



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

**Case No: 51100/2021**

**Date of hearing: 8 June 2023**

**Judgment: 10 July 2023**

- (1) REPORTABLE: YES / NO  
(2) OF INTEREST TO OTHER JUDGES: YES / NO  
(3) REVISED.
- 

**IN THE MATTER BETWEEN:**

**STEVE DLWATHI**

**APPLICANT (IN THE  
APPLICATION FOR LEAVE TO  
APPEAL)**

**AND**

**DAYTONA (PTY) LTD**

**RESPONDENT (IN THE  
APPLICATION FOR LEAVE TO  
APPEAL)**

**IN RE:**

**DAYTONA (PTY) LTD**

**APPLICANT**

**AND**

**STEVE DLWATHI**

**RESPONDENT**

**IN RE:**

**STEVE DLWATHI**

**APPLICANT**

**AND**

**HYDE PARK AUTO (PTY) LTD t/a**

**RESPONDENT**

**SANDTON AUTO**

**DAYTONA (PTY) LTD**

**FIRST RESPONDENT**

**SHAREHOLDERS OF THE**

**SECOND RESPONDENT**

**FIRST RESPONDENT**

**ABRINA 3765 (PTY) LTD  
T/A BMW SANDTON**

**THIRD RESPONDENT**

**SHAREHOLDERS OF THE  
THIRD RESPONDENT**

**FOURTH RESPONDENT**

**THE SHERIFF OF THE COURT**

**FIFTH RESPONDENT**

---

**JUDGMENT: APPLICATION FOR LEAVE TO APPEAL**

---

**Strijdom AJ**

1. This is an application for leave to appeal the whole of my judgment to the Full Court of this division, handed down on 28 March 2023.
2. The applicant's grounds of appeal are set out in the application for leave to appeal.
3. Section 17(1)(a) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be granted where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success, or if there is some compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.
4. Each application for leave to appeal must be decided on its own facts. Some examples of what will be regarded as compelling reasons have been identified. They include:

- (a) The substantial importance of the case to the applicant or to both the applicant and respondent.
  - (b) The decision sought to be appealed against, involves an important question of law.
  - (c) The administration of justice, either generally, or in the particular case concerned, requires the appeal to be heard.
  - (d) An issue of public importance, which will have an effect on future matters.
5. With the enactment of section 17 of the Act, the test has now obtained statutory force and is to be applied, using the word 'would' in deciding whether to grant leave. The test is: 'would another court come to a different decision.'
6. In the decision of **Mont Chevaux Trust v Goosen and 18 Others**,<sup>1</sup> the Court held that the wording of the subsection raised the bar for the test that has now to be applied to any application for leave to appeal.
7. It was decided in **Notshokovu v S<sup>2</sup>** that an appellant faces a higher and stringent threshold in terms of the Act.
8. 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.<sup>3</sup>

---

<sup>1</sup> 2014 JDR 2325 (LCC)

<sup>2</sup> (157/15) [2016] ZA SCA 1112 (7 Sept 2016) at para 2 See also Democratic Alliance v Acting Director of Public Prosecution and Others (19577/09) [2016] ZAGPPHC 489 (24 June 2016)

<sup>3</sup> Van Heerden v Cronwright & Others 1985 (2) SA 342 at 343 H

9. In respect of all the grounds of appeal raised by the applicant, my judgment deals with the facts and the law as presented by the parties and how the Court arrived at each conclusion on the contentions raised by the parties.
10. When the facts and the law were examined, there is in my view no sound or rational basis for the conclusion that another Court would come to a different decision. I am also of the view that there are no compelling reasons why the appeal should be heard.
11. In the result the application for leave to appeal is dismissed with costs.

---

**STRIJDOM JJ  
ACTING JUDGE OF  
THE HIGH COURT  
OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION  
JOHANNESBURG**

Appearances:

For the Applicant: In person (Adv S Dlwathi)

For the Respondent: Adv U. van Niekerk

Instructed by: Alan Allschwang & Associates Inc.