

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 13531/2018

DOH: 3 March 2023

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

.....**07 March 2023**
SIGNATURE**DATE**

In the matter of:

A.A S obo C.M.M. S

PLAINTIFF/ RESPONDENT

and

THE MEC FOR HEALTH, GAUTENG

DEFENDANT/ APPLICANT

REASONS

Bam J

A. Introduction

1. This is an application for leave to appeal to the Supreme Court of Appeal. The application is brought by the defendant (now applicant) and it is directed against certain aspects of the order handed down by this court on 12 October 2022. Although not specifically set out in the application for leave to appeal, it appears from the content thereof that the defendant bases its application on the two sub-provisions of section 17 (1) (a), of the Superior Courts Act¹, namely, sub-provision (i) and (ii).
2. The defendant's grounds of appeal are set out in its Amended Notice of Application for Leave to Appeal. In the first instance, the respondent says that the court erred in awarding general damages to the minor child, in the amount of R2.2 million instead of awarding R 500 000. It also points to previous conflicting decisions and suggests that there is a need for a superior court to pronounce on how general damages should be dealt with in cases of serious brain injuries that leave a person in a vegetable or 'cabbage state'.

B. The Law

¹ Act 10 of 2013.

3. Section 17 (1) of the Superior Courts Act provides that:

'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;'

4. On the question of prospects of success, counsel for the defendant referred the court to the case of *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021), where the court remarked:

'I am mindful of the decisions at high court level debating whether the use of the word 'would' as opposed to 'could' possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates 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 other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.'

5. Counsel for the defendant suggested that because of the circumstances of the minor child and the findings of the various experts as to the extent of his injuries, the questions around his state of awareness of his circumstances, including his projected life expectancy, the court erred in awarding general damages to the extent that it did.

Thus, there was a reasonable prospect that another court would come to a different conclusion. I refer to my findings as set out in my reasons and the bases for the award I had made. I am not persuaded that another court would come to a different conclusion in this regard.

6. However, on reflecting on the submissions made by counsel in respect of granting leave on the basis of section 17 (1) (a) (ii) and the decisions I was referred to, which appear to contradict each other, there is a need for a superior court to pronounce on the matter. On this basis, leave must be granted.

C. Order

7. Accordingly, the following order is made:

1. Leave is granted to the defendant to appeal to the Supreme Court of Appeal only against that part of paragraph 1 of the order granted on 12 October 2022, which relates to general damages in the amount of **R2 200 000.00** (Two million two hundred thousand rand).
2. For the sake of clarity, the balance in the amount of R 13 330 576,28 is not suspended by virtue of the order in paragraph 1 (one) above and shall be complied with in terms of the order granted on 12 October 2022.
3. The costs of the application will be costs in the appeal.

N.N BAM
JUDGE OF THE HIGH COURT,
PRETORIA

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