



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

CASE NO: 28859/2020

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

In the matter between: -

LEBITSE PALESA

Applicant

and

ALLIED VALUE INVESTORS (PTY) LTD

First Respondent

PAKKIES LETSEPA PROMISE

Second Respondent

THE CITY OF JOHANNESBURG

Third Respondent

METROPOLITAN MUNICIPALITY

**Judgment – (Leave
to Appeal Application)**

SENYATSI J:

- [1] This is an application for leave to appeal the judgment for eviction handed down on 23 November 2021.
- [2] Notice of application for leave to appeal was filed on 15 December 2021, and was not followed by the grounds of appeal. Furthermore, the notice of appeal also stated that the grounds of appeal would be filed within fifteen (15) days of the notice.
- [3] To date of writing this judgement, those grounds have not been provided, however, in the heads of arguments submitted by the applicant, she contends that in the judgement the court misdirected itself by stating that the lease was concluded by the second respondent, when in fact it was concluded by the applicant. This contention takes the application for leave no further because the applicant in fact admits that she concluded the lease agreement.
- [4] The consideration on whether or not to consider an application for leave to appeal is regulated by Rule 49 (1) (b) of the Uniform Rules of Court and section 17 (1) (a) of the Superior Courts Act No: 10 of 2013. This is important because no condonation for the late filing of the grounds of appeal was effected.
- [5] Rule 49 (1) (b) of the Rules states as follows:
- “When leave to appeal is required and it has not been requested at the time of the judgment or order, application for such leave shall be made and the grounds therefore shall be furnished within 15 days after the date of the order appealed against: Provided that when the reasons or full reasons for the court's order are given on a later date than the date of the order, such application may be made within 15 days after such later date provided further that the court may, upon good cause shown, extend the aforementioned periods of 15 days.”

[6] The failure for initial 15 days' period to provide grounds of appeal may well be forgivable because the reasons in this case were provided much later after the order was granted. However, the applicant had 15 days period effective from 20 October 2022 to provide the full grounds of appeal. This was required to be done by way of an interlocutory application for condonation of the late filing of the grounds. In the instant case, no such application, as already stated, was made nor were the grounds of appeal set out as required by the Rules.

[7] Section 17 (1) (a) of the Superior Courts Act No 10 of 2013 provides as follows:

“17(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;
- (ii) there is a compelling reason why the appeal should be heard including conflicting judgments on the matter under consideration.”

[8] Dealing with the test required to be made by the courts considering an application for leave to appeal, in *Zweni v Minister of Law and Order of the Republic of South Africa*¹ the court stated the following:

“Leave is granted if there are reasonable prospects of success so much is trite”.

[9] The test under the new section 17 (1) (a) of the Superior Courts act is more stringent. The applicant must show that the appeal “would” have a prospect of success.

¹ 1993 (1) SA 523 (A)

- [10] In her heads of argument, the applicant submits, inter alia that the order was granted in her absence; that the court failed to take into account that the applicant would be rendered homeless and that the proceedings were issued in the High Court instead of the Magistrate's Court.
- [11] There were no circumstances set out in the papers by the applicant regarding her homelessness. Instead, the applicant states in her papers that she was a student, studying LLM degree at one of the local universities.
- [12] Regard being had to the grounds of appeal submitted in the heads of arguments as well as failure by the applicant to file condonation for the late filing of the grounds for appeal, I'm not persuaded that the applicant in this application for leave to appeal has succeeded to show that the appeal has a reasonable prospect of success, differently put, there is no basis that an appeal court would come to a different conclusion.
- [13] Consequently, the application for leave to appeal cannot succeed.

ORDER

- [14] the application for leave to appeal is refused with costs

ML SENYATSI

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

DATE LEAVE TO APPEAL JUDGMENT RESERVED: 17 November 2022

DATE JUDGMENT DELIVERED: 1 February 2023

APPEARANCES

Applicant: In person

Counsel for the respondent: Adv. C Laurent

Instructed by: SSLR Inc.