

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: A201/2021

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

Date: 26 July 2023 E van der Schyff

In the matter between:

SIYANDISA TRADING (PTY) LTD

APPLICANT

and

THE COMMISSIONER FOR THE SOUTH AFRICAN  
REVENUE SERVICES

RESPONDENT

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JUDGMENT

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Van der Schyff J (Mbongwe J *et Leso* AJ concurring)

[1] The applicant, the appellant in the proceedings before the Full Court, seeks leave to appeal the judgment and order handed down by this court on 17 February 2023. The applicant initially approached the Supreme Court of Appeal for special leave

as provided for in s 17(3) read with s 16(1)(b) of the Superior Courts Act 10 of 2013. The applicant's attention was subsequently drawn to the decision in *National Credit Regulator v Lewis Stores (Pty) Ltd and Another*<sup>1</sup> where the Supreme Court of Appeal (SCA) held that a High Court hearing an appeal from an administrative tribunal sits as a court of first instance, irrespective as to whether the court was constituted by one judge or a Full Court. In these circumstances, good cause is shown for the delay in filing a notice for leave to appeal to this court.

[2] It is trite by now that s 17(1) of the Superior Courts Act, raised the threshold to grant a party leave to appeal. Leave to appeal may only be granted if the court is of the opinion that the applicant has a reasonable prospect of success on appeal. In this regard, the SCA held in *MEC for Health, Eastern Cape v Mkhita and Another*<sup>2</sup> that:

‘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’.

[3] The reasons for the Full Court's order are set out in the written judgment and will not be repeated. The findings made accord with the evidence led, or the lack thereof. Leave to appeal is not granted on the arguments raised but when the evidence on record supports the submissions made.

[4] Leave to appeal ought not to be granted lightly, and courts should exercise caution in deciding whether leave to appeal is to be granted.

## **ORDER**

**In the result, the following order is granted:**

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<sup>1</sup> 2020 (2) SA 390 (SCA).

<sup>2</sup> [2016] ZASCA 176 (25 November 2016) at para [16] - [17].

1. The late filing of the application for leave to appeal with this court is condoned.
2. The application for leave to appeal to the Supreme Court of Appeal is dismissed with costs.

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E van der Schyff  
Judge of the High Court

I agree

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M Mbongwe  
Judge of the High Court

I agree

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M Leso  
Acting Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

For the applicant:	Adv. M. C. Maritz SC
With:	Adv. J. Truter
Instructed by:	COEZYN HERTZOG & HORAK
For the respondent:	Adv. T. Tijana
Instructed by:	State Attorney, Pretoria
Date of the hearing:	21 July 2023
Date of judgment:	26 July 2023