



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

**CASE NO: 47204/2021**

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

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In the matter between:

**3<sup>RD</sup> LEVEL MARKETING AND MEDIA  
APPLICANT**

**GROUP (PTY) LTD**

AND

**SOUTH AFRICAN BROADCASTING  
RESPONDENT**

**CORPORATION LTD**

***In re:***

**SOUTH AFRICAN BROADCASTING APPLICANT**

**CORPORATION LTD**

AND

**3<sup>RD</sup> LEVEL MARKETING AND MEDIA  
RESPONDENT**

**GROUP (PTY) LTD**

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**LEAVE TO APPEAL JUDGMENT**

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This Judgment was handed down electronically by circulation to the parties' and or parties representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed on 15 June 2022.

**BAQWA J:**

**INTRODUCTION**

[1] This is an application for leave to appeal against an order handed down by this court on 2 March 2022.

[2] The test under section 17(1)(a)(i) is whether the appeal “would” have reasonable prospects of success, rather than whether it “might” have reasonable prospects, as was the case prior to the amendment of section 17.

Acting National Director of Prosecutions and Others vs. Democratic Alliance /  
re: Democratic Alliance vs. Acting National Director of Prosecutions and  
Others<sup>1</sup>

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<sup>1</sup> [2016] ZAG PP HC 489.

[3] The Supreme Court of Appeal enunciated what would constitute reasonable prospects in Smith vs. S<sup>2</sup> where it was held that: *“what the test of reasonable prospects of process 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. 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 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] As stated in my judgment (para 30) the applicant failed in its founding affidavit, to challenge each registration which it sought to have removed from the Register of Trade Marks. Put differently the applicant presented no evidence to establish that it was an interested person in relation to the relevant mark, goods or services covered by the registrations for the mark: Tshivenda Music Awards, in class 9 and 41 and the mark: TSHIMA, in class 9, 25, 38, and 41.

[5] Further, the applicant does not contend that this Court erred in holding that the applicant has to establish its *locus standi* and that it must do so in its founding papers.

[6] The applicant also does not challenge the finding that the Trade Marks Act (the TMA) requires an applicant to establish that it is an interested person for rectification of the Trade Mark Register Under 24, 26 and 27 of the Act.

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<sup>2</sup> 2012 (1) SACR 567 SCA.

[7] The applicant also does not contend that this Court erred in relying on the decision in *Ritz Hotel Ltd vs. Charles of the Ritz and Another*<sup>3</sup> regarding the approach in determining whether the applicant is an interested person.

[8] The grounds of appeal also do not disclose that the applicant presented the evidence which established its interest in relation to the relevant marks, goods and services covered by the relevant registration.

[9] In light of the above and after considering the submission by both counsel for the parties I am not persuaded that reasonable prospects of success exist.

[10] In the result, I make the following order

#### ORDER

10. 1 The application for leave to appeal is dismissed with costs, such costs to include the costs consequent upon the employment of two counsel.

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**SELBY BAQWA**

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

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<sup>3</sup> 1988 (3) SA 290 (A).

Date of hearing:

Date of judgment:

**Appearance**

On behalf of the Applicants

Instructed by

On behalf of the Respondents

Instructed