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**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO: 2483/2024

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED
DATE 31 March 2026
SIGNATURE

In the matter between:

MAMBA JABULILE NOMINI
(ID NO: 6[...])

APPLICANT

And

THE ROAD ACCIDENT FUND
(LINK NO: 3640072)

RESPONDENT

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to beat 10h00.

JUDGMENT

MANGENA AJ:

[1] Applicant seeks leave to appeal the judgment and order of this court delivered on 03 March 2026. The application is opposed by the respondent.

[2] By way of a reminder, Ms Mamba was born on 20 June 1965 and was employed as a diagnostic radiographer until she retired in 2025.

[3] She was involved in an accident on 30 September 2012. She continued to work until she retired at the age of 60. I dismissed her claim for loss of earnings on the basis that she did not suffer any loss as a result of the accident. My reasons appear in the judgment. No purpose will be served by repeating them.

[4] The basis upon which leave to appeal is sought is that the court erred in its evaluation of probabilities regarding the continued employment of the plaintiff. It is submitted that plaintiff opted for an early retirement because of the injuries sustained as a result of the accident. If it was not for the accident, so the argument goes, plaintiff would have continued to work until she retired at the age of 65. In support of this averment, Mr Mashele, counsel for the applicant drew my attention to the report by the industrial psychologist where it was stated that should she retire early from her employment due to not coping with her work demands, it will not be easy for her to secure alternative employment in the open labour market.

[5] There is simply no merit in this submission. It is an undisputed fact that Ms Mamba has not retired early as postulated by her experts. She continued to work until her pensionable and retirement age of 60. No evidence was tendered regarding the circumstances of her retirement. In fact when this matter was argued she was already at home, retired because she reached the age of 60. If her retirement was accident related, it was incumbent upon her to adduce evidence to support that contention. This she failed to do and it is simply not enough to rely on a paragraph that postulates the future in a report. The practical reality is that she worked for almost 12 years without any reported difficulties either directly from her or her supervisors. Indeed, the industrial psychologist recorded all her attempts to verify the information provided by Ms Mamba and did not succeed. The attorneys could have called hospital officials to appear in court under subpoena if they were not cooperative. This was not done. They are to carry the blame for this lapse and presenting the case in the manner they did. An appeal court is not a forum to correct tactical errors committed during the trial.

[6] The threshold to grant leave to appeal is high and the SCA has on a number with count cautioned trial courts for granting leave in circumstances where same was not necessary. In *Ramakatsa v African National Congress*, (724/2019) [2021] ZASCA 31 (31 March 2021), the court said:

" [10] Turning the focus to the relevant provisions of the Superior Courts Act^[5] (the SC Act), leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice.^[6] This Court in *Caratco*^[7], concerning the provisions of s 17(1)(a)(ii) of the SC Act pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that 'but here too the merits remain vitally important and are often decisive'.^[8] I am mindful of the decisions at high court level debating whether the use of the word 'would' as opposed to 'could' possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects 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. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.^[9]"

[7] Applying the above test to the grounds relied upon by the applicant to attack the judgment I am not persuaded that there are reasonable prospects of success. Applicant's counsel seems to be labouring under an (false) impression that once physical impairment is proved, plaintiff automatically becomes entitled to payment for loss even in cases where impairment does not result in loss. In this case Ms Mamba was gainfully employed at the time of the accident, she continued to work and earned her salary. The impairment did not result in the reduction of her earning capacity and she did not therefore suffer any loss as

a result of the accident. I therefore do not agree that the court failed to apply the but for test expounded in Bailey.

[8] As an added bow to the string, counsel submitted that the court erred with regard to costs in that it did not make a cost on the special plea argued. There was simply no need to do so because the special plea was argued together with the merits. Costs are in the discretion of the court and in exercising its discretion the court determined that no costs should be awarded on the special plea, hence no specific cost order was made.

[9] In the result, application for leave to appeal is dismissed with costs.

M I MANGENA

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MBOMBELA

APPEARANCES:

Attorney for the Applicant:

M.H MKHABELA ATTORNEYS

C/O VM NKOSI ATTORNEYS

13 DE Kock Street,

Sonheuwel

MBOMBELA

Tell: 013 753 3212

E-mail: VMnkosi@gmail.com;

mkhabelaattorneys@gmail.com

Ref.: **RAF/T019/24/NOTHANDO**

Attorney for the First Respondent:

STATE ATTORNEY, NELSPRUIT.

3rd Floor, Admin Block, West Wing

R104 Samora Machel Drive

NELSPRUIT

Tel.: 013 101 3722

E-Mail: gugu1@raf.co.za

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