

SOUTH AFRICA / JUDGMENT

Khorommbi Mabuli Incorporated v Road Accident Fund and Others (6683/2021)

[2021] ZAGPPHC 652 (17 September 2021)

[2021] ZAGPPHC 652

COURT

North Gauteng High Court, Pretoria

BEFORE

Tlhapi VV

CASE / FILE NUMBER

6683/2021

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE: 6683/2021

17/09/2021

In

the matter between:

KHOROMMBI
MABULI INCORPORATED
APPLICANT
AND
ROAD
ACCIDENT
FUND
FIRST RESPONDENT
COLLINS
LETSOALO
SECOND RESPONDENT
SHOKENG
E
DLAMINI
THIRD RESPONDENT
APPLICATION FOR LEAVE TO
APPEAL-JUDGMENT
TLHAPI

J

[1]

This is an application for leave to
appeal premised on section 17(1) of the Superior Courts Act 10 of

2013, ("the Act")
which section is set out in its entirety

below:

"Section 17(1)
(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 reasonable prospect of success; or
(ii)
there is some other compelling reasons 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); 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."

[2]

Previously the test applied to similar
applications was whether there were reasonable prospects that another
court may come to a
different conclusion, Commissioner of Inland
Revenue v Tuck 1989 (4) SA 888(T). The threshold of reasonable
prospects has now been raised by the use and meaning attached to the
words 'only' in 17(1) and 'would'
in section 17(1)(a)(i). Therefore,
on the entire judgement there should be some certainty that another
court would come to a different
conclusion from the judgment the
applicant seeks to appeal against. In
Mont Chevaux Trus v Tina Goosen and 18 Others
2014 JDR 2325(LCC) at para [6] :

"It
is clear that the threshold for granting leave to appeal 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 Cronwright &
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"
[3]
In S v
Smith 2012 (1) SACR 567(SCA) at para
[7], a more stringent test is called for in that an applicant must
convince a court, on proper grounds that there are prospects
of
success which are not remote, a mere possibility is not sufficient.
Therefore, where the applicant has satisfied either
of the
two identified requirements in the Act, leave to appeal should be
granted, Minister of Justice and
Constitutional Development and Others v Southern African Litigation
Centre and Others 2016 (3)SA 317
(SCA). This standard was confirmed in Notshokovu
v S (157/15) [2016] ZASCA (7
September 2016) at paragraph [2] where it was stated:
"...An
appellant on the other hand faces a
higher and stringent
threshold in terms of the Act compared to the provisions of the
repealed Supreme Court Act 59 of 1959...."

[4]

The application is based on the

following grounds:

- "1.
The Honourable Court erred and/or misdirected itself in law and/or in
fact for
dismissing the Applicant's application for lack of the
necessary locus standi;
2. The
Honourable Court erred and/ or misdirected itself in law and/or in
facts in finding that the powers of attorneys do not extend
to
authorizing the applicant to launch contempt proceedings against the
first and second respondents
3.
The Honourable Court erred and/or
misdirected itself in law and/or in facts in ordering the applicant
to pay costs of the application
despite the fact that the application
was brought in the public interest;
4.
Accordingly, the Honourable Court
failed to properly and judicially exercise its discretion and another
court, properly directing
itself and applying its mind on the
relevant and objective facts and evidence and the law, may come to a
different conclusion.

[5]

The contempt application was purportedly brought by the applicant on behalf of 42 of its clients who were not identified or joined as parties to the proceedings and who were allegedly owed an amount of R11 732 441.82. It was alleged in the papers that the applicant was mandated by virtue of powers of attorneys of which only 19 were annexed to the papers.

[6]

In the answering affidavit the respondent contended that the applicant, a firm of attorneys was not the judgment creditor and that the right to enforce debts due in terms of a court order was payable to the clients, that the applicant did not rely on court orders granted in the applicant's name and that the contempt proceedings were to be brought by the judgment creditors and not its attorney of record. In reply the applicant denies that it lacks the necessary locus standi reiterated its contention that the signed powers of attorney authorise the applicant to launch the application.

In

the heads of argument for the respondent at the hearing the same submission of a lack of locus standi

is

restated and added thereto was that none of the purported judgment creditors have annexed confirmatory affidavits

[7]

The new issue raised on behalf of the applicant in the heads of argument in this application now raises section 38 of the Constitution for the first time as an issue the court should have addressed when adjudicating the matter. The following submission is made as at paragraph 6 of the heads of

argument:

" This provision introduces a radical departure from the common law in relation to standing. It expands the list of persons who may approach a court in cases where there is an allegation that a right in the Bill of Rights has been infringed or threatened to include anyone acting in the public interest or on behalf of another person who cannot act in their own personal interest"

[8]

Section 38 of the Constitution expands the principle of locus standi and lays down the criteria to be applied by the courts. The applicant in my view failed to make out a case in the founding papers that, in terms of the said section it was pursuing the matter in the public interest and on behalf of its clients. No explanation was given why the clients were not joined alternatively why the clients could not bring the application themselves and no confirmatory affidavit was secured and annexed to the papers. Where locus standi was disputed in the answering affidavit no effort was made to even correct the issue in reply, albeit that it is trite that a case should be made out in the founding papers, unless circumstances demanded a response which was not foreseen when the founding papers were drafted. According to the applicant its mandate stemmed from the powers of attorney and I found that nowhere in those documents was mandate given to the applicant to pursue contempt proceedings against the respondents.

[9]

Consequently, I do not find that the applicant has satisfied the requirement in section 17(1)(a)(i) that there are reasonable prospects of success in the appeal.

[10]

In the premises the following order is made:

1.
The application for leave to appeal is dismissed with costs.
TLHAPI VV
(JUDGE
OF THE HIGH COURT)
MATTER
HEARD ON
:
15 JUNE 2021

JUDGMENT

RESERVED ON

: 15 JUNE 2021

ATTORNEYS FOR THE APPLICANTS : SHAPIRO LEDWABA INC.

ATTORNEYS FOR THE RESPONDENTS : MALATJI & CO ATT.

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Prepared on 13 October 2026 · Esheria