



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

**Case number: 48319/2018**

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

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SIGNATURE

2023-04-19  
.....  
DATE

**In the matter between:**

**FLORENCE LILLIAN KOLOKO**

**APPLICANT**

**And**

**NEDBANK LIMITED**

**RESPONDENT**

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**JUDGMENT ON LEAVE TO APPEAL**

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**PHAHLAMOHLAKA A.J.**

[1] This is an application for leave to appeal my judgment and order dated 30 May 2022 wherein I dismissed the applicant's application with costs on attorney and client scale.

[2] The applicant contends that I erred on the following grounds:

*"2.1 The learned judge committed a gross misdirection regarding the main issue that the learned judge was called upon to decide, and he did not decide this main issue, at all.*

*- In paragraph 1 of the judgment the learned judge correctly identifies the relief sought by the applicant, and in that process identifies the main relief and the alternative relief.*

*2.2 The learned judge grossly misdirected himself regarding the facts.*

*2.3 The learned judge was influenced by a wrong principle or he misunderstood the law relating to the notice of bar.*

*2.4 The learned judge erred when he ruled that the applicant followed a wrong procedure.*

*2.5 The learned judge erred in finding that he was required to declare the order dated 17 September 2020 unconstitutional.*

*2.6 The learned judge erred in awarding costs to Nedbank, let alone on punitive scale."*

[3] Section 17(1)(a) of the Superior Courts Act, 10 of 2013, provides as follows:

*"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] In **Ramakatsa & Others v African National Congress & Another**<sup>1</sup>, at paragraph 10 Dlodlo JA said the following:

*"Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act) leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospects of successor there are compelling reasons which exist why the appeal should be heard such as the*

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<sup>1</sup> (724/2019) [2021] ZASCA 31 (31 March 2021)

interests of justice. This court in *Caratco*<sup>2</sup>, concerning the provisions of s 17(1)(a)(ii) of the Superior Courts Act pointed out that if the court is unpersuaded that there are prospects of success, it must still inquire into whether there is a compelling reason to entertain the appeal. Compelling reasons would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However this court correctly added that 'but here too the merits become vitally important and are often decisive.' 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 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] In his introductory remarks, Counsel for the applicant, said "the right that is protected here is a constitutional right to housing. However, in his argument for the application for leave to appeal he never really talked to the grounds that the applicant put forth for asking for leave to appeal. Counsel repeated the argument that my brother Avvakoumides AJ was wrong in refusing the applicant a postponement and ultimately granting judgment against her.
- [6] In *Ramakatsa supra*, it was held that the those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. In this case the main complaint against the judgment of Avvakoumides AJ was that he was wrong in granting the orders. Clearly this court, as I alluded to in my judgment cannot be competent to inquire whether a judge of the same status was wrong.
- [7] Clearly I cannot declare the order of the court of equal status as mine to be null and void, nor can I review the decision of that court. I said in my judgment, dismissing the applicant's application, that the applicant approached the wrong forum.
- [7] In relation to costs Counsel for the applicant did not say much in respect of why costs on a punitive scale were not supposed to be awarded to the respondent, save to allude to the fact that the applicant is indigent.
- [8] I am not satisfied that there are reasonable prospects of success, nor are there other compelling reasons why this appeal should be heard and therefore the application should fail.

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<sup>2</sup> *Caratco (Pty) Ltd v Independent Advisory(Pty) Ltd* [2020] ZASCA 17; 2020(5) SA 35(SCA)

[9] Consequently, I make the following order:

The application for leave to appeal is dismissed with costs.

**KGANKI PHAHLAMOHHLAKA  
ACTING JUDGE OF THE  
HIGH COURT**

**Delivered:** This judgment was prepared and authored by the judge whose name is reflected herein and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on caselines. The date for handing down is deemed to be 19 April 2023.

**FOR THE APPLICANT : ADV MBANA**

**INSTRUCTED BY : SA MANINJWA ATTORNEYS**

**FOR THE RESPONDENTS : ADV OSCHMAN**

**INSTRUCTED BY : BEZUIDENHOUT VAN ZYL & ASSOCIATES INC.**

**DATE JUDGMENT RESERVED : 31 MARCH 2023**

**DATE OF JUDGMENT : 19 APRIL 2023**