

SOUTH AFRICA / JUDGMENT

Nel N.O. and Others v Marx N.O. and Another (4679/2016) [2017] ZAFSHC 180 (2 November 2017) [2017] ZAFSHC 180

COURT

Free State High Court, Bloemfontein

BEFORE

C Reinders

CASE / FILE NUMBER

4679/2016

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IN

THE HIGH COURT OF SOUTH AFRICA,
FREE
STATE DIVISION, BLOEMFONTEIN

Case

No: 4679/2016

In

the matter between:

JAN
JOACHIM NEL N.O
First
Applicant
JOYCE
NEL N.O
Second Applicant
HANNES
LOTTER
N.O Third
Applicant
CORNELIUS
JOHANNES HERCULAS VAN
TONDER
t/a NJ
KONSULTANTE Fourth
Applicant
and
JACOBUS
MARX N.O.

First
Respondent
JOHANET
HELENA MARX
N.O. Second
Respondent

JUDGMENT

BY: C REINDERS, J

HEARD ON: 27 OCTOBER 2017

DELIVERED ON: 2 NOVEMBER 2017

- [1] This is an application for leave to appeal against the judgment and order granted by myself on 7 September 2017.
- [2] In the Notice of Application for Leave to appeal filed on 29 September 2017 the Applicants set out the grounds of appeal. I do not intend repeating same. The upshot of these grounds are to a large extent asserting that this courts reasoning was erroneous, that I failed to take into consideration factors which I ought to have and failed to apply my judicial discretion correctly.
- [3] This application must be considered in accordance with the provisions of s17 of the Superior Courts Act, 10 of 2013. In terms of s17(1) leave to appeal may only be given where the judge or judges concerned of the opinion that-
- (a)(i) the appeal would have a reasonable prospect of success (own emphasis added)
- (ii)...
- (b)...
- (c)... .

In the unreported case of *Matoto v Free State Gambling and Liquor Authority and Others* (4629/2015) (2017) ZAFSHC 80 (8 June

2017) Daffue J (with whom Rampai J concurred) articulated at para (5) as follows:

"There can be no doubt that the bar for granting leave to appeal has been raised. Previously, the test was whether there was a reasonable prospect that another court might come to a different conclusion. Now, the use of the word "would" indicates a measure of certainty that another court will differ from the court whose

judgment

is sought to be appealed against. See Acting National Director of Public Prosecutions and Others v Democratic Alliance (19577/209) [2016] ZAGPPHC 489 (24 June 2016). The use by the legislature of the word "only" emphasized supra, is a further indication of a more stringent test."

[4] Having perused the papers before me including the grounds for the application for leave to appeal and my judgment and listening to oral submissions by counsel, I do not have a measure of certainty that another court would come to a different finding.

[5] Consequently the following order will issue:

The application for leave to appeal is dismissed with costs.

C. REINDERS, J

On behalf of the Applicants: Adv. S. Grabler

Instructed by:

Peyper Attorneys

BLOEMFONTEIN

On behalf of the Respondents: Adv. A.J.R. van Rhyn SC

Kramer Weihmann & Joubert Inc

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Prepared on 28 October 2026 · Esheria