

SOUTH AFRICA / JUDGMENT

Malan v Minister of SAPS NO and Others (25953/18) [2019] ZAGPJHC 444 (31 October 2019)

[2019] ZAGPJHC 444

COURT

South Gauteng High Court, Johannesburg

BEFORE

E Molahlehi

CASE / FILE NUMBER

25953/18

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 25953/18

In the matter between:

JASPER JOHANNES MALAN Applicant

and

THE MINISTER OF SAPS N.O. 1st Respondent

CONST. SEKGOTHE VICTOR MOKGOGA N.O. 2nd Respondent

THE MAGISTRATE: BRONKHORSTSPRUIT N.O. 3rd Respondent

THE CHAIRPERSON: GAUTENG GAMBLING BOARD 4th Respondent

J U D G M E N T

MOLAHLEHI, J:

- [1] This is an application for leave to appeal against the judgment of this court made on 22 February 2019. In that judgment the court dismissed the applicant's application seeking a reconsideration and setting aside of a search and seizure warrant obtained by the South African Police Services ("SAPS") on 10 July 2018 from the Bronkhorstspruit Magistrate Court. The court further dismissed the applicant's application seeking an order directing the respondent to restore possession of the property seized by the SAPS following the execution

of the warrant.

- [2] The applicant in his application for leave to appeal has raised the following grounds for appeal:
- (a) The court erred in finding that Rule 6 (12) (c) of the Uniforms Rules of the High Court (Rules) did not find application.
 - (b) The court erred in finding that Rule 53 of the Rules found application;
 - (c) The court erred in holding that there had been substantial compliance with the Regulations governing the Administration Oaths and

Affirmations;

- (d) The court erred in holding that there was substantial compliance with the Regulations governing Oaths and Affirmations.
- [3] An applicant in an application such as the present has to show that there are reasonable prospect that another court is likely to arrive at a different decision than that reached by the court below.
- [4] It is now trite that, for an applicant in an application for leave to appeal to succeed he or she has a threshold higher than it previously was. In this regard the applicant has in terms of s 17 (1) of the Superior Court Act 10 of 2013 (Act) to show, as stated in *Investec Bank Limited v Karel and Another* (2013/34683) [2016] ZAGPJHC 171 (15 June 2016), that “there is some compelling reason why the appeal should be heard.” It was similar held earlier in *The Mont Chevaux Trust (IT 2012/28) v Tina Goosen and 18 Others* LCC14R/2014 at paragraph [6] of the judgment that the Act requires “ a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against . . .”
- [5] In my view the issues raised by the applicant in this matter were considered in full in the earlier judgment. In considering the

grounds of appeal set out in this application and the submission made by Counsel during the hearing of the application, I am not persuaded that there are reasonable prospects that another court is likely to arrive at a decision different to that reached by this court in dismissing the applicant’s application. Put in another way, the applicant has failed to make out a case leave to appeal to another court.

Order

1. In the premises the applicant’s application is dismissed with costs.

E MOLAHLEHI

JUDGE OF THE HIGH COURT

APPEARENCES:

Counsel for the Applicant: Adv L J Lowies

Instructed by: Vardakos Attorneys

Counsel for the Respondent: Adv N Jagga

Instructed by: The State Attorney Johannesburg

Date of hearing: 23 October 2019.

Date delivered: 31 October 2019.

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Prepared on 13 October 2026 · Esheria