

SOUTH AFRICA / JUDGMENT

University of Limpopo and Others v Simon (Leave to Appeal) (4047/2022) [2024] ZALMPPHC 207 (23 December 2024) [2024] ZALMPPHC 207

COURT

Limpopo High Court, Polokwane

BEFORE

E Mashamba

CASE / FILE NUMBER

4047/2022

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

DIVISION, POLOKWANE

CASE

NO: 4047/2022

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO THE JUDGES: YES/NO

(3)

REVISED: YES

DATE:

23-12-2024

SIGNATURE:

In

the matter between:

UNIVERSITY
OF LIMPOPO
FIRST
APPLICANT
REGISTRAR
FOR THE
UNIVERSITY
OF LIMPOPO
SECOND
APPLICANT
THE
EXECUTIVE COMMITTEE OF
SENATE
OF UNIVERSITY OF LIMPOPO
THIRD
APPLICANT
DEAN
OF THE FACULTY OF
MANAGEMENT
AND LAW,
UNIVERSITY
OF LIMPOPO
FOURTH
APPLICANT
MINISTER
OF HIGHER EDUCATION
AND
TRAINING
FIFTH
APPLICANT
COUNCIL
ON HIGHER EDUCATION
SIXTH
APPLICANT
SOUTH
AFRICAN QUALIFICATION
AUTHORITY
SEVENTH
APPLICANT
UNIVERSITIES
OF SOUTH AFRICA
EIGHTH
APPLICANT
SENATE
OF THE UNIVERSITY OF LIMPOPO
NINETH
APPLICANT
And
MASISI-LETELE
SIMON
RESPONDENT

In

Re: MASISI-LETELE
SIMON
APPLICANT
And
UNIVERSITY
OF LIMPOPO
FIRST
RESPONDENT
REGISTRAR
FOR THE UNIVERSITY
OF
LIMPOPO
SECOND
RESPONDENT
THE
EXECUTIVE COMMITTEE OF SENATE OF UNIVERSITY OF LIMPOPO
THIRD
RESPONDENT
DEAN
OF THE FACULTY OF
MANAGEMENT
AND LAW,
UNIVERSITY
OF LIMPOPO
FOURTH
RESPONDENT
MINISTER
OF HIGHER EDUCATION
AND
TRAINING
FIFTH
RESPONDENT
COUNCIL
ON HIGHER EDUCATION
SIXTH
RESPONDENT
SOUTH
AFRICAN QUALIFICATION
AUTHORITY
SEVENTH
RESPONDENT
UNIVERSITIES
OF SOUTH AFRICA
EIGHTH
RESPONDENT
SENATE
OF THE UNIVERSITY OF LIMPOPO
NINETH
RESPONDENT

JUDGMENT

- APPLICATION FOR LEAVE TO APPEAL

MASHAMBA AJ

INTRODUCTION

- [1] The first, second, third, fourth and ninth Applicants ("the Applicants") made an application for leave to appeal against the judgment and orders granted by the above honourable court on the 27th September 2024. The Respondent opposed the application.
- [2] This application is premised on the grounds set out in the application for leave to appeal filed on the 18th October 2024.
- [3] The application was set down for hearing on the 13th December 2024.

LEGAL PRINCIPLES

- [4] Applications for leave to appeal are governed by the provisions of section 17 of the Superior Courts Act 10 of 2013. Section 17(1) provides as follows:

"(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 reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
- (b) The decision sought to appeal does not fall within the ambit of section 16(2)(a); and
- (c) Where the decision sought to be appealed does not dispose of all the issues in case, the appeal would lead to a just and prompt resolution of the real issues between the parties."

- [5] The traditional test that was applied by the courts in considering leave to appeal applications have been whether there is a reasonable prospect that another Court may come to a different conclusion to the one reached by the court a quo as said in *Commissioner of Inland Revenue v Tuck* 1989 (4) SA 888 (T) at 890B. With the enactment of section 17, the test obtained statutory force. In terms of section 17(1)(a)(i) leave to appeal may now only be granted where the Judge or Judges concerned is of the view that the appeal would have a reasonable prospect of success, which made it clear that the threshold to grant leave to appeal has been raised.

- [6] In *Mont Chevant Trust v Tina Goosen and 18 Others supra*, at para 6, it was held that:

"It is clear that the threshold or 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 at a different conclusion, see *Van Heerden v Cronwright & others* 1985 (2) SA 342 (T) at 342H. 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." In *Notshokuvu v S*

(2016) ZASCA 112 at para 2, it was indicated that an Appellant faces a "higher and stringent" threshold under the Superior Courts Act. Thus, in relation to the said section 17, the test for leave to appeal is not whether another Court "may" come to a different conclusion, but "would" indeed come to a different conclusion.

