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

CASE NO: **2023-0001343**

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

NOT REVISED

04/10/23

In the matter between:

HARMONY GOLD MINING COMPANY LIMITED **FIRST APPLICANT**

[Registration Number:[…]]

RANDFONTEIN ESTATES LIMITED **SECOND APPLICANT**

[Registration Number:[…]]

and

BONGUMUSA CYPRIAN MBATHA **FIRST RESPONDENT**

[Identity Number:[…]]

THUTHUKANI COMMUNITY DEVELOPMENT NPC **SECOND RESPONDENT**

[Registration Number: […]]

In re:

HARMONY GOLD MINING COMPANY LIMITED **FIRST APPLICANT**

[Registration Number:[…]]

RANDFONTEIN ESTATES LIMITED **SECOND APPLICANT**

[Registration Number:[…]]

and

THUTHUKANI COMMUNITY DEVELOPMENT NPC **FIRST RESPONDENT**

[Registration Number:[…]]

BONGUMUSA CYPRIAN MBATHA **SECOND RESPONDENT**

[Identity Number:[…]]

MPHO PAKKIES **THIRD RESPONDENT**

KEDIBONE GLADYS MOLEFE **FOURTH RESPONDENT**

ABERT TSOTSI MOLEFE **FIFTH RESPONDENT**

SONTO AYABONGA BIYELA **SIXTH RESPONDENT**

THE RESIDENTS OF WARD 53 OF SLOVOVILLE TOWNSHIP AND SURROUNGS INVOLVED AND/OR PARTAKING IN THE INTERDICTED ACTIVITIES **SEVENTH RESPONDENT**

JUDGMENT

(Leave to Appeal Application)

SENYATSI J:

[1] This is an application for leave to appeal against portions of the judgment and order I handed down on the 05 July 2023.

[2] The applicant is Mr Zuko Madikane, a director of the African Black Lawyers Foundation NPC. He admitted to me during the hearing of the matter that he acted for the first and second respondent and that the counsel instructed through a firm of attorneys was not available to deal with the matter.

[3] Mr Madikane raises the following as grounds of appeal:

(a) First, there are compelling reasons concerning the constitutionality of making an adverse finding against another person or party without granting them an opportunity to state their side of the story that warrants leave to appeal being granted to the SCA; and

(b) Second, there are reasonable prospects of success that the SCA will reach a different conclusion to this court on the merits.

[4] It is a trite principle of our law that leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have reasonable prospect of success or where there is a compelling reason, including conflicting judgments, why the appeal should be heard.[1]

[5] The test whether the requirements of section 17(1)(a) of the Act have been met is a stringent one.[2]

[6] The grounds of appeal have been spelt out in the notice of application for leave to appeal as well as the written submissions filed by the applicant on 15 July 2023 and will not be repeated in this judgment.

[7] Having considered the grounds raised in support of the application for leave to appeal, I am of the view that the threshold set out in section 17(1)(a) was not met. It should be remembered that the applicant was not the

[1] Section 17(1)(a) of the Superior Courts Act No.10 of 2013 ("the Act")
[2] See MEC for Health, Eastern Cape v Mkhitha and Another [2016] ZASCA 176 paras 16-17

subject matter of the judgment in so far as the merits were concerned. The judgment was referred to the Provincial Director of Public Prosecutions to investigate whether the applicant was not in violation of the Legal Practice Act by acting on behalf of the first and second respondent through his non-profit company.

[8] It follows in my opinion, that there is no prospect that the appeal would succeed. There are also no compelling reasons why the appeal should be heard.

ORDER

[9] Accordingly, the application for leave to appeal is dismissed with costs.

ML SENYATSI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Delivered: This Judgment was handed down electronically by circulation to the parties/ their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 04 October 2023.

DATE JUDGMENT RESERVED: 20 September 2023

DATE JUDGMENT DELIVERED: 04 October 2023

APPEARANCES

For the Applicant: Mr Z Madikane *(In Person)*