REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO:30607/2020

DOH: 27 MAY 2022

REPORTABLE: **NO**/YES
OF INTEREST TO OTHER JUDGES: **NO**/YES
REVISED.

.....01 JULY 2022
SIGNATUREDATE

In the matter of:

YOLANDE FOURIE **APPLICANT**

and

SPRUYT INCORPORATED ATTORNEYS **FIRST RESPONDENT**

THE ROAD ACCIDENT FUND **SECOND RESPONDENT**

OFFICE OF THE LEGAL PRACTICE COUNCIL **THIRD RESPONDENT**

JUDGEMENT

THIS JUDGEMENT HAS BEEN HANDED DOWN REMOTELY AND SHALL BE CIRCULATED TO THE PARTIES BY WAY OF E-MAIL / UPLOADING ON CASELINES. ITS DATE OF HAND DOWN SHALL BE DEEMED TO BE 30 JUNE 2022

Bam J

A. Introduction

1. This is an opposed application for leave to appeal the judgement handed down by this court on 8 March 2022. The application is brought in terms of section 17 (1) (a) (i) of the Superior Court Act.

2. The applicant's grounds for leave to appeal are set out in her Application for Leave to Appeal[1], supported by her Heads of Argument[2] filed of record. I do not repeat all the grounds of appeal in this judgement, but I mention a few.

3. The applicant avers that:

> (i) The court erred in refusing to find in favour of invalidity of the two agreements, based only on the alleged violations of the Contingency Fees Act and not finding that the agreed fee rate of R7000 per hour plus an annual escalation of 10% thereon effective on 1 January every year is excessive and unreasonable and that the first agreement signed in [November 2016] and the second fee agreement circumvented the provisions of the Contingency Fees Act, (CFA).

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1 Caselines 020
2 Caselines 022

(ii) The court erred in concluding that the applicant ought to have sought rectification as in law a contingency fee agreement which does not comply with the Contingency Fees Act cannot be rectified as it is invalid and unenforceable.

(iii) The court erred in concluding that it could not grant relief due to material disputes of fact as the only disputes of fact were confined to the existence of the alleged verbal part of the agreement between Christo and the Applicant and the authority of Christo to act for the First respondent when concluding that agreement. There were no further material disputes of fact in respect of the fee rate of R7000 per hour and in respect of he terms of the second fee agreement concluded on 30 January 2020 or any other material issue.

(iv) The court erred by not finding that the agreed fee rate of R7000 per hour plus an escalation of 10% effective on 1 January every year was excessive and unreasonable in the circumstances and that there are prospects on appeal that it would be found that such fee rate offends public policy and that the agreement would be set aside.

(v) The court erred in not finding that a fee rate of R7000 per hour irrespective of who did the work at the offices of the first respondent is unlawful in that it enabled non-legal practitioners to charge the fees of a legal practitioners in contravention of the Legal Practice Act.

(vi) The court erred in not finding that the disputes of fact were not *bona fide*.

(vii) The court erred in not accepting the applicant's factual version in respect of the verbal agreements and events pertaining to Christo.

(viii) The court erred in not finding that the integration rule does not apply when the invalidity of an agreement is sought.

B. The law

4. Section 17 (1) reads:

> ‘Leave to appeal
>
> 17. (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;
>
> (b) the decision sought on 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.

5. As to how the test set out in section 17 (1) (a) (i) is to be understood, in terms of the standard that the applicant must meet, reference is made to the remarks of the court in *Public Protector South Africa* v *Commissioner for the South African Revenue Service*:

> ‘Section 17(1) sets out an inflexible threshold to grant leave to appeal. Therefore, the Public Protector must, meet this stringent threshold set out in s 17 of the Superior Courts Act to succeed with her respective application for leave to appeal. This threshold set out in s 17(1) of the Superior Courts Act is now even more stringent than when the now repealed Supreme Court Act 59 of 1959 was still applicable…Section 17(1) uses the word “only”. It provides that:
>
> “Leave to appeal may “only” be given…” and then proceeds to set out the circumstances under which leave to appeal may be given. For instance, in *South African Breweries (Pty) Ltd* v *The Commissioner of the South African Revenue Services* (SARS)[3], the Court cited with approval the following passage from *Mont Chevaux Trust* v *Tim Goosen & 18 Others*, 2014 JDR 2325 [LCC] para [6]:

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3 [2017] 2 AGPPHC 340 (28 March 2017) at paragraph 6

> "It is clear that the threshold for granting leave to appeal against a judgment of the High Court has been raised in the new Act. The former test whether leave to appeal should be granted was reasonable prospect that another court might come to a different conclusion. See Van Heerden v Cronwright & Others 1985 (2) SA 343(T) at 34H. 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."

'….Finally, on the rigidity of the threshold, Plaskett AJA, as he then was, wrote the following in the judgment in which Cloete JA and Maya JA, as they then were, concurred in *S* v *Smith* 2012(1) SACR 567, 570 par [7]:

> "What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. See *S* v *Mabena & Another* 2007(1) SACR 482 (SCA) para [22]. 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 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."[4]

6. In *Acting National Director of Public Prosecutions and Others* v *Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others,* the court reasoned the test introduced by section 17 (1) (a) (i) with reference to the reasoning of Bertelsmann J in *The Mont Chevaux Trust (IT2012/28)* v *Tina Goosen & 18 Others*[5], stating that the Superior Courts Act had raised the bar for granting leave to appeal[6].

C. Merits

7. I mention that the applicant had come to court seeking that the court declare certain agreements as Contingency Fee Agreements and thereafter, owing to defects that the

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4 (84074/19) [2021] ZAGPPHC 467 (15 July 2021), paragraphs 6
5 As set out in paragraph 5 of this judgement
6 (19577/09) [2016] ZAGPPHC 489 (24 June 2016) at paragraph 25

applicant contended for, that the court declare the two agreements, unlawful, invalid and unenforceable. That relief was not granted and the reasons for refusing it are set out in the judgment.

8. In her application for leave to appeal supported by the applicant's Heads of Argument, the applicant contends that the court erred in failing to find that the agreements were unlawful, invalid and unenforceable owing to their terms being inimical to public policy. I note that there was no such attack against the agreements in the applicant's founding affidavit, neither was the point canvassed during the hearing of the application. Notwithstanding the additional attack raised by the applicant, I am persuaded that the applicant has met the threshold set out in section 17 (1) (a) (i) of the Superior Court Act. The application for leave to appeal must therefore succeed.

D. Conclusion

9. I accordingly conclude that leave to appeal to the Full Court must be granted.

E. Order

10. Leave to appeal is granted to the Full Court. Costs shall be costs in the cause.

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NN BAM

JUDGE OF THE HIGH COURT,

PRETORIA

APPEARANCES:

APPLICANTS' COUNSEL:	Adv Ferreira SC
Instructed by:	A Myburgh
FIRST RESPONDENTS' COUNSEL:	Adv Potgieter SC
Instructed by:	A Smith