



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

Case No:61050/2021

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

DATE 22 February 2023

SIGNATURE 

In the application between:

**LEGAL PRACTITIONER'S INDEMNITY INSURANCE
FUND NPC**

Applicant

and

MATIMBA NOEL MKANSI

Respondent

In re:

In the application between:

MATIMBA NOEL MKANSI

Applicant

and

**LEGAL PRACTITIONER'S INDEMNITY INSURANCE
FUND NPC**

Respondent

JUDGMENT

KHWINANA AJ:

INTRODUCTION

[1] This is an application for leave to appeal to the Supreme Court of Appeal alternatively the full bench of the above honourable court against my judgment granted on this the 24th day of May 2022.

[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.

[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 Supreme Court of Appeal in ***MEC Health, Eastern Cape v Mkhitha (1221/15) [2016] ZASCA 176 (25 November 2016)*** said the following about section 17(1)(a) of the Superior Courts Act:

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

"A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

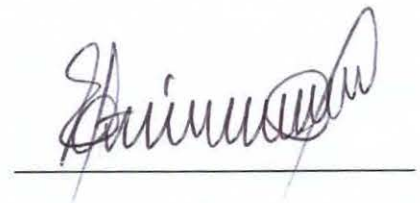
[5] The applicant's leave to appeal is on my judgment, save to say the reasons have been given in my judgment.

[6] Order:

The draft order, as amended, marked "X" is made an order of court.

In the result:

1. Leave to appeal is refused.
2. Each Party is to pay their own costs.

A handwritten signature in black ink, appearing to read 'E.N.B. Khwinana', is written over a horizontal line.

E.N.B. KHWINANA

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

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

Case No: 61050/2021

[Signature]
22/02/2023

In the matter between:-

LEGAL PRACTITIONERS FIDELITY FUND

APPELLANT

and

MKANSI

RESPONDENT

Order

- (a) Leave to Appeal is dismissed.
- (b) Each party is to pay their own costs.

REGISTRAR

DELIVERED: This judgment was prepared and authored by the judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representation by email and by uploading it to the electronic file of this matter on caselines. The Date for hand down is deemed to be 21 February 2023.

APPEARANCES:

For the applicant in the application for leave to appeal

Adv Heyns SC

For the respondent in the application for leave to appeal

Adv PG LOUW