

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 35849/2016

(1)	REPORTABLE: <u>YES</u> / NO
(2)	OF INTEREST TO OTHER JUDGES: <u>YES</u> / NO
(3)	REVISED
11/10/2017	
DATE	SIGNATURE

In the consolidated application between:

**CRYSTAL CLEAR CONSULTING
& MERCHANTS (PTY) LTD**

Applicant

and

MS & KHUDU HOLDINGS

First respondent

J U D G M E N T

SENYATSI, AJ:

INTRODUCTION

- [1]. This is an application leave to appeal against the judgment I handed down on the 30th of June 2017. The parties will be referred as in the main application. In the judgment, I came to a conclusion that there was an oral agreement in terms of which the 50% profit sharing margin

was agreed to by the parties and I granted judgment in favour of the applicant.

- [2]. The Respondent has filed leave to appeal and raised fifteen (15) grounds of appeal. Its counsel, Mr Bokaba submitted that another court will come to a different conclusion and that leave should be granted to appeal.
- [3]. The application is opposed by the Applicant Mr Segal, on behalf of the applicant, submitted that the Respondent's grounds of appeal do not pass the test as provided for in Section 17 (1) (a) of the Superior Courts Act 10 of 2013 ("the Act") which lays down a strict test that needs to be passed for leave to appeal to be granted. Mr Segal furthermore submitted that the Respondent's grounds for appeal do not pass the test as provided in Section 17 (1)(a) of the Superior Court Practice Act 10 of 2013 ("the Act") which lays down a test that needs to be passed for leave to appeal to be granted. Mr Segal contended that the grounds of appeal amount to re-argument of the merits of the case.
- [4]. The issue for determination is whether the test as provided for by Section 17 (1) (a) of the Act has been passed.
- [5]. Section 17 (1) (a) of the Act provide as follows:
 - "(i) 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; or*
 - (ii) There is some other compelling reason why the appeal should be heard, including*

conflicting judgment on the matter under consideration.”

- [6]. Prior to this Act coming into effect during August 2013, the criterion which an Applicant had to satisfy was that leave would be granted if there were reasonable prospect of success.¹
- [7]. It is now trite law, after the coming into effect of the Act that the threshold for granting leave to appeal against the judgment of a High Court has been raised. 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.²
- [8]. There is therefore an agreement between the authorities that the test for leave to appeal introduced by Section 17 of the Act has placed the standard much higher and is more stringent than the traditional test.³
- [9]. The test has now been consistently applied. In applying the test, the court must always have regard to the merits of each case.
- [10]. I have considered the submission made by Mr Bokaba on behalf of the Respondent. I have also considered the submission made by Mr Segal on behalf of the Applicant. In addition to the consideration of the submissions, I also had regard to the merits of the case and the context under which I reached the conclusion. I hold the view that the grounds for appeal relied on have not passed the test as laid down in Section 17 of the Act.

¹ See Zweni v Minister of Law and Others 1993 (1) SA 523 (A) at 531 B-E; New Clicks South Africa (Pty) Ltd v Tshabalala-Msimang 2005 (3) SA 231 (CPD) 236 H; Goodwin Stable Trust v Duohex (Pty) Ltd & Another 1999 (3) SA 353 (CPD) at 355 B

² See the unreported judgment of The Mont Chevaux Trust v Tina Goose Case number LCC/4R/214.

³ See Van Tender v Master of the High Court, Pretoria 2017 JDR 0346 (GP)

- [11]. As a consequence thereof, I am not persuaded that the Respondent has passed the test that another court will come to a different conclusion.

Order

- [12]. Leave to appeal is dismissed with costs

A handwritten signature in black ink, appearing to be 'M Senyatsi', is written over a horizontal line.

**M SENYATSI
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Appearances

For the Applicant: ADV. Bokaba

Instructed by: Ngoato Attorneys

For the Respondent: ADV. Segal

Instructed by: Witz Calicchio Isakow & Shapiro Attorneys Inc.