

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 17383/2019

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

.....
SIGNATURE

.....
DATE

In the matter between:

NKOSI SIBUSISO ISAAC

Applicant

and

THE REGIONAL MAGISTRATE, BOKSBURG1st Respondent**THE NAATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**2nd Respondent

JUDGMENT ON LEAVE TO APPEAL

MALUNGANA AJ

[1] On 15 August 2022, the applicant brought an application for leave to appeal to the Supreme Court of Appeal (SCA) alternatively to the Full Court of this division,

against the order/judgment of this Court, which I handed down on 07 April 2021. The facts of the case are comprehensively set out in the judgment of the 7th April 2022, and same need not be repeated in any detail herein.

[2] Section 17 (1) of the Superior Court Act 10 of 2013 ('the Act') provides, in relevant part, as follows:

“ 17. (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) ...
- (c)”

[3] It follows from the provision in s 17 (1) (a)(i) of the Act that leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have reasonable prospects of success. Various courts have considered this provision, which essentially entails that there exists a reasonable prospect that another court would arrive at the different finding and order from that rendered in the judgment against which the appeal is being sought.

[4] Upon due consideration of the issues raised in the grounds for leave to appeal, and the arguments presented by counsel for the parties at the hearing, and having dispassionately considered the judgment, we are of the view that the appeal would have a reasonable prospect of success.

[5] The applicant is presently on bail, pending the outcome of the application for leave to appeal. The applicant seeks an extension of his bail pending the outcome of the appeal process. The respondent does not oppose such application. There are no considerations that militate against the grant of an extension of bail.

[6] In the premises, the following order is made:

ORDER

1. Leave to appeal to the Full Court of this Division is granted.
2. The applicant's bail is extended pending the outcome of the appeal to the Full Court in the Gauteng Division, held at Johannesburg.

MALUNGANA PH

Acting Judge of the High Court, JOHANNESBURG

I AGREE, and IT IS SO ORDERED.

MAIER-FRAWLEY J

Judge of the High Court of South Africa, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on Caselines and release to SAFLII. The date and time for hand-down is deemed to be have been at 10h00 on 19 August 2022.

Date of hearing: 15 August 2022

Date of Judgment: 19 August 2022

APPEARANCES:

Counsel for the Appellant:

Advocate EA GUARNERI

Instructed by:

Legal Aid South Africa

Counsel for the Second Respondent:

Advocate C E Britz

Instructed by:

Office of the National Director of Public Prosecutions