

SOUTH AFRICA / JUDGMENT

Key Results Properties (Pty) Ltd and Another v Kgoele (Leave to Appeal) (94127/2016; 64481/2017) [2024] ZAGPPHC 943 (26 September 2024) [2024] ZAGPPHC 943

COURT

North Gauteng High Court, Pretoria

BEFORE

J.T Leso

CASE / FILE NUMBER

94127/2016; 64481/2017

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Policy

IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Case

No: 94127/2016

Case No: 64481/2017

(1)

Reportable: No

(2)

of interest to other judges: No

(3)

Revised: Yes

Date:

26 September 2024

Signature

In the matter between: KEY RESULTS PROPERTIES
 (PTY) LTD
 First Applicant
 (REG NO:
 2007/025924/07)
 ERNST PHILLIPUS
 BLIGNAUT
 Second Applicant
 And
 MMAMABIRI LEAH
 KGOELE
 Respondent
 (ID
 No. 4[...])

In re: MMAMABIRI LEAH
 KGOELE
 Applicant
 (ID No. 4[...])
 KEY RESULTS PROPERTIES
 (PTY) LTD
 First Respondent
 ERNST PHILLIPUS
 BLIGNAUT
 Second Respondent
 THE REGISTRAR OF
 DEEDS: PRETORIA
 Third Respondent
 SOUTH AFRICAN HOME
 LOANS
 Fourth Respondent
 LEAVE TO APPEAL-

JUDGMENT

LESO AJ:

INTRODUCTION

1. The applicants filed leave to appeal the judgment that this court delivered on 01 July 2024 after the respondent had made an application for setting aside of the eviction order which was granted against her and the cancellation of the registration and transfer of the property described as Erf 1[...], T[...] Extension [...], Pretoria, Registration Division J.R., Province of Gauteng in favour of CHECK

PAPERS in terms of provisions of Section 6(1) and (2) of the Deeds Registries Act, Act 47 of 1937 (“the Act”), and to cancel all rights accorded to the CHECK PAPERS by virtue of title deed with title deed Number: T24607/2008 and to register the above property in the name of Leah Khoele.

2. The court made a judgment in favour of Leah Khoele in the following terms:

2.1 The court order granted on 21 February 2019 for the eviction of the applicant is rescinded and set aside.

2.2 The transfer of the property described as of Erf 1[...], T[...] Extension 1, Pretoria, Registration Division J.R., Province of Gauteng from the applicant to the first respondent ((known as Money Box Inv 135 (Pty) Ltd) was declared void ab initio and cancelled.

2.3 The third respondent was ordered to cancel the Deeds Register of Transfer in respect of the first respondent (known as Money Box Inv 135 (Pty) Ltd) and the Title Deed Number: T24607/2008 in respect of Erf 1[...], T[...] Extension [...], Pretoria, Registration Division J.R., Province of Gauteng in favour of the first respondent; and to cancel all rights according to the first respondent by virtue of said Title Deed.

2.4 The third respondent was ordered to register the property described as Erf 1[...], T[...] Extension [...], Pretoria, Registration Division J.R., Province of Gauteng in the name of Leah Khoele free from mortgage and any obligations.

2.5 The first respondent is ordered to pay the costs of this application on an attorney and client scale.

3. The applicant has set out inordinate grounds of appeal which I will not repeat in this judgment because of the volume.

BACKGROUND

4. South African Home Loans (Pty) Ltd (“SAHL”) which is the fourth respondent in the main application was joined in the proceedings by the respondent as a party who has a direct and substantial interest in this application because it is a mortgagee in respect of the property that was in dispute. The court did not grant the relief that the respondent sought in the main application. The respondent sought the relief that protected the interest of SAHL that Key Results Properties (Pty) Ltd is liable to settle in full the existing bond held by the SAHL.

5. On the day of the proceedings, the fourth respondent requested postponement of the hearing on the basis that the fourth respondent

will need an opportunity to read the judgment and consider the application because it only received the judgment on 22 July 2024

when the first and the second respondent filed leave to appeal.

6. On 13 August 2024 the SAHL elected to file notice to abide on the basis that the Court Order regarding the security of SAHL is sound and beyond reproach upon finding of fraud hence a notice to abide.
7. The third party was on record to argue costs after the court had reserved the issue of costs to be dealt with during the application.

