

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



Case No. 68355/2018

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

DATE: 26th April 2023 SIGNATURE: _____

In the matter between:

MONUMENT PARK 110 (PTY) LTD

APPLICANT

AND

ANNETTE VENTER

RESPONDENT

JUDGMENT

- [1] This is an application for leave to appeal to the Supreme Court of Appeal alternatively full bench of the above honourable court against my judgment granted on this the 06th day of December 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;
- (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.¹Section 17(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 [61]:

'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 findings save to say the reasons have been given in my judgment. Having read the papers and having carefully heard counsel I come to the conclusion that there is no reasonable prospect that another court would come to a different conclusion on the order of the court in terms of section 17(1)(a)(i) of the Superior Courts Act 10 of 2013.

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

In the result:

- (1) Leave to appeal is refused.
- (2) Applicant to pay the costs of the application.

ENB KHWINANA

ACTING JUDGE OF NORTH GAUTENG

HIGH COURT, PRETORIA

FOR APPLICANT: ADV JW STEYN
INSTRUCTED BY: SWART REDELINGHUIS NEL & PARTNERS

FOR RESPONDENT ADV S. MANGANYE
INSTRUCTED: MALETE ATTORNEYS

DATE OF HEARING: 01 FEBRUARY 2023
DATE OF JUDGMENT: 26 APRIL 2023