

**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

31/10/2016

Not reportable

Not of interest to other Judges

CASE NO: 50948/2011

In the matter between:

ANITA HELENA NEL

Applicant

and

ADV. NORMAN DAVIS SC N.O.

First Respondent

ANDRIES DE BRUYN

Second Respondent

J U D G M E N T (Leave to appeal)

MAKGOKA, J

[1] This is an application for leave to appeal against the judgment and order of this Court handed down on 20 April 2016. In terms of the order of the judgment, the applicant's application seeking an order that that she is entitled to the value of a partnership property as at 21 April 2006 before the property net proceeds are shared on a 50% basis, was dismissed with costs.

[2] Mr *Davies*, counsel for the applicant, submitted that another could come to a different conclusion, as, according to him, the court did not take into consideration that the parties had expressly provided for the outcome contended for by the applicant, by using the words 'net proceedings'. I do not agree. The parties did not

agree that when considering the 'net proceeds' the second respondent's non-monetary contributions would be ignored. In the light thereof, the common law position with regard to the dissolution of partnerships applies, which is what the court premised its judgment on. This aspect has been exhaustively dealt with in the judgment.

[3] The common law test in an application for leave to appeal has always been whether there are reasonable prospects that another court, given the same set of facts, might arrive to a different conclusion. That test has been codified by s 17(1)(a)(i) and(ii) of the Superior Court Act 10 of 2013, in terms of which leave to appeal may only be given where a judge is of the opinion that the appeal would have reasonable prospect of success, or that there is some compelling reason why the appeal should be heard.

(my underlining for emphasis)

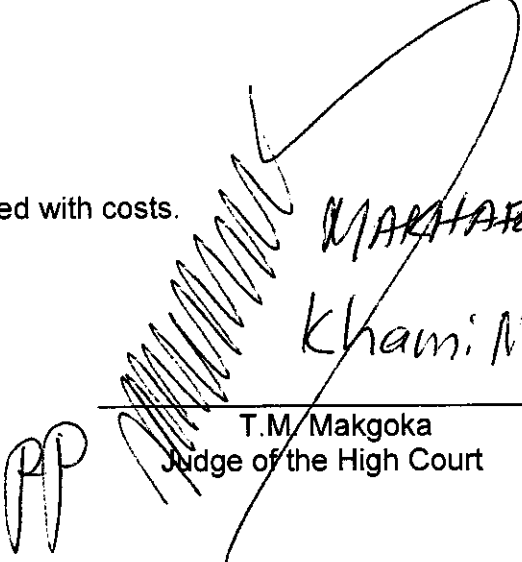
[4] It is clear that by the use of 'would' in the s 17, the legislature intended a heightened threshold than the common law one. Given what has been considered in the main judgment, I conclude that there appeal would not have a reasonable prospect of success. There is no compelling reason why the appeal should be heard.

[5] The sum total of the above is that the application for leave to appeal is unmeritorious and falls to fail.

[6] The following order is made:

The application for leave to appeal is dismissed with costs.

PP


MARHABOLA, J.
Khami Makhafole
T.M. Makgoka
Judge of the High Court

Date heard: 28 October 2016

Date of judgment: 31 October 2016

For the Applicant: Adv. SW Davies

Instructed by:

Dempster McKinnon Attorneys

Barnard & Patel Attorneys, Pretoria

For the Second Respondent: Adv. PJ Vermeulen

Instructed by: JPA Venter Attorneys, Pretoria

No appearance for the First Respondent