the affidavits and went out of its way to bring facts which are imaginary as if the said discretion is exercised without following the guideline;

4.4 The court *a quo* misdirected itself by attacking the Applicant who is a Senior Counsel and his legal representative as a ground of refusing them costs on allegations of malicious and that they are trying to use court to enrich themselves;

4.5 The court *a quo* misdirected itself in the exercise of its discretion on costs by missing the point that the costs were one of the prayers in the particulars of claim to the combined summons commencing the main proceedings and not a stand-alone application or request.

[5] Both parties handed over to the court, heads of arguments and further made an oral submission. The Judgment was reserved.

PARTIES

[6] The Applicant is **Tebogo Frank Mathibedi**, an adult male person, working as an advocate of the High Court of South Africa, practising as a senior counsel at 4th Floor, SALA House, [...] P[...] Place, Sandown, Sandton in the district of Johannesburg.

[7] The first Respondent is the **Capricorn Technical, Vocational, Education and Training College**, an institution of higher learning duly registered in terms of higher education laws of the Republic of South Africa operating as a college as defined in terms of the Continuing Education and Training Act 16 of 2006, as amended, and having its address at 1[...] -1[...] M[...] Street, Polokwane in the district of Polokwane.

[8] The second Respondent is **Lekau Mamabolo** N.O, an adult male, duly cited herein on his official capacity as the Principal or Head of Accounting Officer of the First Respondent and sharing the same address of operation. (herein after together referred as "the respondents")

[9] The third Respondent is **Lucky Thekisho Inc Attorneys**, a duly registered law firm created in terms of the legal practice laws of the Republic of South Africa operating as such with its main place of business situated at Suite No 1[...]1[...], B[...] House, first floor at 2[...] H[...] J[...] street in Pretoria in the district of Tshwane. The third Respondent did not participate in this proceeding.

FACTUAL BACKGROUND

[10] On the 12th June 2024, the Applicant issued the combined summons against the Respondents for a claim in the amount of **R 518 650.00** for a legal fee rendered. On the receipt of the said summons, the respondents effected payment immediately into the Applicant's account.

[11] On the 17th July 2024, the Applicant wrote a correspondent letter to the Respondents, demanding that since the Respondents have settled their debt, they should also tender costs. The Respondents did not reply to the said letter. The Applicant was displeased by the Respondents' failure to tender costs, and as a result he took further step to claim his costs.

[12] On the 29th October 2024 the Applicant made an application for default judgement in terms of Rule 31 (2)(a) and indicated that the default judgment is, exclusively for cost, as the debt was fully satisfied. The Applicant argued that he is a successful party in litigation, therefore, the court should grant default judgment for costs in his favour.

LEGAL PRINCIPLES

[13] Applications for leave to appeal are governed by the provisions of section 17 of the Superior Courts Act 10 of 2013. Section 17(1) provides 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 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 to 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 case, the appeal would lead to a just and prompt resolution of the real issues between the parties."*

[14] The traditional test that was applied by the courts in considering leave to appeal applications have been whether there is a reasonable prospect that another court may come to a different conclusion to the one reached by the court *a quo* as said in ***Commissioner of Inland Revenue v Tuck 1989 (4) SA 888 (T) at 890B***. With the enactment of section 17, the test obtained statutory force. In terms of section 17(1)(a)(i) leave to appeal may now only be granted where the Judge or Judges concerned is of the view that the appeal would have a reasonable prospect of success, which made it clear that the threshold to grant leave to appeal has been raised.

[15] In ***Mont Chevant Trust v Tina Goosen and 18 Others ZALCC/2014/20***, it was held that:

"It is clear that the threshold or granting leave to appeal against a 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 & others 1985 (2) SA 342 (T) at 342H. 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."

[16] In ***Notshokuvu v S (2016) ZASCA 112*** it was indicated that an Appellant faces a "higher and stringent" threshold under the Superior Courts Act. Thus, in relation to the said section 17, the test for leave to appeal is not whether another Court "may" come to a different conclusion, but "would" indeed come to a different conclusion.

[17] With regard to the meaning of reasonable prospects of success, it was held in ***S v Smith 2012 (1) (SCA) 570***, at para 7, as follows:

"What the test of reasonable prospects of success postulates is a dispassionate decision, based on the fact 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. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal."

