



THE REPUBLIC OF SOUTH AFRICA

THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

JUDGMENT

Case no: 35730/2012

Reportable: Not

Date 27 August 2013

Signature: 

In the matter between:

LUJABE MATSHELISO XOLISWA

Applicant

and

MARUATONA SHIBISHI SAMUAL

Respondent

Dated: 5 August 2013

JUDGMENT

Molahlehi AJ

Introduction

- [1] This is an application for leave to appeal against the judgment of this Court made on 15 April 2013, in terms of which the applicant's application to have the respondent committed for contempt of Court was dismissed with costs.
- [2] The applicant seeks leave to appeal on the basis that the Court erred in firstly finding that the Court order which had been made the settlement agreement

between the parties an order of Court was not readily executable and that the clause of the settlement agreement which was made an order of Court are in respect of amounts that are unspecified. The applicant further contends that the Court erred in concluding that the order of the Court that incorporated the settlement agreement did not constitute an order *factum praestandum*. The other basis upon which the judgment is challenged is the awarding of costs.

[3] The test that generally applies in an application for leave to appeal is whether there are reasonable prospects of success on appeal. In applying this test I am persuaded that there are reasonable prospects that another Court is likely to arrive at a conclusion different to the one reached by this Court. I am accordingly satisfied that the applicant has made a case for leave to appeal to the full bench.

[4] In the premises the following order is made:

- 4.1 There is no order as to costs arising from the postponement of 5 August 2013.
- 4.2 The leave to appeal to the full bench is granted with cost to be costs in the appeal.



Molahlehi, J

Acting Judge of the

South Gauteng High Court.

APPEARANCES

For the Applicant: Advocate RWM Kujawa

Instructed by: Simpson–Masenamela Attorneys

For the Respondent: Mr Angelo Christophorou of Biccari Bollo Mariano Inc