

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

**CASE NO: 26831/2020**

**REPORTABLE: NO  
OF INTEREST TO OTHER JUDGES: NO**

**In the matter between:**

**J[....] H[....] M[....]**

**Applicant**

**and**

**N[....] L[....] M[....]**

**Respondent**

**J U D G M E N T**

**MOKUTU AJ:**

**Introduction**

1. In this matter the applicant (the respondent in the previous main application) brought an application for leave to appeal. Although the matter (the main application) was argued, around March 2021 and judgment handed down around March 2021, it took a considerable amount of time for the application for leave to appeal to be heard owing to uncertainties created by the Covid-19 pandemic. Ultimately the matter was set down for hearing on 8 October 2021.

2. As I understand it, the test for application for leave to appeal has been enunciated in section 17 of the Superior Courts Act 10 of 2013 (“**the Superior Courts Act**”) in terms of which it is, *inter alia*, provided that leave to appeal may only be given when the judge or the judges concerned is/are of the opinion that the appeal would have a reasonable prospect of success.

3. There is a plethora of legal authorities on the grant of leave to appeal in light of section 17 of the Superior Courts Act. The authorities agree that there is a heightened duty on the applicant to satisfy the Court that the leave to appeal, if granted, would yield either an arguable case or some measure of prospect of success on appeal or whether it would be in the interest of justice to do so.

4. I am not satisfied on the grounds contended for in the application for leave to appeal that the applicant’s application for leave to appeal would succeed as prayed for and for the following reasons:

4.1. it was pleaded in the applicant’s answering affidavit, in the main, that there was a dispute as to whether an amount of R251 000.00 was owned or not;

4.2. however, the annexures referenced in the founding affidavit, which I find are critical, being annexures “**NM18**” until “**NM21**”, demonstrated that the applicant was aware that he was in arrears, although it was denied in oral submission and also in the applicant’s heads of argument that the applicant was in arrears;

4.3. in fact, it was submitted, on behalf of the applicant, that at the date of hearing of the main application, the applicant was on credit, needless to state that a month prior to the institution of the main application, in September 2020, the respondent made a passionate plea to the applicant to pay the arrears as owing at the time.

5. I have remarked in the main judgment, that absent the banks statements and/or proof thereof the respondent’s cause of action was somehow ineloquently

pleaded. But that notwithstanding, I am satisfied that the applicant was aware of his indebtedness to the respondent and the leave to appeal cannot succeed. More so, it was submitted that the applicant was not responsible for payment of school fees and medical expenses notwithstanding the clear language of the settlement agreement which was made an order of Court.

6. Lastly, the issue of Mr Rabinowitz, which according to the applicant that I was not entitled to take note or to place reliance thereon, insofar as the applicant's hiding or "*putting money out of the rich officers' creditors*" warranted attention. In my view, it is a serious and a critical issue which consideration had to be placed on in that regard. Mr Zimmermann's contention that, therefore, I should not have placed reliance thereon, in my view, lacks merit and for the reasons that I have stated so far, in the main judgment, I am still not convinced that there is merit in the application for leave to appeal.

7. In the result I make the following order.

## **ORDER**

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

9. I am not satisfied that another Court will come to a different conclusion.

**MOKUTU AJ**

**ACTING JUDGE OF THE HIGH COURT**

Date of hearing: 08 October 2021

Judgment communicated: 15 November 2021

Attorneys for Applicant: Taitz & Skikne Attorneys  
(Mr Real Zimmerman)

Counsel for Respondent:

Adv N Riley

Attorneys for Applicant:

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