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**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, PRETORIA**

**CASE NO: 29933/2017**

**DELETE WHICHEVER IS NOT APPLICABLE**

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

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DATE

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SIGNATURE

In the matter between:

**S M**

**Applicant**

and

**B M**

**Respondent**

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**JUDGMENT  
(Leave to Appeal Application)**

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- [1] This is an application for leave to appeal against the judgment. I handed down on 26 March 2020.
- [2] The applicant contends that the court misdirected itself by not making an order for forfeiture by the Respondent of sharing in the proceeds of the Applicants pension in Government Employees Pension fund (*GEPF*).
- [3] At the hearing of the application, I asked both Counsels to address me on whether the Court overlooked evidence that showed the nature and the extent to which the Respondent would be unduly benefitted if forfeiture by the Respondent of the equal share in the pension fund of the Applicant was ordered.
- [4] Mr Tshabalala on behalf of the Applicant contended that such averment was contained in the Applicants counter-claim in the pleadings. He failed to point out to me that during trial, evidence was led which showed the nature and the extent of the undue benefit by the Respondent was going to have if forfeiture of sharing in the Applicant's pension was ordered.
- [5] Ms Thamane, on behalf of the Respondent argued that no such evidence was led during trial showing the nature and the extent of the undue benefit if forfeiture of sharing in the Applicant's pension fund was not ordered.
- [6] The judgment is attacked on the basis that it did not focus on forfeiture of the proceeds of the pension fund of the Applicant.
- [7] It should be restated that the parties were married in community of property. What the applicant had sought was impliedly that all and other assets were to be shared equally, to the exclusion of her pension fund, in terms of which she sought an order that the Respondent had to forfeit sharing in the proceeds.

[8] Leave to appeal judgment is regulated by section 17(1) of the Superior Courts Act of 2013 which provides as follows:

*“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 judgments on the matter under consideration;*

*(b) the decision sought on appeal does not fall within the ambit*

*of Section 16 (2) (a); and*

*(c) where the decision sought to be appealed against does not*

*dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties”*

[9] The bar for the granting of leave to appeal has been raised by this section. The Court hearing the application must be satisfied that the appeal would have a reasonable prospect of success.<sup>1</sup> The Court hearing the application for leave to appeal must be certain that the appeal would have reasonable prospect of success.

[10] Having not been persuaded by the evidence adduced by the Applicant at trial (on the nature and the extent of the undue benefit the Respondent would have if no forfeiture of the proceeds of the Applicants pension was not

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<sup>1</sup> See MEC Health, Eastern Cape v Mkhita [2016] ZASCA 176 at para 17

ordered). I am not persuaded that another Court would come to a different conclusion and order forfeiture as prayed for by the Applicant.

[11] It follows therefore that the leave to appeal application must fail

**ORDER:**

The following order is made:

[12] The application for leave to appeal is refused with costs.

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**SENYATSI ML**

*Judge of the High Court of South Africa*

*Gauteng Local Division, Johannesburg*

Date of hearing: 27 August 2020

Date of Judgment: 28 August 2020

Appellants Counsel: Adv. Tshabalala

Instructed by: Naledi Matlhatji Attorneys, Mabopane

Respondents Counsel: Adv. JDB Themane

Instructed by: Victor Mabe Inc, Pretoria