

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2020/21526

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

14 November 2022

DATE

MOKOSE SNI

In the matter between:

SOUTH AFRICAN MEDICAL ASSOCIATION NPC

Applicant

and

SOUTH AFRICAN MEDICAL ASSOCIATION

TRADE UNION

GERHARD VOSLOO N.O.

DR CEDRIC SIPHAMANDLA SIHLANGU

DR TSHILIDZI ORECIOUS SADIKI

DR NKATEKO G MNISI

DR MALOSE MARAKALALA

DR JOHANNE M MKHABELA

1st Respondent

2nd Respondent

3rd Respondent

4th Respondent

5th Respondent

6th Respondent

7th Respondent

LEAVE TO APPEAL

MOKOSE J

[1] The first to seventh respondents (referred to as the applicants in this application for leave to appeal) have applied for leave to appeal to the Supreme Court of Appeal alternatively, the Full Court of this division against the order I delivered on 19 May 2020 under case number 21526/2020.

[2] The applicants seek leave to appeal on several grounds as stated in their application for leave to appeal. Counsel for the applicants addressed the court on the salient points raised in the application. These points were opposed by counsel for the respondent on the grounds that I have reasoned out well in my judgment. Furthermore, submissions were made that there are no prospects that another court would have come to a different conclusion.

[3] The test for granting an application for leave to appeal is whether there are reasonable prospects that another court would have come to a different conclusion. Section 17 of the Superior Courts Act 10 of 2013 ("the Act") states that leave to appeal may only be granted where the judge or judges are of the opinion that:

- (a) (i) the appeal would have a reasonable prospect of success; or
- (ii) for some other compelling reason it should be heard, including conflicting judgements on the matter under consideration;
- (b) the decision sought does not fall within the ambit of Section 16(2)(a) of the Act; and
- (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.

[4] The test laid down in Section 17 of the Act is now a subjective one and no longer an objective test. There must be a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.¹

[5] I had dealt in depth with all the issues raised in the application for leave to appeal in my judgement. After listening to submissions by both counsel for the applicants and counsel

¹ The Mont Cheveaux Trust (IT2012/28) v Tina Goosen & 18 Others (unreported judgment delivered on 3 November 2014)

for the respondent and after reading the application for leave to appeal, I am of the view that there are no prospects that another court would come to a different conclusion.

[6] Accordingly, the following order is granted:

The application for leave to appeal is dismissed with costs.



MOKOSE J

20 August 2020

(Revised on 14 November 2022)