



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

**CASE NO: 3409/2022**

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

5.12.2022  
DATE

SIGNATURE

In the matter between:

**SERVICES SECTOR EDUCATION AND TRAINING  
AUTHORITY**

Applicant

and

**AMANZ' ABANTU SERVICES (PTY) LTD (in business  
rescue)**

First Respondent

**THE SHERIFF: JOHANNESBURG-NORTH**

Second Respondent

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**JUDGMENT**

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**CRUTCHFIELD J:**

[1] The applicant, Services Sector Education and Training Authority, claimed leave to appeal to the Full Court against the whole of my judgment dated 15 November 2022. The first respondent, Amanz' Abantu Services (Pty) Ltd (in business rescue), opposed the application for leave to appeal. The second respondent, The Sheriff, Johannesburg-North, played no role in the proceedings.

[2] The applicant raised various grounds on which leave to appeal was sought. I deal only with the important grounds and do so on a broad basis.

[3] The test for leave to appeal in terms of s 17(1)(a) of the Superior Courts Act, 10 of 2013 ('the Act') is that leave to appeal may only be given in instances where the appeal would have a reasonable prospect of success, or there is a compelling reason why the appeal should be heard, such as conflicting judgments in the matters in issue.

[4] It is now settled law that leave to appeal is not for the asking and that an applicant must hold a truly reasonable prospect of success and "Proper grounds and a sound, rational basis (for leave to appeal) must exist."<sup>1</sup>

[5] I do not refer to or reiterate the factual matrix relevant to this application and refer to the judgment in the application insofar as the facts are concerned.

[6] As regards the applicant's alleged pending appeal, AFSA does not have jurisdiction to appoint an appeal tribunal. AFSA advised the parties accordingly. The applicant did not bring an appeal against the arbitrator's award but against the determination of the quantity surveyor ('QS'), appointed by the parties in terms of the arbitration award.

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<sup>1</sup> *MEC Health, Eastern Cape v Mkhitha* 2016 ZASCA 176 (25 November 2016).

[7] The SCA has pronounced authoritatively that the determination of an expert is not a matter for appeal but for review.<sup>2</sup> The applicant did not bring a review of the QS's determination and did not allege grounds that would sustain a review of the QS's determination. Thus, there is no pending review of the expert's determination in circumstances where the SCA has stated firmly that the determination of an expert is not the subject of an appeal. Thus, the applicant's purported appeal does not have reasonable prospects of success as envisaged in the test for leave to appeal referred to afore. Furthermore, the applicant's purported appeal long since lapsed.

[8] AFSA did not dismiss the applicant's appeal or determine the appeal as referred to by the applicant in the heads of argument submitted in respect of the application for leave to appeal. AFSA simply indicated that it was not vested with jurisdiction to appoint an appeal tribunal.

[9] Accordingly, the alleged pending appeal does not provide a sustainable basis on which to find grounds for leave to appeal. Furthermore, there is no ongoing dispute between the parties for the reasons stated afore.

[10] In the circumstances, there is no reasonable prospect that another court would come to a different conclusion as required for leave to appeal to be granted.

[11] In respect of the alleged conflict in judgments raised by the applicant, Binns-Ward J in *Stoffberg NO v Capital Harvest (Pty) Ltd*,<sup>3</sup> made it very clear that each case is fact specific, decided on the basis of an application of the legal principles to the peculiar and relevant facts of a matter. The emphasis by Binns-Ward J of the relevant facts of

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<sup>2</sup> See the cases cited in the judgment in the application.

<sup>3</sup> *Stoffberg NO v Capital Harvest (Pty) Ltd* 2021 JDR 1644 (WCC)

each matter results in the various judgments not being in conflict such as would comprise a compelling basis for the appeal to be heard.

[12] As to the averting of an injustice, the applicant argued that the writ should be stayed in order to avert an injustice and that I fail to exercise this Court's discretion by failing to consider the various factors relevant to that leg of the argument.

[13] However, the applicant's contentions are grounded in it being without recourse whilst the respondent allegedly obstructs the appeal. Given that the applicant concedes that it has to obtain the respondent's consent in order to further the appeal, something the respondent is not obliged to give, the applicant cannot have a right to appeal. As to the fact that the respondent is in business rescue and the applicant potentially will not have security in respect of its movables, that is the fear of every judgment debtor and it is not exceptional or unique to the applicant.

[14] However, the significant reason why the applicant does not make out a case for a stay in order to avert an injustice is because there is no pending appeal or review or further procedure, pending the outcome of which the writ be stayed. There is no purpose in staying the writ if there is no pending procedure. Staying the writ will not achieve anything because there are no pending proceedings between these parties nor is there an ongoing dispute between them.

[15] In the circumstances, the applicant does not allege sustainable grounds upon which leave to appeal should be granted and there is no reasonable prospect that another court will come to a different conclusion.

[16] By reason of the aforementioned:

1. The application for leave to appeal is dismissed with costs, such costs to include the costs of two counsel, including senior counsel, where two counsel including senior counsel, were utilised.

I hand down the judgment.

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**A A CRUTCHFIELD  
JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION  
JOHANNESBURG**

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 5 December 2022.

DATE OF THE HEARING: 1 December 2022.

DATE OF JUDGMENT: 5 December 2022.

EDWARD NATHAN SONNENBURGS INC  
Attorneys for the Applicant

PETER LeMOTTEE ATTORNEYS  
Attorneys for the Respondent