



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

In the matter between:

Case Number: 37168/21

- | | |
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| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES:
NO |
| (3) | REVISED: NO
DATE 04 September 2023 |

CEBEKHULU PROBUILD JV

APPLICANT

AND

CITY OF EKURHULENI METROPOLITAN
MUNICIPALITY

FIRST RESPONDENT

JF PIPE N.O.

SECOND RESPONDENT

JUDGMENT

KHWINANA AJ

INTRODUCTION

- [1] This is an application for leave to appeal to the full bench of the above honourable court or the Supreme Court of Appeal against my judgment granted on this the 07th day of December 2023.

[2] Section 17(1) of the Superior Courts Act, Act 10 of 2013 ("the Superior Courts Act"), regulates applications for leave to appeal and provides:

'(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.'

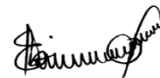
[3] The test in an application for leave to appeal prior to the Superior Courts Act was whether there were reasonable prospects that another court may come to a different conclusion. Section 17(1)¹ has raised the test, as Bertelsmann J, correctly pointed out in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para :

'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 Cornwright & 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.'

[4] The applicant's leave to appeal is on my judgment, save to say the reasons have been given in my judgment.

In the result:

1. Leave to appeal is refused.
2. The applicant is to pay the costs of this application.



**ENB KHWINANA
ACTING JUDGE OF NORTH
GAUTENG HIGH COURT, PRETORIA**

DATE OF HEARING: 24TH JULY 2023
DATE OF JUDGMENT: 04 September 2023

¹ Commissioner of Inland Revenue v Tuck 1989 (4) SA 888 (T) at 890