



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

CASE NO: 43105/2021

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

In the matter between:

**DELI ONE CATERING (PTY) LTD
(REG. NO.: 2004/016639/07)**

Applicant

And

**ATTACQ WATERFALL INVESTMENTS
COMPANY LTD (REG. NO.: 2000/013587/07)**

First Respondent

**EAST AND WEST INVESTMENTS
(PTY) LTD (REG. NO.: 1945/018444/07)**

Second Respondent

Neutral Citation: *Deli One Catering (Pty) Ltd v Attacq Management Services and Other* (Case No: 43105/2021) [2023] ZAGPJHC 325 (17 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 17 April 2023.*

JUDGMENT

(Leave to Appeal Application)

SENYATSI J:

- [1] This is an application for leave to appeal the judgment in terms of which the applicant was evicted from the commercial property owned by the respondent owing to its failure to pay the rental and other related charges.
- [2] The applicant raises various grounds of appeal in the notice of application which I intent not to repeat in this judgment.
- [3] The law to be applicable to an application for leave to appeal a judgment is trite. The applicant bears the onus to convince the court hearing the application that not only did the court err in its findings, additionally that another court would come to a different conclusion.¹

¹ Goosen & Others v The Mont Chevaux Trust (148/2015) [2017] ZASCA 89

[4] An application for leave to appeal must meet the requirements set out in 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 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) the decision sought on appeal does not fall within the ambit of section 16 (2)(a);

(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] The word “would” in section 17 (1)(a)(i) of the Superior Courts Act No: 10 of 2013 has been held to denote “a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against², and that the test for leave to appeal to be successful is more stringent than the traditional test.”

² See *Mont Chevaux Trust v Goosen and Others* (Case No: LCC 14R/2004)

[6] In *Notshokovn v S*³, the Supreme Court of Appeal held as follows on the test:

“...an appellant, on the other hand faces a higher and stringent threshold in terms of the Act compared to the provisions of the repealed Supreme Court Act 59 of 1959.”

[7] In *MEC for Health Eastern Cape v Mkhintha and Another*⁴, Schippers AJA provided the following guidance on the test:

“[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17 (1)(a) of the Supreme Courts Act 10 of 2013 makes it that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.”

[8] In this case, the requirements of section 17(1)(a) of the Superior Courts Act have not been met. There is also no compelling reason advanced as to why the appeal should be heard.

³ [2016] ZASCA 112 para 2

⁴ [2016] ZASCA 176 paras 16 -18

[9] I have considered the grounds of appeal raised against my judgment. I am of the view that the law and the facts were applied correctly in my judgment.

[10] Accordingly, I am not persuaded that another court will come to a different conclusion.

ORDER

[11] 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: 09 February 2023

DATE JUDGMENT DELIVERED: 17 April 2023

APPEARANCES

Counsel for the Applicants: Adv WJ Scholtz

Instructed by: Gideon Pretorius Inc

Counsel for the Respondent: Adv RJ Boucher

Instructed by: Martini Patlansky Attorneys