

Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates:	NO



IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST PROVINCIAL DIVISION, MAHIKENG

Case No.: 2853/2022

In the matter between:

NEVILLE LESLIE JACOBS

1st Applicant

RAVANA SEWSUNKER JACOBS

2nd Applicant

and

THIZWILONDI JUSTICE MAMBURU

Respondent

JUDGMENT
(APPLICATION FOR LEAVE TO APPEAL)

DIBETSO-BODIBE AJ

INTRODUCTION

- [1] This is an application for leave to appeal against the judgment and order of this Court handed down on 09 December 2024. ("the Order").
- [2] The Court adjudicated upon the four Special Pleas by the Applicant viz; the 1st Special Plea of Prescription, 2nd Special Plea of Lis Alibi Pendens, 3rd Special Plea on Respondent's failure to serve the Applicant with a Notice of Intention to Institute Legal Proceedings in terms of Section 3 of Act 40 of 2002 and the 4th Special Plea of non-joinder and mis-joinder of the Minister of Justice and Constitutional Development and another person.
- [3] The second Special Plea of Lis alibi pendens was upheld and the 1st, 3rd and 4th Special Pleas were dismissed. The Court further ordered that the Plaintiff's Claim for defamation be stayed pending the finalisation of the matter between the Parties by the Equality Court, the Respondent to pay costs in respect of the 2nd Special Plea and the Applicants to pay costs in respect of the 1st, 3rd and 4th Special Pleas.
- [4] The application for leave to appeal is opposed. Both Parties were unrepresented and by agreement between the Parties, the leave to appeal was to be adjudicated on papers submitted by the Parties.

GROUND OF APPEAL

- [5] The relevant portions of the grounds of appeal sifted from a somewhat rambling Notice of Application for leave to appeal are as follows:

- [5.1] The Court upheld the 2nd Special Plea. This automatically resulted in the dismissal of Special Plea 1, 3 and 4. Since these Pleas are linked to the stayed proceedings, the Applicants believe that the Court erred in imposing cost orders against them.
- [5.2] The Court failed to consider Applicants' reply to the Respondent's heads of argument... The Special Plea of Prescription was interrupted by Equality Court Case... The Courts have held that an aggrieved person can only claim for damages after there is a judgment...
- [5.3] The applicants believe that the Court erred in its order regarding costs...
- [5.4] The third Special Plea – Respondent's failure to serve the applicants with a Notice of Intention of Legal Proceedings...
- [5.5] Regarding the fourth Special Plea, the Applicants contend that the Court erred in dismissing the joinder of the Minister and T. Netshilindi on the grounds of the second Plea (*Lis alibi pendens*)... The Applicants argue that the finding of the Court is ambiguous in its fundamental clarity since she upheld the second Special Plea of *Lis alibi pendens*.
- [5.6] The Applicants request that the Court uphold the 2nd Special Plea and directed the Parties to the Court of first instance which is the Equality Court, therefore, Special Plea 1, 3 and 4 should be held in abeyance pending the final determination of the equality Court case... Regarding Cost orders from Special Plea 1, 3 and 4, the Applicants request that they be set aside or replaced with no order as to costs.

[6] The Respondent contended that “The Applicants raise a plethora of grounds of appeal and therefore I will not deal with them individually because of the prolixity thereof. Moreso, it is difficult to comprehend the reasons or grounds upon which the Applicants rely for their application for leave to appeal.” Furthermore, the Respondent contended as follows:

[6.1] After upholding the second Special Plea and dismissing the 1st, 3rd and 4th Special Pleas, it is submitted, the Court correctly exercised its discretion by following the accepted principle that the successful party should be awarded costs.

[6.2] The Applicants have not advanced any cogent reason why the Court ought not to have departed from the accepted principle.

[6.3] Finally we submit that the Applicants have not passed the muster of Section 17(1)(a) of the Superior Courts Act.

[6.4] It is submitted that the application for leave to appeal be dismissed with costs.

THE APPLICATION FOR LEAVE TO APPEAL

[7] On 30 November 2020, the Respondent instituted an action before this Court for delictual damages based on the alleged defamation of character against the Applicants. To this end, the Applicants raised four Special Pleas against the Respondent as foreshadowed.

[8] On the other hand, the Applicants had instituted an application in the High Court of Gauteng Division held at Pretoria sitting as the Equality Court (“Equality Court”) under case no. 90409/2019 against thirteen

respondents including the Respondent who is cited as the 11th respondent. This application is still pending before the Equality Court hence the 2nd Special Plea of Lis alibi pendens was upheld in favour of the Applicants.

