



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

REPUBLIC OF SOUTH AFRICA

CASE NO: 9066/2020

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

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SIGNATURE	DATE

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
MUNICIPALITY**

Second Respondent

GAUTENG PROVINCIAL DEPARTMENT

OF AGRICULTURE AND RURAL DEVELOPMENT

Third Respondent

**GAUTENG DEPARTMENT ROADS AND
TRANSPORT**

Fourth Respondent

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 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 judgments on the matter under consideration.”

[4] In Mont Chevaux Trust v Goosen and Others¹ 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 Prosecutions² the court acknowledged the test by Bestertsman J.

[6] In Mothule Inc Attorneys v The Law Society of the Northern Provinces and Another³, 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

¹ 2014 2325 (LCC)

² (Case no: 19577/09) ZAGPPHC 489 at para 25

³ (213/16) [2017] ZASCA 17 (22 March 2017)

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