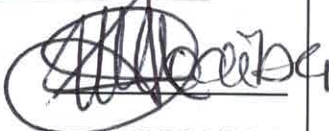


REPUBLIC OF SOUTH AFRICA



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

CASE NO: 23159/2019

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
(3)	<u>REVISED.</u>
<p>10 OCTOBER 2019</p> <p style="text-align: right;"> LT MODIBA J (Ms.)</p>	

In the matter between:

**KUBENTHERAN MOODLEY**

Applicant

And

**THE CHAIRPERSON OF THE JUDICIAL  
COMMISSION OF INQUIRY INTO  
ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE  
PUBLIC SECTOR INCLUDING ORGANS  
OF STATE**

First Respondent

and

**KNOX TITANIUM VAULT COMPANY (PTY) LTD**

Second Respondent

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**J U D G M E N T IN RESPECT OF THE FIRST RESONDENT'S  
APPLICATION FOR LEAVE TO APPEAL**

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**MODIBA, J:**

[1] This is an opposed application for leave to appeal the judgment and order I handed down on 21 August 2019, upholding the applicant's application to set aside the summons the first respondent issued on 24 June 2019 ("the setting aside application").

[2] For convenience, I use the parties' citation in the setting aside application.

[3] The first respondent relies on section 17(1)(a)(i) of the Superior Courts Act 10 of 2013. It provides:

“(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 a reasonable prospect of success;”

[4] The first respondent has set out his grounds of appeal in detail. Their gravamen is that I erred in the interpretation I accorded to sections 3(1) and (2) of the Commission's Act<sup>1</sup> and Regulations 4(1) and (2) of the Commission's Regulations<sup>2</sup> and in awarding costs to the applicant. He contends that there are reasonable prospects that another court would construe these provisions differently, as well as return a different order in respect of costs. Only Mr. Moodley opposes the application. He contends that there are no prospects that another court would come to a different conclusion on these issues.

[6] I have considered the grounds for appeal as set out in the first respondent's notice of appeal as well as submissions by counsel for the parties. I stand by my reasons for judgment as set out in the judgment handed down in this matter.

[8] I find that the first respondent fails to meet the threshold referred to above.

[9] In the premises, the application stands to be dismissed with costs.

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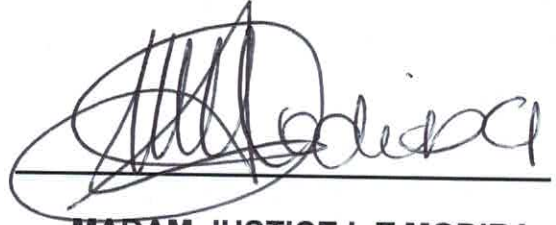
<sup>1</sup> Act 8 of 1947.

<sup>2</sup> The Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, published in the Government Gazette of 9 February 2018 as a Schedule to Government Notice 105.

[10] I therefore make the following order:

**ORDER**

1. The application for leave to appeal is dismissed with costs.

A handwritten signature in black ink, appearing to read 'L T Modiba', is written over a horizontal line.

**MADAM JUSTICE L T MODIBA  
JUDGE OF THE HIGH COURT  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**APPEARENCES:**

Counsel for Applicant:	Advocate M Hellens SC
Attorney for Applicant:	Peyper Attorneys
Counsel for First Respondents:	Advocate V Ngalwana SC
Attorney for First Respondents:	Shandu Attorneys
Date heard:	20 September 2019
Date of judgment:	10 October 2019