

**IN THE HIGH COURT OF
(GAUTENG DIVISION,**



**SOUTH AFRICA
PRETORIA)**

CASE NO: 75594/2019

DELETE WHICHEVER IS NOT APPLICABLE	
•	REPORTABLE: NO
•	OF INTEREST TO OTHER JUDGES: NO
•	REVISED
<u>25 July 2022</u>	_____
DATE	SIGNATURE

**Heard on: 30 June 2022
Delivered on: 25 July 2022**

In the matter between:

THE OFFICE OF THE PUBLIC PROTECTOR

Applicant

and

MAKHOSINI MSIBI

Respondent

In re

MAKHOSINI MSIBI

Applicant

and

THE OFFICE OF THE PUBLIC PROTECTOR

First Respondent

BUSISIWE MKHWEBANE

Second Respondent

ROAD TRAFFIC MANAGEMENT CORPORATION

Third Respondent

JUDGMENT

VUMA, AJ

[1] The Public Protector (“the applicant”) seeks leave to appeal to the Supreme Court of Appeal against the whole order and judgment, save for the finding made in paragraph 55 of the judgement delivered by me on 27 January 2022, on the grounds that I erred both in fact and in law as set out in the judgment.

[2] The applicant contends that the appeal would have a reasonable prospect of success as contemplated by section 17(1)(a)(i) of the Superior Courts Act 10 of 2013 (“the Act”). The applicant further contends that there are other compelling reasons why the appeal should be heard as contemplated by section 17(1)(a)(ii) of the Act.

[3] It is trite that an application for leave to appeal a decision from a single Judge of the High Court is regulated by Rule 49 of the Uniform Rules of Court. The substantive law pertaining to application for leave to appeal is dealt with in section 17 of the Superior Courts Act 10 of 2013.

[4] The grounds of appeal are found in the applicant’s Notice of Application for Leave to Appeal.

[5] Of note the applicant argues that there are compelling reasons why another court should hear this appeal, *inter alia*, a direct conflicting judgment handed down by this division of the High Court on the matter under consideration. The applicant submits that this reason alone suffices for leave to be granted to appeal to the Supreme Court of Appeal.

[7] The respondent did not oppose the application.

[8] The principles governing the question whether leave to appeal should be granted are well established in our law. Such principles have their origin in the common law and they entail a determination as to whether reasonable prospects of success exist that another court, considering the same facts and the law, may arrive to a different conclusion to that of the court whose judgment is being impugned. The principles now find expression in section 17 of the Superior Court Act 10 of 2013

[9] It has also been generally accepted that the use of the word "would" in section 17 of the Act added a further consideration that the bar for the test had been raised with regard to the merits of the proposed leave to appeal before relief can be granted. The Act widened the scope in which leave to appeal may be granted to include a determination of whether "there is some compelling reason why the appeal should be heard."

[10] In my view, considering the applicant's arguments and the impugned judgment and the order, the applicant has succeeded to make out a case for leave to appeal. I am of the further view that there are compelling reasons why leave to appeal should be granted to the Supreme Court of Appeal.

[11] In the premises I make the following order:

ORDER:

1. Leave to appeal is granted.
2. Leave is granted to appeal to the Supreme Court of Appeal.
3. The costs of this application are costs in the appeal.

Livhuwani Vuma
Acting Judge
Gauteng Division, Pretoria

ALA Heard on: 30 June 2022
ALA Judgment handed down on: 25 July 2022

Appearances

For Applicant: Adv. H. Smith SC

Assisted by: Adv. S. Mhantsi

Instructed by: VZLR Inc.

For Respondent/s: No appearance