



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

CASE NO: 33802 / 2016

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

IN THE MATTER BETWEEN:

THE UNLAWFUL OCCUPIERS OF UNIT NO 202 **1ST APPLICANT**

THE UNLAWFUL OCCUPIERS OF UNIT NO 203 **2ND APPLICANT**

THE UNLAWFUL OCCUPIERS OF UNIT NO 204 **3RD APPLICANT**

and

SHIMI JAMES MAHLAELA

1ST RESPONDENT

JUDGMENT

Strijdom A J

1. In this matter the Applicants seeks condonation for the late filing of the application for leave to appeal and leave to appeal against the whole of my judgment and order handed down on 22 April 2021 to the Full Court of the Gauteng Local Division of the High Court.

2. The condonation application was not opposed by the Respondents and condonation for the late filing of the application for leave to appeal was granted.

THE APPLICATION FOR LEAVE TO APPEAL

3. In broad terms the following are the major grounds of appeal:
 - 3.1. The Honourable Judges should have or ought to have concluded that the Second Applicant was never served with a notice of set down for the hearing of the main eviction and therefore, and order for his eviction was granted erroneously;

 - 3.2. The Honourable Judges further erred in finding that the sheriffs' return of service was sufficient and constituted a proper service;

 - 3.3. The Honourable Judges also erred in ruling that the Applicants' case was ought to be lodged within 20 days after acquiring knowledge of such judgment;

3.4. The Honourable Judges erred in finding that the Applicants did not have a bona fide defence.

4. There are now three requirements for the granting of leave to appeal pursuant to Section 71 (1) of the Superior Courts Act 10 of 2013 namely that there are reasonable prospects of success, that the amount involved is not trifling and is a matter of substantial importance to one or both of the parties concerned and further that a practical effect or results can be achieved by the appeal.

5. In order to succeed therefore, the Applicants must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but they have a realistic chance of succeeding. More is required to establish than that there is a mere possibility for success and that the case is arguable on appeal, or that the case cannot be categorized as hopeless. There must be a sound, rational basis for conclusion that there are prospects of success on appeal.

6. In respect of all the grounds of appeal raised, my judgment deals extensively with the facts and law as presented by the parties and how the court arrived at its conclusion.

7. In the present matter when the facts were examined there were a number of considerations, which militated against another court finding in favour of the Applicants.

8. On all the issues there are, in my view, no prospect of another court arriving at a different conclusion. The matter has no prospect of success deserving neither the decision of the Full Court of this division or the Supreme Court of Appeal. The issues have been irrefutably and substantially dealt with in the judgment.

9. In the result the following order is made:

9.1. Condonation for the late filing of the application for leave to appeal is granted.

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

Strijdom A J

Acting Judge of The High Court of South Africa

Matter heard on: 27 January 2022

Judgement delivered: 1 February 2022

Counsel for Applicants: Adv Dhladhla

Counsel for Respondents: Adv Dandadzi