

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

CASE NO:

19616/2022

(1)	<u>REPORTABLE: YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES:</u> <u>YES/NO</u>
(3)	<u>REVISED.</u>
..... DATE	

In the matter between:

**NDYEBO TREASURE JOGWANA**

Applicant

And

**VAJETH RIAZ AMOD**  
Respondent

First

**VAJETH SIBUSISIWE JOY**

Second Respondent

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**JUDGMENT**

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**MAKUME, J:**

[1] The Applicant in this application was the first Respondent in the main application

- [2] On the 28<sup>th</sup> April 2023 I granted an order evicting the Applicant from the premises known as 34B Reitfontein Road Edenburg Rivonia, Sandton.
- [3] On the 30<sup>th</sup> April 2023 the Applicant filed notice seeking leave from this Court to appeal against the whole of the judgement and orders granted on 28<sup>th</sup> April 2023.
- [4] On the 30<sup>th</sup> May 2023 the parties were advised that the application for leave would be heard by me on the 14<sup>th</sup> June 2023 virtual.
- [5] On the 9<sup>th</sup> June 2023 five days before the hearing date the Applicant filed a notice in terms of Rule 28 seeking an order to amend his notice of appeal dated the 30<sup>th</sup> April 2023.
- [6] When the parties appeared before me virtual on the 14<sup>th</sup> June 2023 the Applicant made no mention nor made any submission in respect of the Rule 28 notice. I take it that the Applicant abandoned that application. I say nothing further about that notice.
- [7] The grounds of appeal advanced by the Applicant refer to various aspects in which the Applicant argues that this Court erred. Firstly, it is about my ruling or the Applicant's counter application, secondly my ruling about allowing new matter raised in reply then about the description of the property. That in a nutshell are the grounds on which the Applicant says he has reasonable prospects of success before a Court of Appeal.
- [8] The principles governing applications for leave to appeal are set out in Section 17(1) of the Superior Court Act number 10 of 2013 which reads as follows:

“Leave to appeal may only be considered 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 judgements on the matter under consideration.

[9] The Statute is clear and unambiguous it is that the test remains whether or not there is a reasonable prospect that another Court would come to a different conclusion. In **Caratco (Pty) Ltd vs Independent Advisory (Pty) Ltd 2020 (5) SA 35 (SCA)** the Court pointed out that if the Court was not persuaded that there are prospects of success it must still enquire whether there are compelling reasons to consider the appeal.

[10] In **Ramakotsa and Others vs African National Congress and Another (724/2019) [2021] ZASCA 31 (31 March 2021)** Dlodlo JA at paragraph 10 concluded as follows:

“The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a Court of appeal could reasonably arrive at a conclusion different to that of the trial Court. In other words, the Appellants in this matter needs to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects must not be remote but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion be shown to exist.”

[11] The Applicant has referred this Court to the SCA decision in **City of Johannesburg vs Changing Tides 74 (Pty) Ltd and Others 2012 (6) SA 294 (SCA)** and in particular quotes that Court as having said the following “the right of property owner is not absolute and that one can imagine cases where it would not be just and at the instance of a private land owner.”

[12] The Applicant has not directed this Court to the actual paragraph in any case that case only dealt with a just and equitable date for the order of eviction to take effect and nothing else.

[13] The Applicant's defence was not whether it is just and equitable to evict it was based on totally different grounds. He actually challenged the Respondent's *locus standi* as well as the validity of the lease agreement. In his notice of appeal at paragraph (m) he broadly says that it is not just and equitable to evict the first Respondent and gives no reason or basis for that assertion.

[14] I have come to the conclusion that on a reading and analysis of the application for leave to appeal a sound, rational basis to conclude that there is a reasonable prospects of success are glaringly lacking

[15] I am not persuaded that there are any reasonable prospects that another Court would come to a different conclusion neither am I convinced that there are compelling reasons to grant leave. The Applicant has once again sought to drag this mater on hopeless and unsound reasons. This Court must once more demonstrate its displeasure by granting a punitive costs order.

#### ORDER

1. The Application for Leave to Appeal is dismissed.
2. The Applicant is ordered to pay the Respondent taxed costs on attorney and own client costs.

Dated at Johannesburg on this day of June 2023

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**M A MAKUME  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, JOHANNESBURG**

**Appearances:**

DATE OF HEARING : JUNE 2023

DATE OF JUDGMENT : JUNE 2023

FOR APPLICANT : IN PERSON

FOR RESPONDENT : ADV CAMPBELL

INSTRUCTED BY : MESSRS BENUTT MCNAUGHTON ATTORNEYS