

SOUTH AFRICA / JUDGMENT

La Grange v Road Accident Fund (Leave to Appeal) [2023] ZAGPPHC 532; 2020/37879 (20 June 2023)

[2023] ZAGPPHC 532

COURT

North Gauteng High Court, Pretoria

BEFORE

Mokose

CASE / FILE NUMBER

2020/37879

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 2020/37879

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

DATE:

20/6/2023

MOKOSI

SNI

In

the matter between: JG
LA
GRANGE
Applicant
and
THE
ROAD ACCIDENT FUND
Respondent
CASE

NO: 2018/10189
KL
MOTHOB
Applicant
THE
ROAD ACCIDENT FUND
Respondent
CASE

NO: 2019/83708
E
LOMBARD
obo
R-L LOMBARD
Applicant
CASE
NO: 2021/6875
S
SANGWEN
Applicant
THE
ROAD ACCIDENT
FUND
Respondent
CASE
NO: 2021/7667
JB
VAN
NIEKERK
Applicant
THE
ROAD ACCIDENT
FUND
Respondent
CASE
NO: 2019/2767
El
KRAFTT
Applicant
CASE
NO: 2019/47556
SC

SMAL obo CC SMAL
Applicant
THE
ROAD ACCIDENT FUND
Respondent
CASE
NO: 2020/52669
M
MEIER
Applicant
LEAVE
TO APPEAL-

JUDGMENT

MOKOSE J

[1] The above matters were all heard by me in the default judgment court and the leave to appeal relates to the same issues being that the court disallowed the costs of expert witnesses. All the applicants have applied for leave to appeal to the Full Court of this Division against the entire orders I delivered in respect of the above-mentioned matters.

[2]

It is noted that the respondent in each of the matters, the Road Accident Fund, did not appear to oppose the application for leave to appeal.

[3] The applicants had filed an application in terms of Rule 42(1) in each matter wherein it was requested that I amend the orders and insert the costs as requested failing which reasons for the orders were requested. The reasons were furnished to the applicants and subsequently, leave to appeal was filed with the court.

[4] Further to the issue as mentioned above, the applicants contend in their leave to appeal that the application for default judgment was done on paper mero motu and that the court erred in not hearing the matters in open court or even via video conferencing.

[S] The test for granting an application for leave to appeal is whether there are reasonable prospects of success. Section 17 of the Superior Courts Act 10 of 2013 ("the Act") states that leave to appeal may only be granted where the judge or judges are of the opinion that:

(a) (i) the appeal would have a reasonable prospect of success; or

(ii)

for some other compelling reason, it should be heard, including conflicting judgements on the matter under consideration.

(b) the decision sought does not fall within the ambit of Section 16(2)(a) of the Act; 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.
- [6] The test laid down in Section 17 of the Act is now a subjective one and no longer an objective test. There must be a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.[1] The court held in the case of *The Mont Chevaux Trust v Tina Goosen & 18 Others* as follows:

"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."

- [7] Counsel for the applicant argued that the decision not to hear the applications for default judgment had been made *mero motu*. It is noted that counsel did not appear in any of the matters which were dealt with by other counsel.
- [8] It is, however, correct that in terms of Section 32 of the Superior Courts Act a party to court proceedings has the right to have the matter heard in open court however, the parties were notified in advance that the matters would be dealt with on paper and not in open court. If the parties required the matter to be held in open court, a request should have been made especially as this has been the practice in this division in respect of default

judgment

applications since the Covid-19 regulations were promulgated with the limitation on movement of people. The practice to deal with the application on paper has continued for expediency. No request to appear in respect of all the matters had been made to me.

- [9] The second ground of appeal is that in terms of Item D.5 under Rule 70 of the Uniform Rules of Court, the plaintiff would be unable to recover on taxation the costs of the experts unless they are included in the order granted.
- [10] I had dealt in depth with the issue raised in the application for leave to appeal in my reasons which were furnished to the parties on request. However, after listening to submission by counsel for the applicants and after reading the application for leave to appeal, I am of the view that for some other compelling reason the applications for leave to appeal should be granted and that there are prospects that another court would come to a different

conclusion.

- [11] Accordingly, I order the following:

- (i) leave to appeal is granted to the Full Court of the Gauteng Division, Pretoria;

(ii) the costs of the application for leave to appeal are costs in the appeal.

Judge of the High Court of

South Africa

Gauteng Division, Pretoria

For the Applicants: Adv M Snyman SC Date of hearing: 19 June 2023 Date of judgment: 20 June 2023

[1] The Mont Cheveaux Trust (IT2012/28) v Tina Goosen & 18 Others 2014 JDR 2325 at para [6]

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Prepared on 11 October 2026 · Esheria