

**REPUBLIC OF SOUTH AFRICA**



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

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

7/12/2022

DATE

A handwritten signature in black ink, appearing to be "GJ", written over a dotted line.

SIGNATURE

**CASE NO: 59158/2021**

In the matter between:

**BLACK BOND SURFACING (PTY) LTD**

Appellant

and

**DYNAPAC SA (PTY) LTD**

Respondent

Coram:

Dlamini J

Date of hearing:

15 November 2022 – in a 'virtual Hearing' during a videoconference on Microsoft Teams digital platform.

Date of delivery of Judgment:

07 December 2022

This judgment is deemed to have been delivered electronically by circulation to the parties' representatives via email and shall be uploaded onto the caselines system.

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**JUDGMENT**  
**[LEAVE TO APPEAL]**

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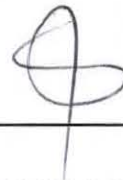
**DLAMINI J**

- [1] This an application for leave to appeal my judgment that I handed down on 9 August 2022.
- [2] This was *rei vindicatio* application for the return of certain equipment instituted by the respondent against the appellant herein
- [3] The background facts are common cause. However, the appellant's main arguments is that there are material dispute of facts in this case, as a result, the appellant submits that the application should be referred to trial for *viva voce* evidence.
- [4] It is trite that for an application for leave to appeal to be successful, the appellant must demonstrate that there are reasonable prospects that another Court would come to a different conclusion to that which was reached in the judgment that is sought to be taken on appeal.
- [5] The provisions of section 17 of the Supreme Court Act has now elevated the test to be applied for granting of leave to appeal. The use of the word "would" when considering the prospects of success in section 17 (1)(a)(i) , now imposes a more stringent and vigorous threshold.
- [6] In my view, the appellant's claim of the existence of material dispute of facts has no merit and it is dismissed, this claim is solely intended to avoid appellant's obligation to return the respondent's machinery.

For all the reasons stated above and in my judgment, I make the following order:

**ORDER**

The application for leave to appeal is dismissed with costs



**DLAMINI J**

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing: 15 November 2022

Delivered: 7 December 2022

For the Appellant: Adv AJ Venter

Email: [ajventer@law.co.za](mailto:ajventer@law.co.za)

Instructed by: Martins Weir-Smith

For the Respondent: SG Dos Santos

Email: [suzydsantos@gmail.com](mailto:suzydsantos@gmail.com)

Instructed by: James Bush

