

REPUBLIC OF SOUTH AFRICA



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

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

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DATE
SIGNATURE

CASE NO: 59158/2021

In the matter between:

BLACK BOND SURFACING (PTY) LTD

Appellant

and

DYNAPAC SA (PTY) LTD

Respondent

Coram: Dlamini J

Date of hearing: 15 November 2022 – in a ‘virtual Hearing’ during a videoconference on Microsoft Teams digital platform.

Date of delivery of Judgment: 07 December 2022

This judgment is deemed to have been delivered electronically by circulation to the parties' representatives via email and shall be uploaded onto the caselines system.

JUDGMENT
[LEAVE TO APPEAL]

DLAMINI J

[1] This is an application for leave to appeal my judgment that I handed down on 9 August 2022.

[2] This was a *rei vindicatio* application for the return of certain equipment instituted by the respondent against the appellant herein.

[3] The background facts are common cause. However, the appellant's main argument is that there is a material dispute of facts in this case, as a result, the appellant submits that the application should be referred to trial for *viva voce* evidence.

[4] It is trite that for an application for leave to appeal to be successful, the appellant must demonstrate that there are reasonable prospects that another Court would come to a different conclusion to that which was reached in the judgment that is sought to be taken on appeal.

[5] The provisions of section 17 of the Supreme Court Act have now elevated the test to be applied for granting of leave to appeal. The use of the word "would" when considering the prospects of success in section 17 (1)(a)(i), now imposes a more stringent and vigorous threshold.

[6] In my view, the appellant's claim of the existence of a material dispute of facts has no merit and it is dismissed, this claim is solely intended to avoid the appellant's obligation to return the respondent's machinery.

For all the reasons stated above and in my judgment, I make the following order:

ORDER

The application for leave to appeal is dismissed with costs

DLAMINI J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing: 15 November 2022

Delivered: 7 December 2022

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