



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO/YES
Of Interest to other Judges:	NO/YES
Circulate to Magistrates:	NO/YES

Case Number: 2734/2022

In the matter between:

ELRICH RUWAYNE SMITH N.O.

First Applicant

ETHNE MARY VAN WYK

Second Applicant

And

PETRONELLA SOPHIA DU PREEZ

Respondent

HEARD ON: This application was determined on the basis of written arguments instead of an oral hearing.

JUDGMENT BY: DANISO, J

DELIVERED ON: 27 SEPTEMBER 2023

[1] The applicants seek leave to appeal the judgment I rendered on 3 March 2023 in terms of which I dismissed the applicants' application to place the respondent's estate under provisional sequestration. The applicants were ordered to pay the costs.

[2] The application is, by consent of the parties determined on the basis of written heads of argument filed by the applicants.

[3] The grounds for leave to appeal are embodied in notice of appeal and are essentially premised on the grounds that this court erred: in holding that the applicants did not discharge the onus to *prima facie* establish that the respondent's liabilities exceeded the total of her assets; by ignoring and even failed to appropriately consider the skimpy information provided by the respondent regarding her financial position; in finding that the applicants should have provided expert valuation of the respondents' assets and this is despite the fact that the applicants were not aware of the respondent's financial position; and not finding that the provisional sequestration of the respondent's estate will be to the advantage of the creditors.

[4] In terms of section 17(1) (a) of the Superior Courts Act¹ ("The Act"), leave to appeal can only be granted where I am of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[5] It was pointed out in *S v Smith* **2012 (1) SACR 567** (SCA)² that:

"What 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 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."

[6] As correctly pointed out by the respondents, in my judgment (pages 17 to 22) I have indeed alluded to the fact that the applicants were expected to make out their case on a *prima facie* basis for the relief they sought and except to provide conclusive proof of the respondent's failure to pay the debt when

¹ Act No, 10 of 2013.

² Para 7.

called upon to do so, no *prima facie* evidence was established on the applicants' affidavit in respect of whether the respondent's assets were exceeded by her debts, for that reason I was not satisfied that the applicants had made out a case for a sequestration order. There is a plethora of cases with regard to what constitutes a *prima facie* case. See *Ohlsson's Cape Breweries Ltd v Totten*³ *Lotter v Arlow & Another*,⁴ *Kali v Decotex (Pty) Ltd and Another*.⁵

[7] I'm of the view that my main judgment has adequately dealt with all the aspects raised by the applicants in their grounds of appeal. I am thus not persuaded that the issues raised by the applicants herein would have reasonable prospects of success,⁶ there is also no compelling reason why the appeal should be heard therefore, the application for leave to appeal stands to be dismissed.

[9] In the result the following order is made:

1. The application for leave to appeal is dismissed.

NS DANISO, J

For the applicants:

Mr. E. Visser
Etiene Visser Attorneys
BLOEMFONTEIN

For the respondent:

Mr. AJ Callis

³ **TPD 48** at 50.

⁴ **2002 (6) SA 60** (T).

⁵ **1988 (1) SA 943** (A).

⁶ *Chithi and Others; In re: Luhlwini Mchunu Community v Hancock and Others* **[2021] ZASCA 123** (23 September 2021) Para 10.

Callis Attorneys Inc.

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