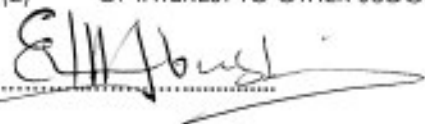




**IN THE HIGH COURT OF SOUTH AFRICA**

**WESTERN CAPE DIVISION**

**Case Number.: 5254/2013**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
	
E.M. KUBUSHI	DATE: 31-03- 2021

In the matter between:

**ADRIAN JOHN SAMUELS**

**Applicant**

and

**GAYAAT SALIE-HLOPHE**

**Respondent**

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**JUDGMENT: APPLICATION FOR LEAVE TO APPEAL**

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**KUBUSHI J**

*This judgement is handed down electronically by circulating to the parties' representatives by email and by uploading on Caselines.*

- [1] The application for leave to appeal is brought by the applicant against the whole of the judgment and order handed down electronically on 2 March 2021 granting the relief sought by the respondent. The applicant seeks this application to be heard on an urgent basis to avoid the service of the warrant of arrest to be issued in regard to the contempt of court order granted against him.
- [2] The application is to be determined on the papers filed without oral hearing.
- [3] 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 a reasonable prospect of success or where there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.<sup>1</sup>
- [4] The grounds for the leave to appeal are succinctly stated in the applicant's notice of application for leave to appeal and need not be repeated in detail in this judgment. In short, the application for leave to appeal is sought mainly on the following grounds: that I erred in refusing to grant the applicant a postponement of the respondent's main application; that the Judge President of the Western Cape, who is the husband of the respondent, allocated the matter when he should have recused himself; I erred in that I granted judgment on an incorrect

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<sup>1</sup> See section 17 (1) (a) (i) and (ii) of the Superior Courts Act, 10 of 2013.

interpretation of the order granted by Samela J on 29 July 2013; and that the effect of direct imprisonment creates compelling reasons why the appeal should be heard.

- [5] The said grounds of appeal have been fully covered and considered in the judgment the applicant seeks to appeal and are, therefore, without merit for the following reasons:

5.1 Firstly, I refused the application for postponement based on the finding that the application had been filed hopelessly out of time and without any condonation application. In addition, I made a finding that the grounds on which the applicant relied for the application for postponement were not sustainable and as such would not avail him at the hearing of the main application.

5.2 Secondly, it is not correct that the order granted on 2 March 2021 was granted on an incorrect interpretation of the order granted by Samela J on 29 July 2013. When the matter served before Mudau J, the applicant was in arrears in the payment of the maintenance that he was ordered to pay by Samela J in the amount of R138 413, 90. Mudau J granted an order that the said amount be paid by no later than 18 December 2020. The applicant failed to pay the said amount, and was, as such, in contempt of the order of Mudau J and by implication that of Samela J. The order of Mudau J, which determined the amount that was in arrears at the time, was not appealed and is, therefore, still of force and effect and ought to be complied with.

5.3 Lastly, there are no compelling reasons why the appeal should be heard, none has been shown to exist.

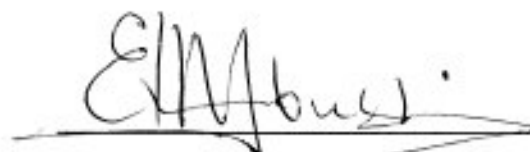
5.3.1 It is not true that this matter was allocated for hearing by the Judge President of the Western Cape. The Judge President of the Western Cape, being the husband of the respondent, was aware that he should recuse himself from allocating this matter. He, as a result, handed the matter over to the Judge President of the Gauteng Division who allocated the matter for hearing.

5.3.2 The effect of direct imprisonment is the result of the applicant's failure to comply with an order of court and does not constitute a compelling reason why this appeal should be heard.

[6] Based on these reasons, it is my opinion that there are no reasonable prospects of success of the appeal. Put differently, in my opinion, there are no reasonable prospects that another court may come to a different conclusion in this matter. The applications for leave to appeal falls to be dismissed.

[7] In the circumstances, the following order is granted:

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

  
E.M KUBUSHI

JUDGE OF THE HIGH COURT,  
GAUTENG DIVISION, PRETORIA

Appearance:

Applicant's Counsel	: Adv. B. Hack
Appellant's Attorneys	: <b>Thomson Wilks Incorporated</b>
Respondent's Counsel	: Adv. J. Van Der Schyff
Respondent's Attorneys	: <b>NSW Inc. Attorneys</b>
Date of hearing	: 31 March 2021
Date of judgment	: 31 March 2021