




IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No: 73418/16

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES	NO
(2) OF INTEREST TO OTHERS JUDGES: YES	NO
(3) REVISED: YES	
24/02/2021	
DATE	SIGNATURE

In the matter between:

PETER THEMBEKILE MALGAS
ALFRED DISCO BIYELA
BOSWELL JOHN MHLONGO

First Plaintiff
Second Plaintiff
Third Plaintiff

and

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

Defendant

LEAVE TO APPEAL JUDGMENT

BAQWA J:

INTRODUCTION

1. Section 17 (1) of the Supreme Courts Act No. 10 of 2013 (the Act) provides:

“Leave to appeal may only be given where the judges concerned are of the opinion that: -

- (a) (i) the appeal would have a reasonable prospect of success; or*
- (ii) there is some compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration”*

2. In the matter of **Alves v LOM Business Solutions (Pty) Ltd and Another (GSJ) [2011] ZAGP JHC; 2012 91 SA 399 (GSJ); [2011] 4 ALL SA 490 (par 1)** Willis J (as he then was) said the following:

“[1] The plaintiff has claimed damages by way of action. He has alleged that the defendants were negligent in preparing the transcript for his appeal hearing resulting in his having to spend a further, unnecessary period of incarceration. According to counsel and the attorneys for the parties this is, as far as they have been able to ascertain, the first case of its kind. I too am unaware of any claim of such a nature having been brought before. The second defendant is the Minister of Justice and Constitutional Development who has been nominally cited as the member of the National Executive with overall responsibility for the administration of justice in this country.”

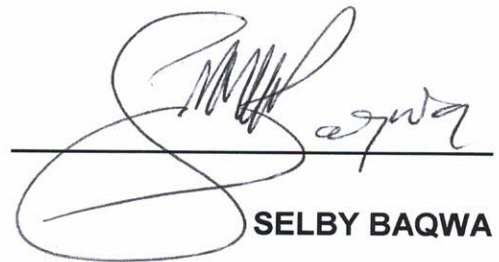
3. The paucity of legal authority regarding the legal issues raised in this case and the comments of Willis J in the Alves decision quoted above, are such that another Court might view such issues differently from this Court and on that basis I have come to the conclusion below.

4. Having listened to Counsel for both parties and having considered the submissions in their heads of argument I am satisfied that the application for leave has a reasonable prospect of success.

ORDER

In the circumstances I make the following order:

- 4.1 Leave to appeal is granted to the Full Court of the Gauteng High Court.
- 4.2 Costs to be costs in the appeal.



SELBY BAQWA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Matter Heard On	:	23 February 2021
Judgment Reserved On	:	23 February 2021
Judgment Delivered On	:	24 February 2021

APPEARANCES:

Counsel for the Plaintiffs	:	Adv. Adv D Thaldar
Attorneys for the Plaintiffs	:	Gildenhuys Malatji Inc.

Counsel for the Defendant : Adv Shakoane [SC]
Attorneys for the Defendant : The State Attorney
: