

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,
PRETORIA

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

.....**06 APRIL 2023**
SIGNATURE **DATE**

CASE NO:
56490/2021

In the matter of:

CONSTANCE MUTALE

APPLICANT

and

CHILD WELFARE KEMPTON PARK

RESPONDENT

In Re:

CONSTANCE MUTALE

PLAINTIFF

and

THE MINISTER OF JUSTICE AND

CONSTITUTIONAL DEVELOPMENT

FIRST DEFENDANT

MINISTER OF SOCIAL DEVELOPMENT

SECOND DEFENDANT

CHILD WELFARE KEMPTON PARK

THIRD DEFENDANT

RULING ON APPLICATION FOR LEAVE TO APPEAL

A. Introduction

1. This is an unopposed application for leave to appeal the order made by this court on 24 November 2022, refusing default judgement against the respondent. The applicant represented herself during the proceedings of 24 November. She represented herself during the proceedings dealing with her application for leave to appeal.
2. The applicant says the court erred in refusing to grant her constitutional damages against the respondent in the amount of R 2 800 000.
3. Although the applicant contends that it is in the interests of justice that her application be granted, I do not agree that this is the test. The test is that set out in section 17 (1) (a) (i) and (ii) of the Superior Courts Act 10 of 2013¹. Based on the

¹ Super Courts Act 10 of 2013.

applicant's grounds, there are no prospects whatsoever that another court would come to a different conclusion. Thus, the application falls to be dismissed.

4. For the sake of completion, I set out in high level, the supposed grounds of appeal as appearing in the applicant's heads of argument. After setting out the background details of how she was granted judgement in the High Court in Johannesburg in 2021, the applicant says:

(i) Her particulars of claim did set out how the amount of R 2 800 000 had been quantified;

(ii) Her ladyship did not understand the court order granted by the Johannesburg High Court in March 2021;

(iii) International instruments were not adhered to during the adoption of her baby at the time; and

(iv) Her ladyship led evidence '*with Plascon Evans on behalf of the third respondent and that a lot of prejudice will accrue to the plaintiff since the refusal to grant default judgement was mutatis mutandis absolution from the instance*'.

(v) Her ladyship did not furnish reasons or indicate that such reasons will be provided upon her request.

(vi) That it is in the interests of justice that leave to appeal be granted.

5. By way of background, the particulars of claim annexed to the applicant's (plaintiff's) summons disclose that she had launched review proceedings through the

Johannesburg High Court to set aside an adoption. In March 2021, an order was granted, which she claims set aside the adoption. Following the grant of the order, the applicant instituted action proceedings claiming what she terms constitutional damages against the defendants.

6. I refused judgement as the particulars of claim disclosed no cause of action, alternatively, lacked the necessary details to support a cause of action.

B. Order

7. The application for leave to appeal is dismissed with costs.

NN BAM
JUDGE OF THE HIGH COURT,
PRETORIA

Appearances:

Applicant: In person

