

**REPUBLIC OF SOUTH AFRICA**



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

**CASE NO:1452/2022**

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

04 MAY 2022

DATE

SIGNATURE

In the matter between:

**THE ROAD ACCIDENT FUND**

**APPLICANT**

**And**

**THE AUDITOR-GENERAL OF SOUTH-AFRICA**

**RESPONDENT**

**This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on Caselines by the Judge or his/her**

**secretary. The date of this judgment is deemed to be 04 MAY 2022.**

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## **APPLICATION FOR LEAVE TO APPEAL JUDGMENT**

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### **COLLIS J**

#### INTRODUCTION

[1] This is an application for leave to appeal against the judgment and order I made on 24 February 2022. The order of the court reads as follows:

“Consequently, the application falls to be dismissed with costs to be reserved.”

[2] The application is premised on the grounds as listed in the Application for Leave to Appeal dated 17 March 2022.

#### LEGAL PRINCIPLES

[3] Section 17 of the Superior Court’s Act provides as follows:<sup>1</sup>

*(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-*

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<sup>1</sup> Act 10 of 2013

- (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;*
- (b) *the decision sought to appeal does not fall within the ambit of section 16(2)(a);*
- 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] In the present instance the Applicant seeks leave to appeal relying on section 17(1)(a)(i) and (ii); i.e. that the “...*an appeal would have a reasonable prospect of success*” and also that “there is some other compelling reason that the appeal should be heard, including conflicting judgments on the matter under consideration.”

[5] As to the test to be applied by a court in considering an application for leave to appeal, Bertelsmann J in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para 6 stated the following:

‘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, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. 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.’

[6] ‘In order to succeed, therefore, the appellant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.’<sup>2</sup>

[7] In *Fair-Trade Independent Tobacco Association v President of the Republic of South Africa and Another*<sup>3</sup> the Full Court of this Division observed that:

*“As such, in considering the application for leave to appeal it is crucial for this Court to remain cognizant of the higher threshold that needs to be met before leave to appeal may be granted. There must exist more than just a mere possibility that another court, the SCA in this instance, will, not might, find differently on both facts and law. It is against this background that we consider the most pivotal grounds of appeal.”*

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<sup>2</sup> *S v Smith* 2012 (1) SACR 567 (SCA) at para 7.

<sup>3</sup> Case no: 21688/2020 [2020] ZAGPPHC 311 (24 July 2020) at [6].

[8] The applicant and the respondent on request by this court had filed written Heads of Argument in order to facilitate the virtual hearing of the matter.

[9] Having read the papers and having carefully heard counsel I come to the conclusion that there is a reasonable prospect that another court would come to a different conclusion on the order of the court.

#### ORDER

[10] Consequently I make the following order:

10.1 The applicant is granted leave to appeal to the Supreme Court of Appeal;

10.2 Costs, including costs of two counsel, to be costs in the appeal.



**C. COLLIS**  
**JUDGE OF THE HIGH COURT**

**Appearances**

Counsel for the Applicant	: Adv. J.A Motepe SC & Adv. M.D Stubbs
Attorney for the Applicant	: Malatji & Co Attorneys
Counsel for the Respondent	: Adv. P. Pretorious SC & Adv R. Tshetlo
Attorney for the Respondent	: Fairbridges Wertheim Becker Attorneys
Date of Hearing	: 21 April 2022
Date of Judgment	: 04 May 2022

**Judgment transmitted electronically.**