

REPUBLIC OF SOUTH AFRICA



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

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED YES/NO

.....
SIGNATURE

.....
DATE

Case number: 21609/2021

In the matter between:

JR

Applicant

and

AL

Respondent

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 6 December 2021

JUDGMENT

INGRID OPPERMAN J

[1] This is an application for leave to appeal to the Full Court of Johannesburg, Gauteng Division, against the order granted against the respondent and handed down by this court on 28 October 2021.

[2] This judgment should be read with the 28 October 2021 judgment (*'the judgment'*). The parties are referred to as in the judgment and all abbreviated descriptions used herein are defined in the judgment.

[3] Mr Bornman (who did not represent the respondent in the main hearing) grouped the grounds of appeal in two broad categories. The first category was focused on the disparity between the facts of this case and those in the *Victoria Park*¹ matter. It was argued that the transgression/s under consideration are far less serious and that another court would accordingly find that the fine of R70 000 imposed was "*unreasonable*". The fine in the *Victoria Park* matter was only R10 000 which fine was ordered to be paid, jointly and severally, amongst several contemnors.

[4] The respondent in this case appears to have a total absence alternatively a very limited appreciation of the seriousness of what was breached and what rights were infringed in the conduct that he embarked upon and persisted with. As emphasised in paragraphs [25] and [26] of the judgment, a legal practitioner's most valuable assets are repute and integrity and once either is lost, it is seldom recovered. Impugning the good name of an attorney is a serious matter. Attacking and undermining fundamental human rights is a serious matter. The fact that this court concluded that this case was not as serious as *the State Capture* matter does not lead to the conclusion that this matter is not serious. Far from it.

[5] Further, the court on appeal would have very limited powers to interfere with the sentence imposed by this court and the respondent would have to satisfy the test

¹ Para 18 of the judgment.

formulated in *Smith v S* 2012 (1) SACR 567 (SCA) for it to interfere with the sentence imposed by this court. None of the criteria required for such an intervention were shown to exist.

[6] There can be no doubt about the willfulness of the respondent. The facts evidence an expression of intent which is followed up by conduct which, in some instances, is proudly announced once he has done so.

[7] The court's power to grant leave to appeal to a higher court is found in section 17(1) of the Superior Courts Act, 2013.²

[8] Leave to appeal should be granted only when there is a sound and rational basis for doing so³. The threshold for granting leave to appeal has also been raised⁴.

[9] The principles that emerge from *Four Wheel Drive* and *Independent Examinations Board* requires that one test the grounds on which leave to appeal is sought against the facts of the case and the applicable legal principles to ascertain whether an appeal court "would" interfere in the decision against which leave to appeal is sought.

[10] In the decision of *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and Others*⁵, Wallis JA observed that a court should not grant leave to appeal, and indeed is under a duty not to do so, where the threshold which warrants such leave,

² Section 17(1) of the Superior Courts Act 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;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."

³ *Four Wheel Drive Accessory Distributors CC v Rattan* 2019 (3) SA 451 (SCA)

⁴ *Independent Examinations Board v Umalusi and Others* (83440/2019) [2021] ZAGPPHC 12 (7 January 2021)

⁵ 2013 (6) SA 520 (SCA)

has not been cleared by an applicant in an application for leave to appeal. He held as follows:

“[24] For those reasons the court below was correct to dismiss the challenge to the arbitrator's award and the appeal must fail. I should however mention that the learned acting judge did not give any reasons for granting leave to appeal. This is unfortunate as it left us in the dark as to her reasons for thinking that enjoyed reasonable prospects of success. Clearly it did not. Although points of some interest in arbitration law have been canvassed in this judgment, they would have arisen on some other occasion and, as has been demonstrated, the appeal was bound to fail on the facts. **The need to obtain leave to appeal is a valuable tool in ensuring that scarce judicial resources are not spent on appeals that lack merit.** It should in this case have been deployed by refusing leave to appeal.” (emphasis added)

[11] I have considered the extensive application for leave to appeal and hold the view that most of the grounds have been answered in the judgment. Nothing argued has persuaded me that another court might (old test) or would (new test), find differently or that another could would be entitled to disturb the discretion I exercised based on recognised legal principles.

[12] Although a punitive costs order was sought and granted in the judgment, no punitive costs order was sought in the application for leave to appeal.

[13] I accordingly grant the following order:

The application for leave to appeal is dismissed with costs, to include the costs consequent upon the employment of two counsel.

I OPPERMAN
Judge of the High Court
Gauteng Division, Johannesburg

For the Respondent in the application for leave to appeal: Adv Adelé de Wet SC and
Adv Sarita Liebenberg

Instructed by: Ulrich Roux & Associates

For the Applicant in the application for leave to appeal: Adv JC Bornman

Instructed by: Van Zyl & Hofmeyr Attorneys

Date of hearing: 26 November 2021

Date of Judgment: 6 December 2021