

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024-083888

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>19 June 2026</u>	
DATE	SIGNATURE

In the matter between:

MUTHANYI ROBINSON RAMAITE

Applicant

and

SG COAL (PTY) LTD

Respondent

Neutral Citation: *Muthanyi Robinson Ramaite v SG Coal (Pty) Ltd (2024-083888)*
[2026] ZAGPJHC --- (19 June 2026)

Coram: Khaba AJ

Heard: 09 June 2026

Delivered: 19 June 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date for hand-down is deemed to be 19 June 2026.

Summary: Application for leave to appeal – s 17(1)(a)(i) of the Superior Courts Act 10 of 2013 – an applicant now faces a higher and a more stringent threshold – Leave to appeal refused.

JUDGMENT
[APPLICATION FOR LEAVE TO APPEAL]

KHABA, AJ:

Introduction:

- [1] I shall refer to the parties as they are referred to in the main application. This is an application for leave to appeal against the whole of the judgment, order and costs order delivered on 24 April 2026, in which summary judgment was granted in favour of the applicant, SG Coal (Pty) Ltd ("the applicant"), against the respondent, Mr. Muthanyi Robinson Ramaite ("the respondent"). In terms of that order, the respondent was ordered to pay the applicant the sum of R118,047,765.68, interest on the aforesaid amount at the rate of 11.25% per annum calculated from 01 September 2023, and costs on the attorney and client scale, including counsel's fees on scale C.
- [2] The respondent applies for leave to appeal against the whole of the aforementioned judgment, and order, including the order for costs, to the Supreme Court of Appeal, alternatively to the Full Bench of this Court. The applicant opposes the application.

The statutory framework and the respondent's express election:

- [3] The central legal question is whether the respondent has satisfied the threshold prescribed by section 17(1)(a) of the Superior Courts Act 10 of 2013. That section provides:

“(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; ...”

- [4] It is imperative to note at the outset the basis upon which the respondent has brought this application for leave to appeal. The respondent's heads of arguments, expressly states:

“This is an application for leave to appeal against that judgment. It is brought in terms of section 17(1)(a)(i), read with section 16(1)(a)(i), of the Superior Courts Act 10 of 2013.”

- [5] More significantly, the respondent's heads of argument contain the following express and unequivocal concession:

“The remainder of these heads of argument set out the basis for leave to appeal, address the ground of appeal and then set out the merits of the defences against the summary judgment, which would be upheld by another court.”

- [6] And critically, at paragraph 1.6 of the applicant's heads of argument (to which the respondent does not demur), it is stated:

“Importantly, the application for leave to appeal is brought in terms of Section 17(1)(a)(i) and not in terms of Section 17(1)(a)(ii).”

- [7] The respondent has therefore made a deliberate and strategic election. The respondent does not invoke section 17(1)(a)(ii). The respondent does not request

this Court to consider whether there is “some other compelling reason why the appeal should be heard”. The respondent places all his eggs in the basket of section 17(1)(a)(i). The respondent must convince this court that the appeal *would* have a reasonable prospect of success. There is no alternative fallback. There is no invitation to consider conflicting judgments, the interests of justice, or any other “compelling reason”. The respondent is bound by that election.

- [8] This election has profound consequences for the analysis that follows. I am not required to enquire, in the alternative, whether there exists some compelling reason to hear the appeal. The respondent has expressly disavowed that basis. The sole question before me is whether the respondent has demonstrated, on a sound and rational basis, that an appeal would have reasonable prospects of success.
- [9] Because the respondent has expressly confined his application to section 17(1)(a)(i) and has not invoked section 17(1)(a)(ii), I am not required to consider whether there exists “some other compelling reason as to why the appeal should be heard”. The respondent’s heads of argument are silent on section 17(1)(a)(ii). The applicant’s heads of argument correctly observe that the application is brought under section 17(1)(a)(i) “and not” under section 17(1)(a)(ii). The respondent does not dispute this characterisation. I proceed on that basis.
- [10] The respondent advances seven grounds of appeal:
- a. The respondent contends that I erred in finding that the applicant had established a clear right as required for final relief.
 - b. The respondent contends that I misdirected in interpreting the relevant contractual provisions (or statutory provisions, as the case may be) governing the dispute.
 - c. The respondent contends that I failed to have proper regard to material factual disputes that ought to have been resolved in the respondent’s favour.

- d. The respondent contends that I erred in assessing of the evidence or affidavits, leading to a wrong finding on a crucial factual issue.
- e. The respondent contends that I misapplied the legal test for the relief sought, particularly in relation to the requirements for final interdictory or declaratory relief.
- f. The respondent contends that I erred in granting summary judgment against the respondent where the applicant had not proved all elements of its claim on a balance of probabilities.
- g. That the award of costs on the scale as between attorney and client scale in favour of the applicant constituted a misdirection and was inappropriate in the circumstances.

[11] The test for leave to appeal is no longer whether another court might reasonably come to a different view. It is whether there are reasonable prospects of success on appeal, that is, a sound, rational basis for the conclusion that there is a realistic chance of this court's decision being overturned on appeal. A mere arguability or the possibility of an alternative finding does not suffice. The respondent must demonstrate that the appeal would have a tangible, not speculative, prospect of success.

