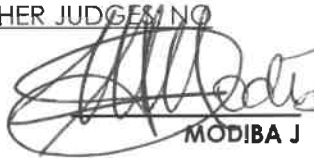


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 28173/2016

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
 MODIBA J	
17 APRIL 2019	

In the matter between:

TSHIDINO THABELA

Plaintiff

and

**NEDGROUP MEDICAL AID SCHEME/
MEDSCHEME
NEDGROUP LIMITED/ NEDBANK**

First Defendant
Second Defendant

J U D G M E N T
IN RESPECT OF THE PLAINTIFF'S APPLICATION FOR LEAVE TO APPEAL

MODIBA, J:

[1] This is an application for leave to appeal the judgment and order I handed down on 21 February 2019, dismissing the applicant's action for damages allegedly suffered

as a result of the alleged unlawful disclosure of his private and confidential medical information. The respondents oppose the application.

[2] For convenience, I use the parties' nomenclature as in the trial proceedings.

[3] The plaintiff relies on section 17(1)(a)(i) of the Superior Courts Act 10 of 2013.

It 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;"

[4] In *Mount Chevaux Trust (IT 2012/28) v Tina Goosen*, the Land Claims Court per Bertelsmann J, held that the use of the word 'would' in the above provision raises the threshold for granting leave to appeal against the judgment of a High Court. To succeed in this application, the plaintiff is therefore required to establish with a measure of certainty that the appeal court will arrive at a different conclusion.¹


[4] I have considered the grounds for appeal as set the plaintiff's notice of appeal as well as submissions by counsel for the parties. I stand by my reasons for judgment as set out in the judgment handed down in this matter. I find that the plaintiff fails to meet the threshold referred to above.

[5] In the premises, the application stands to be dismissed with costs.

[6] I therefore make the following order:

ORDER

1. The application for leave to appeal is dismissed with costs.



L T MODIBA

¹ Unreported LCC Case number LCC14R/2014 dated 3 November 2014.

**JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

APPEARENCES:

Counsel for the Plaintiff:

Mr A Viviers

Instructed by:

Hamel Attorneys, Magalieskruin, Pretoria

Counsel for the Defendants:

Mr PT Rood SC

Instructed by:

Lowndes Dlamini Inc, Sandton, Johannesburg

Date delivered:

17 April 2019