[18] In the decision of ***Ramakatsa v ANC*** which it was [(724/2019) [2021] ZASCA 31 it was held that:

"I am mindful of the decision at High Court level debating whether the use of the word "would" as opposed to "could" possible mean that the threshold or granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted... The test of reasonable prospect 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" [at para 10].

SUBMISSIONS

[19] The Applicant submitted that since the Respondents have paid his debt after the receipt of the summons, he should also pay costs. The Applicant further argued that since the Respondents did not enter their notice of intention to defend and further failed to tender costs, therefore, the Applicant had no other option than to proceed with an application for default judgment, particularly, on the issues of costs. The Applicant further argued that the general rule is that the successful party is entitled for costs and it was a misdirection for court a quo to deny costs to a successful party. The Applicant maintains that he is a successful party because the Applicant paid his claim only after the receipt of the summons.

[20] The Applicant further submitted that the court misdirected when he denied costs on the basis that the Applicant supposed to have sent a letter of demand before taking the matter to court. The Applicant argued that a summons is a demand and there are no law or rules which binds the Applicant to send a letter of demand before issuing of the summons and that an issuing of summons against the Respondents is a demand.

[21] The Applicant submitted that the court misdirected itself when exercising its discretion because he was influenced by the fact that the Applicant is a senior counsel, and further that the counsel who appeared on behalf of the Applicant is also a senior counsel who drafted a particular of claim. The Applicant argued that the court a quo in his comment when he said the senior counsel charges are "exorbitant" is an attack to a good status of a senior counsels and that the court disrespected the status of a senior counsel. The Applicant argued that such unfortunate comments made the court a quo not to exercise his discretion judicially on issues of costs, and such influenced the court a quo not to grant a successful party with costs which is a misdirection.

[22] The Applicant's senior counsel submitted that the reasons of judgment which led to the dismissal of the application for default judgment are wrong and based in imaginations, therefore, it should be appealed to avoid a situation where the whole division of the above honourable court to be undermined. The senior counsel further

indicated that he sometimes seat as an acting judge, so, he loves this honourable court so much that he wishes that a wrong decision should be corrected by the appeal court.

[23] The Applicant further argued that considering the above misdirection of the court a qua, the Applicant's grounds have a reasonable prospect of success in the appeal and that there are compelling reasons why this application should be granted.

[24] The Respondents submitted that cost order fall within the discretion of the court and that appellate courts are slow to interfere with such discretion unless it is shown that the discretion was not exercised judicially or was influenced by misdirection. In support of this assertion the Respondents referred the court in the case between **Gauteng Gambling Board v Silverstar Development Ltd, 2005(4) SA 67 (SCA) at 75E-F**, where the Supreme Court of Appeal reaffirmed that an appellate court will not readily interfere with the exercise of a court's discretion regarding costs.

[25] The Respondents further referred to the matter between **Biowatch Trust v Registrar Genetic Resources and Others, 2009(6) SA 232 (CC) at par 22**, Sachs J recognised that the determination of costs is inherently discretionary. The Respondents submitted that the Applicant has failed to demonstrate any material misdirection on the part of the court *a quo*.

[26] The Respondents submitted that they paid the full amount claimed by the Applicant and the only present dispute concerns only the Applicant's costs associated with drafting and issuing of the summons. The court exercised its discretion in declining to grant such costs through default application and warned that it will not be used to accumulate costs which should have been avoided. The Respondents submitted that the Applicant failed to established that another court would come to a different conclusion.

[27] In conclusion, the Respondents submitted that the Applicant has not demonstrated a reasonable prospect of success on appeal and or any compelling

reason why the appeal should be held. The Respondents submitted that the application should be dismissed with costs.

COURT'S DISCUSSION AND FINDINGS

[28] In the matter of ***Hooper v De Villiers 1934 TPD 200 at 2002***, it was stated that a demand is not a prerequisite to the institution of legal proceedings unless it is required by statute or by agreement between the parties. The essential purpose of a demand is to inform the defendant of the claim against him and make him aware of the repercussion of his failure to settle his debt within specific time. Generally, the defendant should be allowed a reasonable time to respond to the demand.

