

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2021 - 6055

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>9/3/2022</u>	
DATE	MOKOSE SNI

In the matter between:

MACGREGOR KUFA

Applicant

and

NATIONAL RESEARCH FOUNDATION AND OTHERS

Respondents

JUDGMENT – LEAVE TO APPEAL

MOKOSE J

[1] The applicants have applied for leave to appeal to the Supreme Court of Appeal alternatively, the Full Court of this Division against the order granted by Tlhapi J delivered on 11 April 2022.

[2] The applicant seeks leave to appeal on several grounds as stated in the application for leave to appeal. The applicant addressed the court on the salient points raised in the application for leave

to appeal. These points were opposed by counsel for the respondent on the grounds that have been reasoned out well in the reasons furnished by Tlhapi J.

[3] The test for granting an application for leave to appeal is whether there are reasonable prospects of success. Section 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013, as amended, provides that leave to appeal may be granted where the court seized of the matter is of the opinion that the appeal would have a reasonable prospect of success, or where there is some other compelling reason why the matter should be heard. See in this regard *Makgotlo and Another v S* (SS 48/2022) [2025] ZAGPJHC 41 (7 February 2025) par [3]; *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021) at par [10].

[4] The manner in which applications for leave to appeal should be considered was established clearly by the Supreme Court of Appeal in *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021) at par [10] where the court expounded upon the issue of “reasonable prospects of success” thus:

‘What the test for reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the 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 success. 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.’

[5] Put differently there must be a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against. See also in this regard *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* [2016] ZAGPPHC 489 (24 June 2016) Para 25, 29 and 31; *MEC Health, Eastern Cape v Mkhitha* (1221/15) [2016] ZASCA 176 (25 November 2016); *Xinishe v Lonplats Marikana Community Development Trust and Another* 5 (Leave to Appeal) (M658/2020) [2024] ZANWHC 5 (5 January 2024) and *Cook v Morrisson and Another* 2019 (5) SA 51 (SCA) where the position was set out as follows at par 8:

'The existence of reasonable prospects of success is a necessary but insufficient precondition for the granting of special leave. Something more, by way of special circumstances, is needed. These may include that the appeal raises a substantial point of law; or that the prospects of success are so strong that a refusal of leave would result in a manifest denial of justice; or that the matter is of very great importance to the parties or to the public.'

[6] The court has considered this application on the basis that leave to appeal should be granted if the applicant has established that there exists a reasonable prospect of success on appeal, as interpreted above, and/or has established some other compelling reason or reasons for the appeal to be heard.

[7] The grounds for appeal raised by the applicant are based on alleged misdirections by the Court as to some of the facts and the application of the law. It is not deemed necessary to deal with each alleged misdirection individually or in detail. This has already been done in the reasons handed down by the court in which it gave full reasons for reaching its conclusion and the authority therefor. I am of the view that the court did not err in its decision and reasons therefor. In the premises, the following order is granted:

1. The application for leave to appeal is dismissed with costs of two counsel on Scale "C".


SNI MOKOSE J
Judge of the High Court of
South Africa Gauteng
Division, PRETORIA

For the Applicants: Adv M Kufa

Adv Jacobs

On instructions of: Makhafola Verster Inc

For the Respondent: Adv JF Mullins SC

Adv KD Magano

On instructions of: Savage Jooste & Adams

Date of judgment: 9 March 2026