




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No:14012/22

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| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED |
|  | |
| | 18 January 2026 |
| SIGNATURE | DATE |

In the matter between:

ROBERT WILLIAMS HARRISON

APPLICANT

And

CITY OF TSHWANE METROPOLITAN MUNIVIPALITY

RESPONDENT

Delivered: 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 be 18 June 2026.

JUDGMENT ON LEAVE TO APPEAL

Phahlamohlaka AJ

[1] This is an application for leave to appeal the judgment and order handed down by this Court on 21 July 2025. The application is opposed.

[2] Applications for leave to appeal are governed by section 17(1) of the Superior Courts Act 10 of 2013, which 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 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.”

[3] The applicant listed about twelve grounds of appeal. I do not intend to deal with each and every ground raised because of the prolix nature thereof. However, the applicant also contended that the application should be granted because the judgment of this court is in conflict with judgments of other Divisions, including the judgment of Khampepe J in the Constitutional Court. I have to pause here and indicate that it later emerged that the applicant was referring to the minority judgment by Khampepe J in *Liebenberg NO and Others v Bergrivier Municipality*.¹

[4] The court must always be alive to the fact that an application for leave to appeal is not a retrial or a mechanism through which the court justifies its order. In these proceedings the inquiry is two-fold, namely whether the appeal would have a reasonable prospect of success or whether there is some or compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[5] In my view the applicant failed to show what those conflicting judgments are, safe to refer to names of judges and their divisions. Worse, the applicant listed a constitutional court judgment as one of those conflicting judgments. Surely, once the constitutional court has pronounced on the issue, that pronouncement ought to be followed by the lower courts and therefore a high court cannot contradict that pronouncement.

¹ [2013] ZACC 16; 2013(5) SA 246(CC)

[6] I now turn to the question whether the appeal has a reasonable prospect of success or not. The meaning of a reasonable prospect of success was clarified in *S v Smith*² as follows:

“What the test of reasonable prospects of success postulates is 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 a trial court. In order to succeed, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that these prospects are not remote but have a realistic chance of succeeding. More is required to be established than there is 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.”

[7] In these proceedings counsel for the applicant re-argued the case in an endeavour to convince the court that the appeal has a reasonable prospect of success. The Supreme Court of Appeal has pronounced that a mere possibility of success is not sufficient for this court to grant leave to appeal.

[8] The Supreme Court of Appeal in *MEC for Health, Eastern Cape v Mkhitha and Another*³ emphasized the following:

“[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal must 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.

[17] 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.”

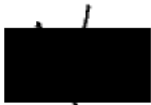
³ [2016] ZASCA 176 para 16 and 17.

[9] In my view, the applicant has failed to pass the muster of section 17(1)(a). For the aforesaid reasons, the application for leave to appeal stands to fail.

[10] This brings me to the issue of costs. I need not overemphasise the trite that the award of costs is in the discretion of the court. However, it has been an accepted principle of our law that the losing party must pay costs. I do not intend to deviate from the trite principle.

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

(a) The application for leave to appeal is dismissed with costs, including costs of counsel to be taxed on scale B.



K F PHAHLAMOHLAKA
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

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JUDGEMENT RESERVED ON: 21 January 2026