- [9] I agree with the Respondent that the application for leave to appeal is prolix and difficult to comprehend and from the onset failed to pass the muster of Section 17(1)(a) of the Superior Courts Act 10 of 2013 ("the Superior Courts Act").
- [10] Moreover, the Applicants have clouded the application with issues before the Equality Court which have not been adjudicated upon by this Court.
- [11] Furthermore, the application for leave to appeal is not crafted in terms of the law, substantive or procedural.
- [12] From the relevant portions of the grounds alluded to above, I am of the view that, the issue of costs seems to go to the heart of the Applicants' leave to appeal wherein a proposal is made to the Court to suspend and/or set aside costs in respect of the 1st, 3rd and 4th Special Plea.
- [13] The Applicants contended that the application is in terms of Section 17(1) of the Superior Courts Acts and Rule 49 of the Uniform Rules of Court, that the appeal would have a reasonable prospects of success since it is in the public interest and goes to the center of the Constitution Section 28 where Children's rights are protected, that there exist compelling reasons why the application for leave to appeal should be granted.

- [14] However, gleaned from the application itself, it was pleaded without specificity, making it difficult if not impossible to apply the test under 17(1)(a)(i) or (ii) of the Superior Courts Act.
- [15] Leave to appeal may only be granted where the appeal would have a reasonable prospect of success or there are compelling reasons why the appeal should be heard such as interest of justice.
- [16] Prospects of success must not be remote and there must exist a reasonable chance of succeeding. The Superior Courts Act raised the threshold for the granting of leave to appeal, so that leave may now only be granted if there is a reasonable prospect that the appeal will succeed.
- [17] The possibility of another court holding different view no longer forms part of the test. There must be a sound, rational basis for the conclusion that there are prospects of success on appeal.
- [18] ***“An applicant for leave to appeal must convince the 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 a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.”¹***
- [19] An application for leave to appeal is further in terms of Rule 49 of the Uniform Rules of Court. Rule 49(1)(b) provides that when leave to appeal is required... application for such leave shall be made and the grounds thereof shall be furnished.

¹ MEC for Health, Eastern Cape v Mkhitha (1221/2015) ZASCA 176 (25 November 2016) at para [17]

[20] ***“... the grounds of appeal required under Rule 49(1) must... clearly and succinctly set out in clear and unambiguous terms so as to enable the Court and the Respondent to be fully and properly informed of the case which the Applicant seeks to make out and which the Respondent is to meet in opposing the application for leave to appeal...”²***

[21] The applicants’ grounds of appeal are so vaguely formulated as to be of little or no assistance in meaningfully defining the bases of the intended appeal. No attempt is made to identify the factual findings which the Applicant seeks to challenge on appeal nor the findings of law. To say the least, these grounds of appeal are incomprehensible.

[22] There are various issues raised by the Applicants in the notice of leave to appeal and in the heads of argument that have no relation to the issues under the Special Pleas and the findings in that regard.

CONCLUSION

[23] It is trite that a court on appeal should not interfere with the trial judge’s finding on primary facts unless it is satisfied that the trial court was plainly wrong.

[24] ***“... Leave to appeal is not simply for the taking. A balance between the rights of the party which was successful before the court a quo and the rights of the losing party seeking leave to appeal need to be established so that the balance of a realistic***

² Phiri v Phiri and Others (39223/2011) [206] ZAGPPHC 341 (14 March 2016) at para [12]

chance of succeeding on appeal dictates that the balance must be struck in favour of the party which was initially successful.”³

[25] The judgment and order of this Court was based on the adjudication of the four Special Pleas by the Applicants and as such not disposing of the case. In fact the order upholding the second special Plea of *Lis alibi pendens* attest to that.

[26] In the premises, and after careful consideration of the Applicants grounds for leave to appeal and the submissions made, there is nothing that persuades me that this appeal would have a reasonable prospects of success. The application for leave to appeal against the judgment and order of this Court cannot be sustained and stands to be refused.

ORDER

[27] The application for leave to appeal the judgment and order of this Court of 09 December 2024 is dismissed with costs.



O.Y DIBETSO-BODIBE
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

³ *Democratic Alliance v President of the Republic of South Africa and Others* (21424/2020) [2020] ZAGPPHC 326 (26 July 2020) at para [4]

Delivered: This judgment is prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties or their legal representatives by email and by release to SAFLII

DATE OF HEARING: 31 October 2025

DATE OF JUDGMENT: 02 April 2026

APPEARANCES

FOR THE APPLICANTS: Self Represented

FOR THE RESPONDEND: Self Represented