DISCUSSION AND APPLICABLE LAW

8. In this application, the court must find whether the appeal would have a reasonable prospect of success.
9. The benchmark of the applicant's case is section 17 of the Superior Courts Act which provides as follows:

“(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 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.”
10. The grounds of appeal as set out in the applicant's leave to appeal dated 22 July 2024 will not be repeated in this judgment because of the volume. In all 26 listed grounds contained in 26 pages of the application, the appellant does not demonstrate how the court erred in a particular finding of fact or application of the law. The allegation that the court simply erred without any particularity of how the court erred is not good enough. This includes the leave to appeal the cost order made by this court.
 11. In this application, the applicant does not take the court in its confidence by alleging prospects of success or compelling reasons why the appeal must be heard. I have no doubt that the applicant is fully conscious of the case it has to meet in this application after highlighting what the court has said in *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* [2016] ZAGDPHC 489 and in *The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others*, where the court commented that ‘the Superior Courts Act has raised the threshold for granting the leave to appeal against the judgment of the High Court.’

12. The arguments raised by the applicant in this application are not fresh. The best part of the applicant's grounds refers to the documents which I found not to be binding. The applicable principle of appeals is that the Appellate Court will only reverse the finding of fact where it is convinced that the court's finding of fact is wrong. Where there has been no misdirection on fact by the trial judge, the presumption is that his conclusion is correct, this is a principle guiding the appellate court in an appeal on facts.
13. The other issue with this application relates to the Notice of leave to appeal. The submission by the applicant's counsel that the court order regarding the security of SAHL is sound and beyond reproach upon finding of fraud hence a notice to abide, does not support the application by the applicant that the whole judgment of the court is flawed. It is trite that the Notice of appeal must specify the grounds upon which the appeal is founded. Secondly, the grounds must be clearly and succinctly set out, in unambiguous terms. The above requirements are briefly set out in Rule 49(1)(b) of the Uniform Rules of the High Court. There is no doubt that the applicant's Notice of leave to appeal is not in line with this trite law because the appellant grounds are very broad and some of the findings were confirmed by the applicant's counsel confirmed to be beyond reproach.
14. There is no court which will find differently because the contracts which the appellants intend to rely on are not legally binding. There is no basis for the appellant to insist on the documents which I have found to be of no use to the court.

COSTS OCCASIONED BY POSTPONEMENT

15. The issue before this court is to determine the liability for the costs occasioned by the postponement of 08 August 20224.
 16. On 08 August 2024 the applicant and the first respondent were ready to proceed with the leave to appeal and they both objected to the fourth respondent's application for postponement on the basis of the third party filed notice to abide by the court's decision.
 17. The application for postponement was granted mainly because the court cannot penalize the fourth respondent for requesting time to consider judgment particularly because there is an order that affects the interest of the fourth respondent. The fourth respondent was entitled to consider the judgment and consider its options at least until 13 August 2024 to file leave to appeal. The fact that the fourth respondent became aware of the judgment on 22 July when leave to appeal was filed is a justifiable and valid reason for postponement. The only issue that remained was the issue of liability of costs as the applicant and the respondent argued that the fourth respondent should be liable for the costs. In *Fleet Motors (Pty) Ltd v Epsom Motors (Pty) Ltd* 1960
- (3) SA 401 (D) at 404H-405B; *Trust Bank of Africa Ltd v Muller NO and Another* 1979
 - (2) SA 368 (D) at 318C-D). Costs were reserved because the court was not ready to consider its view about the liability of the costs.

18. The fourth respondent cannot be liable for the costs of 08 August 2024.

CONCLUSION

1. The applicant had no prospect of success.

THEREFORE, I MAKE THE ORDER AS FOLLOWS:

ORDER

1. Leave to appeal is dismissed.
2. The applicants are to pay the costs of this application.
3. Each party is required to pay their own legal costs occasioned by the postponement of 08 August 2024.

The judgment was handed down electronically and by circulation to the parties/ legal representatives by e-mail and by uploading to Caseline. The date of hand down is the date when the judgment was signed.

J.T LESO

ACTING JUDGE OF THE HIGH COURT,

SOUTH AFRICA, GAUTENG DIVISION, PRETORIA

Date of Hearing: 26 February 2024

Date of Judgment: 26 September 2024

APPEARANCE:

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Prepared on 13 October 2026 · Esheria