

SOUTH AFRICA / JUDGMENT

Mntimba v Member of the Executive Committee for Health: Gauteng Province (Leave to Appeal) (31590/2020) [2024] ZAGPPHC 1257 (6 December 2024)

[2024] ZAGPPHC 1257

COURT

North Gauteng High Court, Pretoria

BEFORE

Makhoba

CASE / FILE NUMBER

31590/2020

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THE

REPUBLIC OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

HIGH COURT DIVISION, PRETORIA

Case

no: 31590/2020

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

DATE

06 DECEMBER 2024

SIGNATURE

In

the matter between:

NONYANISO

MNTIMBA

Applicant/Plaintiff

And

THE

MEMBER OF THE
EXECUTIVE COMMITTEE
FOR HEALTH:

GAUTENG
PROVINCE
Respondent/Defendant

JUDGMENT

LEAVE TO APPEAL

MAKHOBHA, J

[1] For an application for leave to appeal to be successful, it is required of the party seeking such leave to demonstrate that there are reasonable prospects that another court would come to a different conclusion to that reached in the judgment that is sought to be taken on appeal.

[2] Section 17 of the Superior Court Act regulates and legislates the circumstances under which leave to

appeal is to be sought and granted. Section 17, to a large extent codifies the common law grounds of appealable decision.

Section 17(1) reads as follows:

17(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.

[3] In *Member of the Executive Council for Health, Eastern Capa v Mkhitha and Another* [2016] JOL 36940 at paragraphs 16-17 the court applied the concept of 'reasonable prospects of success' as follows "An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal".

[4] Even an application for leave to appeal, with limited prospects of success may be granted, if there are compelling reasons for doing so. This was confirmed by the Supreme Court of Appeal in the matter of *Minister of Justice and Constitutional Development and other v Southern Africa Litigation Centre (Helen Suzman Foundation as amicus curie)* [2016] JOL 34472 (SCA) at par 23.

- [5] The view in *S v Smit* was reconfirmed by the Supreme Court of Appeal in the matter of *Four Wheel Drive CC v Leshni Rattan NO* (1048/17) [2018] ZASCA 124 (26 Sept 2018) at par D [34] where the Court held: “There is a further principle that the court a quo seems to have overlooked – leave to appeal should be granted only when there is a sound, rational, basis for the conclusion that there are prospects of success on appeal.”
- [6] In cases where the decision sought to be appealed does not dispose of all the issues in the case, and the provisions of section 17 (1) (a) and (b) have been satisfied, a Court may grant leave to appeal if the appeal would lead to a just and prompt resolution of the real issues between the parties.
- [7] At the outside an appeal lies only against the substantive order made by this Court, and not against the reasons for judgment. To keep on saying the court erred in this and that is not helpful. What is important is the substantive order made by the court.
- [8] The majority of the grounds advanced by the applicant relate to allegations that the Court failed to take into account, or that the Court did not consider specified aspects of evidence by the various witnesses.
- [9] In *Administrator, Cape v Ntshwaqela* 1990 (1) SA 705 (A) at 715C it was held that there can be an appeal only against the substantive order made by a Court, not against the reasons for judgment. See *Western Johannesburg Rent Board and Another v Ursula Mansions (Pty) Ltd* 1948 (3) SA 353 (A) at 355.
- [10] Due to the technical nature of the matter and the submissions by the applicant, I am of the view that there are compelling reasons for granting the application for leave to appeal even though there are limited prospects of success.

ORDER

- [11] Application for leave to appeal is granted to the Full Court of this Division of this Court. Costs of this application should be cost in the appeal.

MAKHOB A J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

HEARD AND RESERVED JUDGMENT: 02 DECEMBER 2024

JUDGMENT

HANDED DOWN ON: 06 DECEMBER 2024

Appearances:

For the Applicant/Plaintiff: Adv SJ Myburg SC (instructed by) We For the Respondent: Adv T Madileng (instructed by) State Attorney, Pretoria.

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Prepared on 12 October 2026 · Esheria