

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



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

REPUBLIC OF SOUTH AFRICA

CASE NO: 49323/2021

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: NO |
| (4) | DATE: 9 NOVEMBER 2023 |
| (5) | SIGNATURE: <i>ML SENYATSI</i> |

In the matter between:

JOHANNES PETRUS [...] M[...] OSTERT

Applicant

And

MICHELLE [...] B[...] ANDS

Respondent

JUDGMENT

(LEAVE TO APPEAL APPLICATION)

SENYATSI J

- [1] On 9 May 2023 I granted a final sequestration order against Mr. ~~Mostert~~M[...], the applicant in this leave to appeal application. The sequestration order was as a result of an order of court following the divorce between the parties some 28 years ago. In terms of the divorce court order, Mr Mostert was required to make maintenance contribution for the parties daughter, which *inter alia*, included educating the child. Following a *nulla bona* return of service of the warrant of execution for the amount of more than R2 million, an application for sequestration was launched by the respondent, Ms B[...]~~lands~~ who was previously married to the applicant.
- [2] The applicant raises a number of grounds to criticise the judgment handed down in respect of the final sequestration order. He contends that the Court erred both in law and fact in arriving to its judgment. The grounds of appeal will not be repeated in this judgment.
- [3] The controversy in this application is whether the applicant has discharged the onus as required by section 17(1) of the Superior Courts Act 10 of 2013 (“the Act”) and more importantly whether he has shown that it is in the interest of justice that the application for leave to appeal should be granted.
- [4] The principles on the approach by a court faced with the application for leave to appeal are trite. Section 17 of the Act states as follows:
- “(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 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.”*

[5] Our courts have given the true meaning of what is sought to be proven as stated in section 17(1). In *Acting National Director of Public Prosecutions and Others v Democratic Alliance*¹ the court said the following:

“The Superior Court has raised the bar for granting leave to appeal and in The Mont Chevaux Trust (IT 201/28) v Tina Goosen & 18 Others, Bertelsmann J held as follows:

‘It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion see Van Heerden v Cronwright & Others 1985 (2) SA 342 (T) at 343H. The use of the word ‘would’ in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”

[6] It is also an accepted principle in our law that the applicant for leave to appeal, is bound by the grounds set out in the notice of appeal. In putting

¹ (1957/09) [2016] ZAGPPHC 489 (24 June 2016)

an emphasis on this principle, in *Songono v Minister of Law and Order*² Leach J said the following:

“It seems to me that, by a parity of reasoning, the grounds of appeal required under Rule 49 (1)(b) must similarly be clearly and succinctly set out in clear and unambiguous terms so as to enable the Court and the respondent to be fully and properly informed of the case which the applicant seeks to make out and which the respondent is to meet in opposing the application for leave to appeal. It is therefore trite that leave to appeal may also be dismissed if the grounds of appeal fail to comply with the requirements of Rule 49(1)(b), by being couched in ambiguous and vague terms.”

- [7] I have fully considered the grounds raised to appeal the judgment and I am not persuaded that the appeal would succeed. The grounds raised to appeal the judgment seem to pick out statements made in the judgment as the basis to attack the order. I say so based on what I have concluded in the judgment having regard to the two previous judgments handed down by this Court prior to the sequestration order.
- [8] Even if there may have been an error with regards to the amount of stated in the warrant, I specifically referenced in the judgment that the trustees of the insolvent estate of the applicant would still ensure that the amount is properly assessed given the costs associated with the opposed application.
- [9] There is no proposition in the application for leave to appeal that it will be in the interest of justice that leave to appeal be granted. Accordingly, I am not able to consider the aspect.

² 1996(4) SA 384 at 385 I - J

[10] Having considered the papers filed of record and the submissions made by the parties, I am not persuaded that the appeal would succeed. The application for leave to appeal the judgment cannot be sustained and stands to be refused.

ORDER

[11] The following order is made:

- (a) Application for leave to appeal is refused;
- (b) The applicant is ordered to pay costs of the application.

ML SENYATSI

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Delivered: This Judgment was handed down electronically by circulation to the parties/ their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 9 November 2023.

APPEARANCES

Counsel for the Applicant: Adv L Matthysen

Instructed by: Jakobus Nicolaas Swart Attorneys

Counsel for the

Respondent: Adv RG Cohen

Instructed by: Glynnis Cohen Attorneys

Date Judgment reserved: 20 October 2023

Date of Judgment: 9 November 2023