



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

CASE NO: 8433/2020

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
DATE: 14 April 2023
SIGNATURE: ***ML SENYATSI***

In the matter between:

**UNLAWFUL INDIVIDUALS OCCUPYING
THE PROPERTY DESCRIBED AS CHIEF ALBERT
LUTHULI, EXTENSION 6 DAVEYTON ALSO KNOWN
AS MOODERFONTEIN FARM 76 IR 28**

Applicant

**ALL THOSE APPEARING IN THE LIST ATTACHED
TO THE APPLICATION FOR LEAVE TO APPEAL
MARKED AS ANNEXURE "A"**

Second Applicant

And

CITY OF EKURHULENI METROPOLITAN

First Respondent

**CITY OF EKURHULENI POLICE METROPOLITAN
DEPARTMENT ("Daveyton")**

Second Respondent

SOUTH AFRICAN POLICE SERVICES

Third Respondent

Neutral Citation: *The Unknown Occupiers of the Immovable Properties at Chief Albert Luthuli Extension 6 Daveyton also known as Mooderfontein Farm 76 IR 28 v City of Ekurhuleni Metropolitan Municipality* (Case No: 8433/2020) [2023] ZAGPJHC 324 (14 April 2023)

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 14 April 2023*

JUDGMENT
(Leave to Appeal Application)

SENYATSI J:

- [1] This is an application for maybe leave to appeal the judgment granted on 11 October 2021 which was followed by reasons provided on 18th October 2022.
- [2] The grounds for leave to appeal the judgment have been fully set out in the notice of application and will not be repeated in this judgment.
- [3] The requirement and the test for granting leave to appeal are regulated by section 17(1)(a) of the Superior Courts Act No. 10 of 2013 which states as follows:
- “(1) Leave to appeal may only be given where the judge or judges concerned are 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.”

[4] In *Mont Chevaux Trust v Goosen and Others*¹ Bertelsman J interpreted the test 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...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.”

[5] In *Acting National Director of Public Prosecutions and Others v Democratic Alliance: In re: Democratic Alliance v Acting National Director of Public Prosecutions*² the court acknowledged the test by Bestertsman J.

[6] In *Mothule Inc Attorneys v The Law Society of the Northern Provinces and Another*³, the Supreme Court of Appeal stated as follows regarding the trial court’s liberal approach on granting leave to appeal:

“It is important to mention my dissatisfaction with the court a quo’s granting of leave to appeal to this court. The test is simply whether there are any reasonably prospects of

¹ 2014 2325 (LCC)

² (Case no: 19577/09) ZAGPPHC 489 at para 25

³ (213/16) [2017] ZASCA 17 (22 March 2017)

success in an appeal. It is not whether a litigant has an arguable case or mere possible of success.”

[7] Having considered the grounds of appeal and the heads of arguments by both counsel, I am not persuaded that the requirements of section 17(1) (a) of the Act have been met. I am also not convinced that there is a compelling reason to grant the application for leave to appeal. There is therefore no prospect that the appeal would succeed.

[8] Accordingly, the application for leave to appeal must fail.

ORDER

[9] The following order is issued:

(a) The application for leave to appeal is dismissed with costs.

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

DATE JUDGMENT RESERVED: 17 November 2022

DATE JUDGMENT DELIVERED: 14 April 2023

APPEARANCES

For the Applicants: Seboko Attorneys

Instructed by: Lawyers for Black People (NPC) SA

Counsel for the First Respondent: Adv E Sithole

Instructed by: Majang Inc Attorneys