



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

**REPUBLIC OF SOUTH AFRICA**

**CASE NO: 014395/2022**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: NO  
DATE: 17 FEBRUARY 2023  
SIGNATURE: **ML SENYATSI**

In the matter between:

**SELOTA C**

Applicant

**BOSHOMANE, T & OTHERS LISTED ON ANNEXURE "A"** Further Applicants

**TO THE NOTICE OF MOTION**

And

**YG PROPERTY INVESTMENTS (PTY) LTD**

Respondent

***Delivered:*** By transmission to the parties via email and uploading onto Case Lines  
the Judgment is deemed to be delivered. The date for hand-down is deemed to be  
17 February 2023.

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**JUDGMENT**

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**(Leave to Appeal Application)**

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**SENYATSI J:**

- [1] This is an application to appeal the order I granted on 26 August 2022 in favour of YG Property Investments Pty Ltd. For convenience sake, the parties will be referred to as in the main application.
- [2] The respondents seek to appeal the order supplemented by reasons thereto which were provided on 17 November 2022. It should be stated that the grounds for appeal were set out in the notice of leave to appeal which was filed prior to the reasons for the order. No supplementary grounds were filed by the respondents subsequent to making reasons for the order known. As a consequence, this judgment will restrict itself to the grounds as filed of record.
- [3] The grounds raised against the order are as follows:
- 3.1. The court erred in arriving at a conclusion that the matter was urgent and the applicant was entitled to the interim relief contained in the draft order submitted by the applicant;
  - 3.2. The court erred in concluding that the applicant or its agent were justified to approach the court for relief notwithstanding that the agent was only 14 days in the office as a managing agent;
  - 3.3. The court erred in endorsing as a court the draft order proposed by the applicant and ignoring the respondents answering affidavits and oral

submissions in so far as the nature and the relief sought was concerned;

3.4. The court erred in failing to take into consideration the fact that there were pending eviction proceedings of the other two respondents by the applicant through different attorneys and agents;

3.5. The court also erred in ignoring the affidavits and submissions made on behalf of the Respondents that the court was not placed in position of enough evidence to sustain the order it made, more importantly in relation to records the new managing agents inherited from the previous agents.

3.6. The courts erred by not considering that the applicant had no other remedies at its disposal;

3.7. The order was granted without sufficient evidence on facts on behalf of the applicant;

These are in a nutshell the grounds filed of record.

[4] The controversy in this application is whether or not the respondents have discharged the onus as required by section 17(1) of the Superior Courts Act 10 of 2013 (“the Act”) more importantly whether they have shown that it is in the interest of justice that the application for leave to appeal should be granted.

[5] 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.”

[6] 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 v Acting National Director of Public Prosecutions and Others***<sup>1</sup> the court said the following:

“The Superior Court has raised the bar for granting leave to appeal 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

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

statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”

[7] 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 an emphasis on this principle, in *Songono v Minister of Law and Order*<sup>2</sup> 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.”

[8] As regards to the assessment of the grounds raised to appeal the judgment, and particularly a ruling on urgency, that ruling is not appealable. In *Lubambo v Presbyterian Church of Africa*<sup>3</sup> in holding that the ruling that the matter is urgent is not appealable, Jansen J stated the following:

“In any event, the decision as to whether a case should be heard as a matter of urgency amounts to the exercise of judicial discretion. That is clear from the wording of Rule 6 (12) (a) which reads as follows:

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<sup>2</sup> 1996(4) SA 384 at 385 I - J

<sup>3</sup> 1994 (3) SA 241 (SE) at 243 G - H

‘In urgent applications a Court or a Judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and in such manner and in accordance with such procedure which shall as far as practical be in terms of these Rules as to it seems meet.’”

[9] Based on the papers before me and the risk not only of continuing rent boycott but the violence alleged by the applicant, I decided that it was prudent that the matter be heard on an urgent basis. This is permissible in terms of the Rules but that directive to hear the matter on an urgent basis, is not appealable as it is not on its own, a final judgment, but simply a direction to the parties involved in the case.

[10] The respondents’ counsel referred me to ***PZL Properties (Pty) Ltd v The Unlawful Occupiers of Erf, Judith’s Paarl Township and Another***<sup>4</sup> whether the unlawful occupiers had been in occupation of the property for several years. The court in that case correctly rejected the proposition that the matter was urgent. The facts of the instant case are distinguishable because the respondents were tenants who were engaged in a rental boycott and threatened violence to the applicant’s staff and property.

[11] In their heads of argument, the respondent through their counsel, Advocate M Lepaku made submissions consisting of 20 pages. The submissions stated 15 grounds as opposed to the five grounds raised in the notice of leave to appeal. This is in violation of Rule 49 of the Rules of this Court and for that reason alone, the application for leave to appeal stands to be dismissed.

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<sup>4</sup> (053569/2022) [2023] ZAGPJHC 59 (30 January 2023)

[12] I have not been informed as to why it will be in the interest of justice, if it is found that the respondents have failed to meet the requirements of section 17(1) of the Act, that leave to appeal the judgment should be granted.

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

**ORDER**

[14] The following order is made:

- (a) Application for leave to appeal the judgment is refused;
- (b) The respondents are ordered to pay costs.

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**ML SENYATSI  
JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

**DATE JUDGMENT RESERVED:** 10 February 2023

**DATE JUDGMENT DELIVERED:** 17 February 2023

**APPEARANCES**

Counsel for the Applicant: Adv C van der Merwe

Instructed by: Vermaak Marshall Well Beloved Inc.

Counsel for the Respondents: Adv M Lepaku

Instructed by: ET Paile Attorneys

Counsel for the Respondents: Mr AJ Masiye

Instructed by: AJ Masiye Attorneys