Reportable:	YES/**NO**
Circulate to Judges:	YES/**NO**
Circulate to Magistrates:	YES/**NO**
Circulate to Regional Magistrates	YES/**NO**

IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

CASE NUMBER: M533/2021

In the matter between:-

STEPHANUS SALAMON STRYDOM	1st Applicant
THE INDIVIDUALS MENTIONED IN ANNEXURE "X" TO THE FOUNDING AFFIDAVIT	2nd Applicant

and

SOLOMON WILLIAM COOMANS	1st Respondent
ANDRIES COOMANS	2nd Respondent
SOLOMON WILLIAM COOMANS N.O.	3rd Respondent
LOUISA COOMANS N.O.	4th Respondent
GAWIE DU PLESSIS	5th Respondent
THE TRUSTEES OF THE ANDRIES DU PLESSIS TRUST (IT 316/2001)	6th Respondent

ORDER

The following order is granted:

i) The application for leave to appeal is dismissed.

ii) The applicants are to pay the costs of the application.

JUDGMENT ON LEAVE TO APPEAL

FMM REID (THEN SNYMAN) J

[1] This application is for leave to appeal against the whole judgment granted on 3 November 2022 in which this court dismissed an application for spoliation and/or a mandatory interdict against the respondents with costs.

[2] In the spoliation application, the applicants claim that they have been spoliated from the use of a road on private property, which road is situated between two public roads named **Z 153** and **D 3513**, located in the **DR. RUTH**

SEGOMOTSI MOMPATI DISTRICT MUNICIPALITY (the disputed road). The disputed road provides direct access between the two public roads **Z 153** and **D 3513** (the public roads) and is located across / through the farms of the respondents.

[3] The grounds for leave to appeal is that the court *a quo* failed to appreciate a number of issues as contained in the 20 (twenty) grounds for leave to appeal. These grounds include *inter alia:*

3.1. That the court erred in finding that the respondents offered remote controls to the applicants to utilize the private road, whereas the factual position is that the respondents made the use of remote controls available to the applicants;

3.2. That the respondents' right to protect their property is not a defence to spoliation;

3.3. That use of the road has to be restored before the merits of the "case" is to be "restored".

3.4. By having consideration to the fact that no servitude or right of way has been registered in favour of the applicants;

and

3.5. That the court should not have weighed up both parties' rights where a counterclaim has not been instituted.

[4] Most of the grounds of appeal are a repetition of the argument that the court should have found in favour of the applicant. Most of the grounds of appeal are duplicated or triplicated.

[5] It is trite law the grounds for leave to appeal is supposed to be set out briefly and succinctly. This common law position was emphasised recently in **S v Tyhala** 2022 JDR 0289 (ECG) where it was found that:

> *"[9] This means that the grounds relied on by the applicant must be* ***clear and unambiguous with a defined scope****. It is of no practical significance or use if the grounds are so wide as to encompass every conceivable point that can be taken into account no matter how irrelevant or narrow it is to have any positive bearing on the appeal itself…*
>
> *…*
>
> *[12] It is impossible to analyse the document to establish the grounds the applicant intends to rely on. Its contents are incomprehensible, obscure and*

vacuous, being nothing more than a generic ramble across the issues it purports to identify without even the slightest elucidation of the factual or legal issues as would indicate that an informed consideration (or investigation) of the transcript and/or the judgments was rendered. Indeed, no effort was made to point to the relevant portions of the transcript or pages of the judgments to facilitate identification of the issues. The practical effect is that neither the court nor the respondent is informed of the case the applicant seeks to make out and which the respondent is to meet in opposing the application for leave to appeal."
(own emphasis)

[6] In the heads of argument, the applicant merely states that there is "good prospects of success" on each of the grounds of appeal, without specifying where the court erred in the application of the law, or on the facts.

[7] The test to be applied in an application for leave to appeal is set out in section 17(1)(a) of the **Superior Courts Act** 10 of 2013 which provides that:

*"(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;"*

(own emphasis)

[8] In **Erasmus Superior Court Practice** CD Rom & Intranet: ISSN 1561-7476 Internet: ISSN 1561-7475, DE van Loggerenberg, © **Jutastat e-publications** Part A, Volume 3 under the heading "Introduction, Superior Court System and Access to Superior Courts" the author discusses the right of a party to appeal to a higher court, and compares section 20(4) of the **Supreme Court Act** 59 of 1959 (repealed with effect from 23 August 2013) with section 17 of the **Superior Courts Act** 10 of 2013. The author writes as follows:

*"**Leave to appeal.** Both Acts limit the right to appeal to a higher court against a judgment or order, either by the court appealed from or the court appealed to. This limitation was contained in section 20(4) of the **Supreme Court Act** 59 of 1959, and was re-enacted in section 17 of the **Superior Courts Act** 10 of 2013. In **Besserglik v Minister of Trade, Industry and Tourism (Minister of Justice Intervening)** 1996 (4) SA 331 (CC), dealing with the repealed Act, the Constitutional Court pronounced that the screening of unmeritorious appeals to prevent the flooding of the courts of appeal with hopeless cases did not constitute an infringement of the fundamental right of access to courts. The same principle applies to the new Act, save that the wording of section 17 indicates that, in the test*

> *whether a potential appeal could succeed,* ***the bar has been raised****: except in extraordinary cases,* ***leave may be granted only if another court 'would' come to the conclusion that the appeal had merit****. (See:* ***Magashule v Ramaphosa*** *[2021] 3 All SA 887 (GJ) at para [6]; and also cited with approval in, amongst others,* ***South African Breweries (Pty) Ltd v Commissioner of the South African Revenue Services*** *(unreported, GP case no 3234/15 dated 28 March 2017) at para [5];* ***Pretoria Society of Advocates v Nthai*** *2020 (1) SA 267 (LP) at para [5], overruled, but not on this point, in* ***Johannesburg Society of Advocates v Nthai*** *2021 (2) SA 343 (SCA)) Given the case load of all courts, the new section does meet the constitutional threshold of compliance."*
>
> (some footnotes omitted; own emphasis)

[9] The Supreme Court of Appeal specifically found in **MEC for Health, Eastern Cape v Mkhita** 2016 JDR 2214 (SCA) that the application for the test for leave to appeal has to be applied purposefully for appeals where there is no prospect of success and appeals which have no merit, should not be granted leave to appeal. This is to alleviate the ever increasing workload on the judicial system.

[10] Having considered the grounds of the application for leave to appeal, I am satisfied that there are no prospects of success and that leave to appeal should be denied. I hold the view

that another court would not come to a different conclusion.

Cost

[11] I do not find any reason why the normal cost order should not be implemented and the successful party should be entitled to recover his / her costs from the other party. The respondents should thus be entitled to their costs.

[12] A normal cost order where the successful party is entitled to its cost, on a party and party scale would in my view, be just and fair.

Order:

[13] In the premises I make the following order:

iii) The application for leave to appeal is dismissed.

iv) The applicants are to pay the costs of the application.

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FMM SNYMAN
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION MAHIKENG

DATE OF HEARING: **8 SEPTEMBER 2023**

DATE OF JUDGMENT: **16 NOVEMBER 2023**

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