[12] Having carefully considered the seven grounds advanced by the respondent, I find that none, singly or cumulatively, discloses a reasonable prospect of success. The grounds are, in substance, a repetition of arguments already fully ventilated and correctly rejected in the main judgment; they identify no misdirection of law or fact reasonably capable of yielding a different outcome on appeal. In truth, they seek impermissibly to re-litigate the same issues without pointing to any palpable error or novel point of substance.

[13] The respondent has not identified any principle of law that this court misapplied, nor any fact that was materially misunderstood. In my original judgment of 24 April 2026, I have dealt with most, if not all of the issues raised by the respondent in its application for leave to appeal and it not necessary to repeat those in full. Suffice to restate what I said in my original judgment. The application amounts to a disagreement with the outcome.

- [14] The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another court can come to a different conclusion to that reached by me in my judgment. This approach has now been codified in s 17(1)(a)(i) of the Superior Courts Act 10 of 2013, which came into operation on the 23rd of August 2013, which provides that leave to appeal may only be given where a judge concerned is of the opinion that 'the appeal would have reasonable prospect of success'.
- [15] Even if I were inclined to consider section 17(1)(a)(ii) *mero motu*, it is trite that if a court is unpersuaded of the prospects of success, it must still enquire into whether there is compelling reason to entertain the appeal. However, the merits remain vitally important and are often decisive. In considering the existence of compelling reasons as envisaged by s 17(1)(a)(ii) of the Superior Courts Act. I am also not persuaded that such reasons exist in this matter, when considering in the context of prospects of success on the merits.
- [16] In *Ramakatsa and Others v African National Congress and Another*¹, the SCA held that the test of reasonable prospects of success postulates a dispassionate decision, based on the facts and the law that a court of appeal 'would' reasonably arrive at a conclusion different to that of the trial court. These prospects of success must not be remote, but there must exist a reasonable chance of succeeding. An applicant who applies for leave to appeal must show that there is a sound and rational basis for the conclusion that there are prospects of success.
- [17] The ratio in *Ramakatsa* simply followed *S v Smith*², in which Plasket AJA (Cloete JA and Maya JA concurring), held as follows:

"What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the Court of Appeal could reasonably

¹ *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31 (31 March 2021)

² 2012 (1) SACR 567 (SCA) at para 7

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 *Mont Chevaux Trust v Tina Goosen*³, the Land Claims Court held (in an *obiter dictum*) that the wording of this subsection raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. I agree with that view, which has also now been endorsed by the SCA in a judgment in *Notshokovu v S*⁴. In that matter the SCA remarked that an appellant now faces a higher and more stringed threshold, in terms of the Superior Courts Act 10 of 2013 compared to that under the provisions of the repealed Supreme Court Act 59 of 1959. The applicable legal principle as enunciated in *Mont Chevaux* has also now been endorsed by the Full Court of the Gauteng Division of the High Court in Pretoria in *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others*⁵.

[19] As explained in *MEC for Health, Eastern Cape v Mkhitha and Another, Schippers AJA* provided the following guidance on the test⁶:

“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 Supreme Courts Act 10 of 2013 makes it that leave to appeal may 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.

³ (LCC14R/2014) at para 6

⁴ [2016] ZASCA 112 (7 September 2016)

⁵ [2016] ZAGPPHC 489 at par 25

⁶ [2016] ZASCA 176 at paras 16-17

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.”

[20] I am not persuaded that the issues raised by the respondent in his application for leave to appeal, are issues in respect of which another court is likely to reach conclusions different to those reached by me. I therefore conclude that there are no reasonable prospects of another court making factual findings and coming to legal conclusions at variance with my factual findings and legal conclusions. Therefore, in my view, the appeal does not have reasonable prospects of success.

[21] Having considered the papers filed on record and the submissions made by the parties, it follows that the application for leave to appeal, must therefore fail. There is no reason to deviate from the normal principle that costs follow the result.

Costs:

[22] The applicant seeks an order that the application for leave to appeal be dismissed with costs, on scale C. The application has been opposed and has failed. There is no reason to depart from the ordinary principle that costs follow the result. Indeed, there is every reason to affirm that principle. The costs sought are on scale C. This is justified considering the all the foregoing circumstances, the respondent has not made out a case which justifies an opinion that would have reasonable prospects of success, or that there any compelling reasons why an appeal should be heard in this matter, costs on scale C are warranted.

Order:

[23] Accordingly, the following order is made:

1. The application for leave to appeal is dismissed.
2. The respondent is ordered to pay the applicant's costs in this application to be taxed on scale C.



KHABA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances:

For the Applicant: Adv. A Bham SC with Adv. M Salukazana

Instructed by: Mkhabela Huntley Attorneys Inc

For the Respondent: Adv. J A Venter

Instructed by: DR TC Botha Attorneys
C/O Swanepoel Attorneys

Date of Hearing: 09 June 2026

Date of Judgment: 18 June 2026