

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

**REPUBLIC OF SOUTH AFRICA**

 **CASE NO**: **9066/2020**

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

**…………..…………............. ……………………**

 **SIGNATURE DATE**

 DATE SIGNATURE

In the matter between:

**HAPPY VALLEY HOLIDAY HOTEL** First Applicant

**AND PLEASURE RESORT 1972 (PTY) LTD**

**VALLEY LODGE (PTY) LTD** Second Applicant

and

**NAKOSENI PROPERTY DEVELOPERS (PTY) LTD** First Respondent

**MOGALE CITY METROPOLITAN** Second Respondent

**MUNICIPALITY**

**GAUTENG PROVINCIAL DEPARTMENT**

**OF AGRICULTURE AND RURAL DEVELOPMENT** Third Respondent

**GAUTENG DEPARTMENT ROADS AND** Fourth Respondent

**TRANSPORT**

**JUDGMENT**

**(Leave to Appeal Application)**

**SENYATSI J:**

[1] This is an application to appeal the order I granted on the 15 September 2023 in terms of which I dismissed the reliefs sought by the applicants.

[2] The grounds for leave to appeal the judgment have been fully set out in the notice of application and will not be repeated in this judgment.

[3] The requirement and the test for granting leave to appeal are regulated by 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 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.”

[4] In *Mont Chevaux Trust v Goosen and Others*[[1]](#footnote-1) Bertelsman J interpreted the test as follows:

“It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion…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.”

[5] In *Acting National Director of Public Prosecutions and Others v Democratic Alliance: In re: Democratic Alliance v Acting National Director of Public Prosecutions*[[2]](#footnote-2) the court acknowledged the test by Bestertsman J.

[6] In *Mothule Inc Attorneys v The Law Society of the Northern Provinces and Another*[[3]](#footnote-3), the Supreme Court of Appeal stated as follows regarding the trial court’s liberal approach on granting leave to appeal:

 “It is important to mention my dissatisfaction with the court a quo’s granting of leave to appeal to this court. The test is simply whether there are any reasonably prospects of success in an appeal. It is not whether a litigant has an arguable case or mere possible of success.”

[7] Having considered the grounds of appeal and the heads of arguments by both counsel, I am not persuaded that the requirements of section 17(1) (a) of the Act have been met. I am also not convinced that there is a compelling reason to grant the application for leave to appeal. There is therefore no prospect that the appeal would succeed.

  **ORDER**

[8] The following order is issued:

(a) The application for leave to appeal is dismissed with costs

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**SENYATSI M L**

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG LOCAL DIVISION**

**Delivered:** This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the order is deemed to be the 2 February 2024.

**Appearances**:

For the Applicant: Adv NGD Maritz SC

Instructed by: Messrs Se Kanyoka Attorneys

For the First Respondent: Adv JA Venter

Instructed by: Charles Rossouw Attorneys

For the Second Respondent: Adv SD Mitchell

Instructed by: MHP Attorneys

Date Judgment Reserved: 29 November 2023

Date of Judgment:2 February 2024

1. 2014 2325 (LCC) [↑](#footnote-ref-1)
2. (Case no: 19577/09) ZAGPPHC 489 at para 25 [↑](#footnote-ref-2)
3. (213/16) [2017] ZASCA 17 (22 March 2017) [↑](#footnote-ref-3)