[29] In ***Havenga v Lotter 1912 TPD 395*** the appeal court reversed an award for interest and costs where the plaintiff had sent a demand and the summons had followed immediately after the demand such that it was impossible for the defendant to have made a tender in reply to the demand before the issue of summons. The court awarded the defendant costs incurred through the issue of summons as he had tendered adequate damages within a reasonable time from receipt of the demand, but after summons had been issued. The court also expressed the view that the purpose of a demand is to put the debtor *in mora* and there should always be a reasonable time allowed for the debtor to comply with the demand.

[30] The ***Havenga*** case referred in *supra*, reinforce that a plaintiff acts at their own risk if they rush to issue summons without giving a defendant a reasonable opportunity to respond to a letter of demand and it helps protect defendants from unnecessary legal costs.

[31] The court noted that the Applicant is a senior counsel and represented by a senior counsel in court and the two are legal experts but decided to issue summons before a letter of demand. The court accept that a letter of demand is not a prerequisite in this matter and accept that a summons is regarded as a demand. The court finds that the court *a quo* was correct when it decided that the Applicant should not be awarded costs because the Applicant's first legal step was to issue summons as a method to demand his payment and the Respondents effected payment

immediately. In a situation where the defendant adhered to the payment of his debt, immediately on demand, the court may decide not to punish him with costs. The plaintiff should be discouraged to proceed with premature litigation in a situation where accumulation of legal costs should have been avoided. The courts encourage parties to settle their dispute outside the court, to avoid unnecessary litigation.

[32] Considering the **Havenga** matter in paragraph 29 in *supra*, where the plaintiff used the summons as the first step of demand, the defendant full payment of the debt extinguishes the claim, therefore, it is unnecessary for the defendant to enter his appearance to defend. In this circumstance, the plaintiff cannot proceed with default application as it is unnecessary step in litigation. If the plaintiff did not send a letter of demand but issues the summons as the first step in litigation, especially, in a situation where the defendant has within reasonable time, makes full payment to satisfy his debt. The litigants should in all time discouraged to participate in frivolous litigation which is done for purposes of earning costs against its rivals.

[33] Rule 41A of the uniform rules of courts as amended, further encourages parties to participate in mediation as a dispute resolution mechanism to assist parties in trying to resolve their disputes before court trial. It is clear that rule 41A, brought an opportunity to a willing party to try their utmost best to try settling issues before trial to avoid unnecessary further litigation.

[34] I am of the view that the court *a quo* was correct in deciding not to grant costs to the Applicant after it has considered the fact that no letter of demand was sent before issuing of the summons. The court has a discretion on issues of costs and the discretion should be exercised judicially and considering the circumstances in this case, the court *a quo* exercised his discretion judicially on the issues of costs. No other court which will interfere with the costs order which was granted by another court in a situation where the discretion on costs was exercised judicially.

[35] The Applicant argued that the court *a quo* attacked the Applicant who is senior counsel and who supposed to be respected by the court, because the court *a quo* was of the view that the costs in this matter should have been avoided and that the default proceeding was done for a purpose of costs to enrich the Applicant or his

legal representatives. I did not find any misdirection from the court a quo reasoning in his judgment.

[36] The Applicant's argument that the senior counsel was attacked does not hold water and the court a quo comment that in general senior counsels' fees are exorbitant was not meant to undermine or disrespect senior counsels but it was the court a quo's view that the Applicant's conduct by failing to send a letter of demand before issuing summons created exorbitant costs which includes the senior counsel's fee for drafting the summons and for his appearance which should have been avoided. In terms of section 14 of the Constitution of the Republic of South Africa, Act 108 of 1996, everyone is equal before the law and no special treatment can be given to a senior counsel who is a litigant because of his status.

CONCLUSION

[37] In conclusion, the court heard the submissions from both parties and concluded that the appeal has no reasonable prospect of success and no compelling reasons why the appeal should be heard. The court is of the view that, there is no other court would come to the different conclusion, therefore, the application for leave to appeal cannot succeed. The general principle is that the costs should follow the successful party. The court finds that the Applicant should pay the costs incurred by the Respondents.

ORDER

[38] In the result, I make the following order;

[1] The application for leave to appeal is dismissed with costs.

E MASHAMBA
ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

APPEARANCES

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