[7] With regard to the meaning of reasonable prospects of success, it was held in *S v Smith* 2012 (1) (SCA) 570, at para 7, as follows:

"What the test of reasonable prospects of success postulates is a dispassionate decision, based on the fact and the law, that a 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 the decision of *Ramakatsa v ANC* which it was [(724/2019) [2021] ZASCA 31 (31 March 2021)] it was held that:

"I am mindful of the decision at High Court level debating whether the use of the word "would" as oppose to "could" possible mean that the threshold or granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted... The test of reasonable prospect 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" [at para 10].

[9] The Applicants and the Respondent submitted their heads of argument to this court before the application could be heard. The Applicants argued that the School of Law had no authority to grant the Respondent with exemption of B proc courses to credit LLB courses. The Applicants further argued that the Respondent did not satisfy the requirements of legitimate expectation because the School of Law had no authority to grant exemption of courses. This court is not persuaded to believe that the School of Law had no authority to grant exemption because *Adv Rapatsa* indicated that other students in the same position as that of the Respondent graduated and this mean that the School of Law used its expertise to advise the Respondent, the LLB courses, which he supposed to register in order to complete his LLB degree. This made the court to stand in a good position as an administrator and to substitute the Senate's decision.

[10] The Applicants did not illustrate the reasons the Respondent was registered as third year student, if his courses were not exempted by the School of Law. The Applicants indicated that their application for leave to appeal has reasonable prospect of success. The Applicants further submitted that, even if the court a quo may justify an order to review and set aside of the Senate's decision, failure to remit the matter back to the Senate was not justifiable.

The Applicants also submitted that no exceptional circumstances which justified the court to substitutes the Senate's decision. The Applicants argued that the court a qua should have remitted the matter back to the administrator ("the Senate") for

reconsideration. The Applicants argued that in substituting the Senate's administrative decision, the court a qua overstepped its

constitutional mandate.

[11] In reply, the Respondent referred the court to the case decided in the SCA between Municipal Manager: The City of Johannesburg Metropolitan Municipality and Others v San Ridge Heights Rental Property (Pty) (517/2022) [2023] ZASCA 109 (11 July

2023) at para 17 held as follows;

"Section 8 of PAJA gives the courts a wide discretion to make any just and equitable order to remedy the violation of the right to just administrative action, this includes, in exceptional circumstances, the court substituting or varying the administrative action with a decision in terms of the court's order (s 8(1)(c)(ii) (aa). Substitution, however, is an extraordinary remedy".

[12] The Respondent further referred the court to the matter of Trencon Construction (Pty) Limited v Industrial Development Corporation of South Africa Limited and Another [2015] ZACC 22; 2015 (5) SA 245 (CC), para 42-54, the court clarified the test for exceptional circumstances where a substitution order is sought. It suffices to state that remittal is almost always the prudent and proper course. Whether a court was in a good position as the administrator to make the decision and whether the decision was a foregone conclusion are two factors that had to be considered accumulatively. Other relevant factors include delay, bias or incompetence on the part of administrator.

[13] The court a quo reviewed and set aside the Senate's decision after proper considerations of the facts and law. The court a quo substituted the Senate's decision after the consideration of the whole facts of the case, among others, the court considered that, the School of Law took a decision as an administrator, and such decision the Senate did not approach the court with an application to review and to set aside the decision. The court a quo substituted the Senate's decision after the principles in Trencon case referred in supra was considered. In terms of section 8 of PAJA, the court has a wide discretion to exercise when considering to substitution order of the Senate's administrative decision. The School of Law had already dealt with the requirements the Respondent had to satisfy in order to obtain his LLB degree and .the Respondent fulfilled such requirements, therefore, the court a quo was correct in finding that the Respondent completed his LLB degree.

CONCLUSION

[14] In conclusion, the court finds that the appeal has no reasonable prospect of success and no other court which would come to a different conclusion, therefore, the application for leave to appeal should be refused.

[15] In the circumstances, I make the following order;

1. The application for leave to appeal is dismissed.
2. The Applicants are ordered to pay party and party costs, including Counsel's fee, in scale B.

E MASHAMBA

ACTING JUDGE OF THE HIGH COURT,

POLOKWANE, LIMPOPO DIVISION

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Prepared on 12 October 2026 · Esheria
