



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

CASE NO: 2015/08456

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

DATE: 19 October 2020

In the matter between:

KADER: HEIDI JOY

Applicant

And

SWARTZ: MERVYN ISRAEL N.O.

First Respondent

KADER: STUART WAYNE

Second Respondent

JUDGMENT ON LEAVE TO APPEAL

FOULKES-JONES AJ

1. I handed down judgment in this matter in December 2019. I gave various orders against the First Respondent and ordered him to pay the costs of the application.
2. First Respondent now seeks leave to appeal against my judgment, citing sections 17(1), (2)(a) and (6).
3. No doubt if one reads those sections of the Superior Courts Act No. 10 of 2013 (with Uniform Rule 49) I would have to refer the matter to the Full Court of the Gauteng Local Division. The appeal does not involve a question of law of importance, is not of general application and does not involve differences of opinion (section 17(1), (2)(a) and (6)).
4. But I could in terms of section 17(1)(a) only grant leave to appeal if I am of the opinion that the appeal would have a reasonable prospect of success. (My underlining).
5. I have been referred to the judgment of Bertelsmann J in the matter of ***The Mont Chevaux Trust v Tina Goosen & 18 Others*** 2014 JDR 2325 (LCC) at paragraph (b) where he held as follows:

“It is clear that the threshold for 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 to a different conclusion ... The use of the word “would” in the new statute that another court will differ from the court whose judgment is sought to be appealed against.”

6. I am thus obliged to determine whether another Court would (not might) come to a different conclusion. Notwithstanding the able argument of Mr Badenhorst SC, I am not convinced that another Court would come to a conclusion other than that which I have made.
7. I cannot therefore grant the First Respondent leave to appeal. I make the following order:

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

K I FOULKES-JONES

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG

Electronically submitted

Delivered: This judgement is handed down electronically by circulation to the Parties/their legal representatives by email. The date for hand-down is deemed to be 19 October 2020.

Date of hearing: 23 July 2020

Date of judgment: 19 October 2020

Appearances:

Sian Richardson Attorneys: Attorneys for the Applicant

Counsel for the Applicant: Adv. W Davel

Keith H Lang Attorneys: Attorneys for the 1st Respondent

Counsel for the 1st Respondent: Adv. S M Katzew

Yosef Shishler Attorneys: Attorneys for the 2nd Respondent

Counsel for the 2nd Respondent: N/A (not opposed)