



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

REPUBLIC OF SOUTH AFRICA

CASE NO:40451/2019

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

In the matter between:

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

First Applicant

And

REGIMENTS FUND MANAGERS (PTY) LTD

First Respondent

REGIMENTS SECURITIES LTD

Second Respondent

ASH BROOK INVESTMENTS 15 (PTY) LTD

Third Respondent

CORAL LAGOON 194 (PTY) LTD

Fourth Respondent

KGORO CONSORTIUM (PTY) LTD

Fifth Respondent

EUGENE NEL N.O.

(second respondent cited in his capacity
as the curator bonis of the applicants)

Sixth Respondent

REASONS

(Leave to Appeal)

SENYATSI J:

[1] On 11 November 2022 I granted leave to appeal the judgment that I gave on 5 July 2022 which was followed by the reasons which were handed down on 1 September 2022.

[2] The respondents requested the reasons for permitting leave to appeal and these are as set out hereunder.

[3] The test on whether an order is appealable has been set out by our courts in the past. The court in *Zweni v Minister of Law and Order*¹ which was decided before the introduction of Section 17(1)(a) of the Superior Courts Act 10 of 2013 which states as follows:

“The jurisdiction requirements for a civil appeal emanating from a Provincial or Local Division sitting as a Court of first instance are twofold:

¹ 1993 (1) SA 523 (A) at pg 531 B-D

1. the decision appealed against must be a 'judgment or order' within the meaning of those words in the context of s20(1) of the Act; and
2. the necessary leave to appeal must have been granted, either by the court of first instance, or, where leave was refused by it, by this court. Leave is granted if there are reasonable prospects of success. So much is trite but if the judgment or order sought to be appealed against does not dispose of all the issues between the parties the of convenience must, in addition favour a piecemeal consideration of the case. In other words, the test is then 'whether the appeal - if leave were given - would lead to a just and reasonably prompt resolution of the real issue between the parties' (per *Colman J in Swartzberg vs Barclays National Bank* 1975 (3) SA 515 (W) at 518B)."

[4] The promulgation of the Superior Court Act NO 10 of 2013 introduced a new test to apply in an application for leave to appeal a judgment. Section 17(1) (a) of the said Act now states 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."

- [5] The effect of the section is that the applicant must now show in his application that the appeal would have a reasonable prospect of success, unlike before the Act was passed when the threshold was much lower.
- [6] More importantly, the approach is now developed as a second threshold to be considered if the provisions of section 17(1)(a) do not find application. The court must now, even if it finds that there is no prospect that the appeal would have a reasonable prospect of success, consider whether it is in the interests of justice that the appeal should be heard.
- [7] In the instant case, the controversy was whether or not there was a full disclosure of the assets by the directors of the respondents to enable the trustees to make a determination of the available resources out of which legal fees could be paid. The respondents submitted that the disclosure was fully made whilst the applicant contended that it was not. Judgment was then granted in favour of the respondents.
- [8] Having considered the application for leave to appeal the judgment and regard being had to the grounds therein advanced, I was persuaded that the appeal would have a reasonable prospect of success.
- [9] Accordingly I stand by the order granted.

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

DATE LEAVE TO APPEAL REASONS REQUESTED: 22 November 2022

DATE REASONS DELIVERED: 2 February 2023

APPEARANCES

Counsel for the Applicant: Adv G Budlender SC
Adv K Saller

Instructed by: National Prosecuting Authority; Adv Suna de Villiers

Counsel for the Respondents: Adv IV Maleka SC
Adv T Scott

Instructed by: Smit Sewgoolam Inc.