

SOUTH AFRICA / JUDGMENT

Willis v Mahadevy and Others (94037/19) [2021] ZAGPPHC 601 (17 September 2021) [2021] ZAGPPHC 601

COURT

North Gauteng High Court, Pretoria

BEFORE

TLHAPI VV

CASE / FILE NUMBER

94037/19

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IN

THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE

NUMBER: 94037/19

17/9/2021

In

the matter between:

WILLIS
RS
PLAINTIFF
And
MAHADEVY,
R
FIRST DEFENDANT
DMA
INC
SECOND DEFENDANT
MAHARAJ,
D
THIRD DEFENDANT

JUDGMENT

APPLICATION FOR LEAVE TO APPEAL

TLHAPI J

- [1] This is an application for leave to appeal to the Full Court of the above Honourable Court against an order granting summary judgment against the applicant ("first defendant") with costs. I have taken into account submissions and arguments by both counsel in this application and these shall not be repeated.
- [2] The applicants raise the issue that the court erred in not taking into account the defence of the first defendant that he was not personally liable for the amount owed to the plaintiff, there being documentary evidence, being an admission by the third defendant that he represented a company called Eden Rose Mining Resources (Pty) Ltd (ERMR). Further, that the court failed to take cognizance of the fact the first defendant was a shareholder and director of ERMR a fact not denied by the plaintiff, second and third defendant and, that the plaintiff's fees in respect of ERMR had been directed at all times to the second and third defendants and not to the first defendant in his personal capacity. The basis of the agreement of fees was entered into between the plaintiff and the third respondent was not disclosed to the first defendant.
- [3] It was also contended that the court failed to take cognizance of the fact that The R1 850 000,00 which was held by the third defendant in trust for the first defendant and later paid over to the attorney of the first defendant at a time when fees were due to the plaintiff, that if the first defendant was personally liable for the fees of the plaintiff the third defendant would have withheld payment of the amount or part thereof to secure payment of plaintiff's fees
- [4] It was contended that the grant of judgment against the first defendant for the amount of fees that had not prescribed on the basis that the first defendant held a Fidelity Fund certificate in respect of a law firm called Mahadev and Maharaj in Pietermaritzburg, ignored the fact that the said firm served as a correspondent in order to comply with the Supreme Court Rules of Court of a 15 kilometres requirement from the court, and that for these reasons the first defendant was denied an opportunity to a fair trial.
- [5] It is trite now that the test previously applied to similar applications is no longer applicable and that the threshold for reasonable prospect has now been raised as provided in Section 17(1)(a)(i) of the Superior Courts Act 10 of 2013 . There should be some certainty that another court would come to a different conclusion. *Mont Chevaux Trust v Goosen* 2014 JDR 2325 (LCC); *Nontshokuvu v S* [2016] ZASCA 112 (7 September 2016)

- [6] Having heard both counsel I do find that there are reasonable prospects of Success on appeal in respect of the issues raised in the application for leave to appeal, especially regarding the second and third defendant in respect of instructions given to the plaintiff in the matter of ERMER and, the fact that the agreement for the payment of fees is an issue to be interrogated in relation to the role of the first defendant. The requirements of section 17(1) above have been met and the application should succeed.
- [7] In the result the following order is made:
1. Leave to appeal to the Full Court of this Division is granted and costs shall be costs in the appeal.

TLHAPI VV

(JUDGE OF THE HIGH COURT)

MATTER HEARD ON

: 11 JUNE 2021

JUDGMENT

RESERVED ON

: 11 JUNE 2021

ATTORNEYS FOR THE APPLICANT : J J FRYER ATTORNEYS

ATTORNEYS FOR THE RESPONDENTS : MR AS SEEDAT

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Prepared on 10 October 2026 · Esheria