

SOUTH AFRICA / JUDGMENT

M v B and Another (2328/1993) [2022] ZAGPJHC 804 (14 October 2022)

[2022] ZAGPJHC 804**COURT**

South Gauteng High Court, Johannesburg

BEFORE

L R Adams

CASE / FILE NUMBER

2328/1993

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record**SAFLII****Note: Certain**

**personal/private details of parties or witnesses have been
redacted from this document in compliance with the law
and SAFLII**

Policy**REPUBLIC OF SOUTH****AFRICA****IN THE HIGH COURT OF****SOUTH AFRICA****GAUTENG DIVISION,****JOHANNESBURG****CASE****NO:**

2328/1993

REPORTABLE:

NO

OF

INTEREST TO OTHER JUDGES: NO

REVISED:

Yes

14th

October 2022

In the matter between: M
[...], J [...] P [...]
Applicant
and
B
[...] (previously M
[...]), M [...] 1 A [...]
First Respondent
THE SHERIFF OF THE
COURT,
RANDBURG
SOUTHWEST
Second Respondent

Heard: 14 October 2022 – The ‘virtual hearing’ of
this
opposed application was conducted as a videoconference on Microsoft
Teams.

Delivered: 14 October 2022 – This judgment was handed down
electronically by circulation to the parties' representatives by
email, by
being uploaded to CaseLines and by release to
SAFLII. The date and time for hand-down is deemed to be 14:00 on 14
October 2022.

Summary: Application for leave to appeal – s 17(1)(a)(i) of the Superior
Courts Act 10 of 2013 – an applicant now faces a higher and a
more stringent threshold – leave to appeal refused.
ORDER
(1)
The applicant’s application for
leave to appeal is dismissed with costs.
JUDGMENT [APPLICATION
FOR LEAVE TO APPEAL]

Adams J: [1].
I shall refer
to the parties as referred to in the original application for the
setting aside of a warrant of execution against
the property of the
applicant. The applicant is the applicant in this application for
leave to appeal and the respondent herein
was the first respondent in
the said application. The applicant applies
for leave to appeal against the judgment and the order, as well as
the reasons therefor, which I granted on 22 August 2022,
in terms of
which I had dismissed, with costs, the applicant’s application
to have set aside a writ issued against his property
for alleged
arrear maintenance in terms of a divorce order.
[2].

The application for leave to appeal is mainly against my factual finding that the applicant, in his founding affidavit, did not genuinely and bona fide dispute his indebtedness to the first respondent nor the quantum thereof. If regard is had to his version as set out in the founding affidavit, so the applicant contends, it is evident that he manifestly disputes the amount claimed by the first respondent. In my view, this submission misses the point – that being that the first respondent set out in detail how she arrived at the amount claimed and confirmed that the documentary evidence in support of the details of the calculations are available for inspection and the applicant's response is one of a denial without any engagement with the amounts. How can this translate into a genuine and a bona fide dispute, I ask rhetorically.

[3].

The applicant also contends that the court a quo erred in finding that he does not dispute that he did not contribute towards the costs of tertiary education of their daughter. I should have found, so the applicant argues, that because their minor daughter, on reaching the age of majority during 2010, told him that 'she wanted nothing to do with him', that the applicant in fact disputed his liability for payment of such tertiary education fees. In any event, so the argument continues, the aforesaid constituted an express waiver of the right to maintenance in relation to the now major child, which in itself constitutes a valid defence to at least a portion of the first respondent's claim.

[4].

Nothing new has been raised by the applicant in this application for leave to appeal. In my original judgment, I have dealt with most of the issues raised and it is not necessary to repeat those in full. Suffice to restate what I said in my judgment, namely that, in my view, the applicant's attempt to play 'cat-and-mouse' and to 'kick up enough dust' so as to cloud the issues and draw attention away from the fact inter alia that he was liable

to pay arrear maintenance, should not be countenanced.

[5].

The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another court may come to a different conclusion to that reached by me in my judgment. This approach has now been codified in s 17(1)(a)(i) of the Superior Courts Act 10 of 2013, which came into operation on the 23rd of August 2013, and which provides that leave to appeal may only be given where the judges concerned are of the opinion that ‘the appeal would have a reasonable prospect of success’.

[6].

In

Ramakatsa

and Others v African National Congress and Another[1], the SCA held that the test of reasonable prospects of success postulates a dispassionate decision, based on the facts and the law

that a court of appeal ‘could’ reasonably arrive at a conclusion different to that of the trial court. These prospects of

success must not be remote, but there must exist a reasonable chance of succeeding. An applicant who applies for leave to appeal must show

that there is a sound and rational basis for the conclusion that there are prospects of success.

[7].

The ratio in

Ramakatsa

simply followed S

v Smith

2012 (1) SACR 567 (SCA), [2011] ZASCA 15, in which Plasket AJA (Cloete JA and Maya JA concurring), held as follows at para 7:

‘What

the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the Court

of Appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant

must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not

remote, but have a

realistic chance of succeeding. More is required to be established than that there is a mere possibility of

success. That the case is

arguable on appeal or that the case cannot be categorised as

hopeless. There must, in other words, be

a sound, rational basis for
the conclusion that there are prospects of success on appeal.’
[8].

In

Mont

Chevaux Trust v Tina Goosen[2],
the Land Claims Court held (in an obiter
dictum)

that the wording of this subsection raised the bar of the test that
now has to be applied to the merits of the proposed appeal
before

leave should be granted. I agree with that view, which has also now
been endorsed by the SCA in an unreported judgment in
Notshokovu

v S[3].

In that matter the SCA remarked that an appellant now faces a higher
and a more stringent threshold, in terms of the Superior
Court Act 10

of 2013 compared to that under the provisions of the repealed Supreme
Court Act 59 of 1959. The applicable legal principle
as enunciated in

Mont

Chevaux

has also now been endorsed by the Full Court of the Gauteng Division
of the High Court in Pretoria 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[4].

[9].

I am not persuaded that the
issues raised by the applicant in his application for leave to appeal
are issues in respect of which
another court is likely to reach
conclusions different to those reached by me. I am therefore of the
view that there are no reasonable
prospects of another court making
factual findings and coming to legal conclusions at variance with my
factual findings and legal
conclusions. The appeal therefore, in my
view, does not have a reasonable prospect of success.

[10].

Leave to appeal should therefore
be refused.

Order

[11].

In the circumstances, the

following order is made: L R ADAMS
Judge of the High
Court of South Africa
Gauteng
Division, Johannesburg
HEARD

ON: 14th
October 2022 as a videoconference on
Microsoft
Teams

JUDGMENT

DATE:

14th October 2022 – handed down electronically

FOR THE APPLICANT:

Advocate Ian L Posthumus

INSTRUCTED BY:

JNS Attorneys, Randburg

FOR THE FIRST RESPONDENT: Advocate R G Cohen

INSTRUCTED BY:

Glynnis Cohen Attorneys,
Emmarentia, Johannesburg

FOR THE SECOND RESPONDENT: No appearance

INSTRUCTED BY:

No appearance

- [1] Ramakatsa and Others v African National Congress and Another (724/2019) [2021] ZASCA 31 (31 March 2021);
- [2] Mont Chevaux Trust v Tina Goosen, LCC 14R/2014 (unreported).
- [3] Notshokovu v S, case no: 157/2015 [2016] ZASCA 112 (7 September 2016).
- [4] Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others (19577/09) [2016] ZAGPPHC 489 (24 June 2016).

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPJHC/2022/804.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/m-v-b-and-another-maintenance-enforcement-agpjhc-2022-2328-1993>

Prepared on 11 October 2026 · Esheria