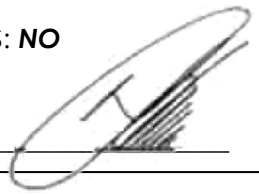
IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

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

Date: ***28th August 2020*** Signature: 

CASE NO: 2019/29442

DATE: 28TH AUGUST 2020

In the matter between:

DUBE, TAKANDU	First Applicant
DUBE, TSITSI	Second Applicant

and

OFF THE GRID CC	First Respondent
DANIEL, JENNIFER MARGARET	Second Respondent
DANIEL PROJECTS CC (In Liquidation)	Third Respondent
EDUARDO TODISCO ARCHITECTS & DESIGNS	Fourth Respondent
MORRISON, TERENCE ANDREW	Fifth Respondent
THE MASTER OF THE HIGH COURT, JOHANNESBURG	Sixth Respondent

Coram: Adams J

Heard: 27 August 2020

Delivered: 28 August 2020 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the

GLD and by release to SAFLII. The date and time for hand-down is deemed to be 12h00 on 28 August 2020.

Summary: Application for leave to appeal against factual findings in opposed motion court proceedings – s 17(1)(a)(i) of the Superior Courts Act 10 of 2013 – an appellant now faces a higher and a more stringent threshold – application for leave to appeal refused

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ORDER

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(1) The first and second applicants' application for leave to appeal is dismissed with costs.

(2) The first and second applicants, jointly and severally, the one paying the other to be absolved, shall pay the first and second respondents' costs of this application for leave to appeal, including any wasted costs (if any) occasioned by the postponement of the application for leave to appeal on previous occasions.

JUDGMENT [LEAVE TO APPEAL]

Adams J:

[1]. I shall refer to the parties as referred to in the original opposed urgent application. The first and second applicants ('the applicants') are the applicants in this application for leave to appeal and the first and second respondents ('the respondents') are the respondents herein. The applicants apply for leave to appeal against the whole of the order and the judgment, as well as the reasons therefor, which I granted on the 7th of April 2020, in terms of which I had granted judgment in favour of the first and second respondents against the first and second applicants for payment of the amount of the R115 535.45, together with interest thereon and costs of suit.

[2]. The application for leave to appeal is against my factual and legal findings that, after the debatement of the first respondent's statement of account, the applicants are liable to the first respondent in an amount of R115 535.45 despite the fact that there was evidence in the papers before me that the first respondent may have been deregistered during 2014. This then means, so it was contended on behalf of the applicants, that the first respondent did not have the necessary *locus standi* to enter into the agreement on which the first respondent's claim was based. Moreover, so the applicants submitted, the first respondent did not have the necessary *locus standi* to institute the 'counterclaim' for payment from the respondents of the said sum.

[3]. The main difficulty with the applicants' case in this application for leave to appeal is that it is based on issues which were not before the court when the matter was initially adjudicated. In fact, in their heads of argument the applicants make the submission that the first respondent's lack of *locus standi* is based on a '*Windeed* Search' dated the 13th of July 2020. This is fatal to the applicants cause. In any event, I reiterate that the first respondent's *locus standi* was not an issue in the proceedings in the court *a quo*. The applicants were the ones who launched an application against the first respondent, which implies that they accepted that the first respondent existed as a legal entity. The first respondent joined issue with the applicants on that aspect, which, in turn, means that the first respondent's *locus standi* was common cause in the proceedings in the court *a quo*. There is therefore no factual or legal basis on which the applicants can ground the submissions made in this application for leave to appeal.

[4]. All other issues raised by the first and second applicants in this application for leave to appeal have been dealt with by me in my original judgment and it is not necessary to repeat those in full. Suffice to say that when the parties came before me in the urgent court initially, it was indicated that the parties disagree on the amount due to the first respondent by the applicants. I indicated to the parties that it was most undesirable that the dispute between them be decided upon in the urgent court. I directed that the applicants be given access to their newly built house and I would subsequently adjudicate the

dispute between them. Neither of the parties had any objection to such directive and an order to that effect was issued.

[5]. The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another court may come to a different conclusion to that reached by me in my judgment. This approach has now been codified in s 17(1)(a)(i) of the Superior Courts Act 10 of 2013, which came into operation on the 23rd of August 2013, and which provides that leave to appeal may only be given where the judge concerned is of the opinion that *'the appeal would have a reasonable prospect of success'.*

[6]. In *Mont Chevaux Trust v Tina Goosen,* LCC 14R/2014 (unreported), the Land Claims Court held (in an *obiter dictum*) that the wording of this subsection raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. I agree with that view, which has also now been endorsed by the SCA in an unreported judgment in *Notshokovu v S,* case no: 157/2015 [2016] ZASCA 112 (7 September 2016). In that matter the SCA remarked that an appellant now faces a higher and a more stringent threshold, in terms of the Superior Court Act 10 of 2013 compared to that under the provisions of the repealed Supreme Court Act 59 of 1959. The applicable legal principle as enunciated in *Mont Chevaux* has also now been endorsed by the Full Court of the Gauteng Division of the High Court in Pretoria in *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2016] ZAGPPHC 489 (24 June 2016).

[7]. I am not persuaded that the issues raised by the first and second applicants in their application for leave to appeal are issues in respect of which another court is likely to reach different conclusions to those reached by me. I am therefore of the view that there are no reasonable prospects of another court coming to different conclusions, be they on aspects of fact or law, to the ones reached by us. The appeal does not, in my judgment, have a reasonable prospect of success.

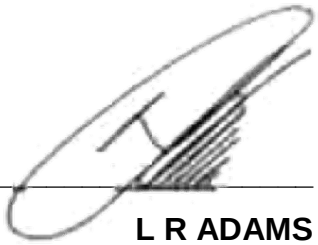
[8]. Leave to appeal should therefore be refused.

Order

In the circumstances, the following order is made:

(1) The first and second applicants' application for leave to appeal is dismissed with costs.

(2) The first and second applicants, jointly and severally, the one paying the other to be absolved, shall pay the first and second respondents' costs of this application for leave to appeal, including any wasted costs (if any) occasioned by the postponement of the application for leave to appeal on previous occasions.



L R ADAMS
Judge of the High Court
Gauteng Local Division, Johannesburg

HEARD ON:	27th August 2020
JUDGMENT DATE:	28th August 2020
FOR THE APPLICANTS:	Adv Melato Makhubedu
INSTRUCTED BY:	F M Setati Attorney
FOR THE FIRST AND SECOND RESPONDENTS:	Ms K Jordaan
INSTRUCTED BY:	K Jordaan & Associates Incorporated
FOR THE THIRD TO SIXTH RESPONDENTS:	No appearance
INSTRUCTED BY:	No appearance