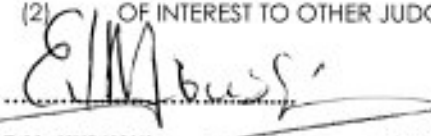




**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case Number: 32165/2020

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
	
E.M. KUBUSHI	DATE: 25-01- 2021

In the matter between:

THE GOVERNMENT EMPLOYEES MEDICAL SCHEME

First Applicant

DR BOJOSI OLEHILE STANLEY MOLOAB

Second Applicant

MPASHA ISMAEL MOGAPI

Third Applicant

and

ALFRED MOKODITOA

Respondent

JUDGMENT

KUBUSHI J,

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

[1] The applicants have approached court for leave to appeal in terms of Uniform Rule 49 (1) (b) and (d) and s 17 of the Superior Courts Act, 10 of 2013 ("the Superior Courts Act"), to the Full Court of this Division, against the whole of the judgment and order, including the order for costs, dated 9 September 2020 under the above case number, dismissing the applicants' urgent contempt of court application.

[2] The salient provisions of s 17 of the Superior Courts Act, on which the applicants have brought this application are contained in sub-sections (1) and (6) and provide as follows -

*17 Leave to appeal

(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.

- (6) (a) If leave is granted under subsection (2) (a) or (b) to appeal against a decision of a Division as a court of first instance consisting of a single judge, the judge or judges granting leave must direct that the appeal be heard by a full court of that Division, unless they consider-
- (i) that the decision to be appealed involves a question of law of importance, whether because of its general application or otherwise, or in respect of which a decision of the Supreme Court of Appeal is required to resolve differences of opinion; or
- (ii) that the administration of justice, either generally or in the particular case, requires consideration by the Supreme Court of Appeal of the decision, in which case they must direct that the appeal be heard by the Supreme Court of Appeal."

[3] For the reasons that follow hereunder, my opinion is that the appeal has no reasonable prospect of success; or that there is some other compelling reason why the appeal should be heard.

[4] The leave to appeal application emanates from the order and judgment I handed down on 9 September 2020, against the applicants following their urgent application seeking an order for the respondent, Mr Alfred Mokoditsoa, to be found in contempt of the court order granted by Ranchod J on 27 November 2019 by virtue of the respondent having published defamatory statements of and concerning the applicants via email and Twitter during the period 19 March 2020 to 20 July 2020, in contravention of the said court order.

In essence, the applicants sought an order committing the respondent to a period of imprisonment as to be determined by the court.

[5] It need to be stated that the urgent contempt application was the second contempt application which the applicants had launched against the respondent emanating from the same court order of Ranchod J. The first contempt of court application was decided by Mngqibisa-Thusi J on 16 March 2020, whereat the respondent was found to be in contempt of that court order.

[6] In opposing the urgent application, the respondent had raised a defence on the merits and several points *in limine*. Of the *in limine* points taken by the respondent, I was of the view that the one relating to the non-compliance with the provisions of s 18 of the Superior Courts Act would be dispositive of the urgent applicant. The urgent application was as a result decided on the issue of whether the applicants have complied with the provisions of s 18 of the Superior Courts Act. Having considered the papers before me and the arguments, for and against, made by the parties I concluded that the applicants have not complied with the requirements of s 18 of the Superior Courts Act in that the filing by the respondent of a Petition to the Supreme Court of Appeal suspended the execution of Ranchod J's order and that the applicants had not applied to uplift such suspension.¹

[7] An underlying question to this main question above was whether the provisions of s 18 of the Superior Courts Act applied to contempt of court proceedings, the applicants having contended that the said provisions do not

¹ Section 18 (6) of the Superior Courts Act.

apply based on the ground that an order of court once granted should be obeyed, even if it is wrong, until set aside by a court of law. The applicants had fortified their argument, in this regard, by referring to the judgment of the Supreme Court of Appeal in *Clipsal Australia (Pty) Ltd & Others v GAP Distributors & Others*,² wherein it was held that the High Court's exercise of its discretion to stay a contempt application pending an application for the review of the registration of the design that was contended for, was not justified, in that, the order that was granted was to be obeyed even if it was thought to be wrong.

[8] In my judgment, I found this case to be of no application to the present matter because that case dealt with the stay of an application for contempt of court rather than the suspension of the execution of a court order as envisaged in s 18 of the Superior Courts Act. I found as a result that the provisions of s 18 of the Superior Courts Act applied, hence the need to uplift the suspension. A contempt of court order is a court order which is also suspended when an application for leave to appeal is instituted.

[9] In this court, the applicants seek that they be granted leave to appeal against the second contempt judgment, including the order for costs, to the Full Court of this Division and that the costs of the application for leave to appeal, including the costs occasioned by the employment of two counsel, be costs in the appeal.

² 2010 (2) SA 289 (SCA).

[10] The issues the applicants seek to be determined on appeal are, whether the subsequent filing of a Petition for leave to appeal to the Supreme Court of Appeal retrospectively clothe a party with impunity for his earlier conduct where he is in contempt of court; and whether a court order is automatically suspended by s 18 of the Superior Courts Act for the intervening period prior to which an application is brought in terms of s 17 of the Superior Courts Act. In other words – is a party, in whose favour an order or judgment is given, automatically precluded from executing on the order or judgment for a period of one month, in the circumstances, irrespective of whether the other party lodges an appeal or not in terms of Section 17 of the Superior Courts Act? The question being whether the order or judgment has no effect during the intervening period.

[11] As earlier stated, the issue that fell for determination before me was that of non-compliance with the provisions of s 18 of the Superior Courts Act. I agree with the argument by the respondent's counsel that the first issue the applicants want to raise on appeal was never raised before me at the hearing of the urgent application and can, in the circumstances, therefore, not be the subject of the appeal in this matter.

[12] Furthermore, even if I were to consider the question, in my view, such a question does not arise in the circumstances of this case. The respondent filed leave to appeal against the order or judgment of Ranchod J on 27 November 2019 which immediately suspended the execution of that judgment. Even though the application for leave to appeal was dismissed, the suspension continued to operate in the event of further applications for leave to appeal to

the Full Court and/or the Supreme Court of Appeal. The respondent, in this instance, is now challenging the order or judgment of Ranchod J before the Supreme Court of Appeal as it is believed that the Supreme Court of Appeal might arrive at a different conclusion. The execution of the judgment thus remains suspended.

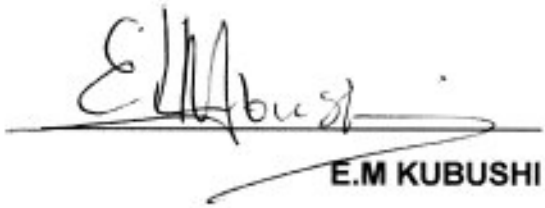
[13] The upshot is that should the order or judgment of Ranchod J, be set aside by the Supreme Court of Appeal, the subsequent order *per* Mnqibisa-Thusi J relating to contempt of court will automatically fall away.

[14] The second ground of appeal, of whether a court order is automatically suspended, does not avail the applicants of the relief they seek. The argument that court orders must be obeyed, even if they are thought to be wrong, until set aside by a court of law, is trite. Section 18 of the Superior Courts Act, however, provides an exception to the general rule. The section suspends the execution of an order granted by a court as soon as the order or judgment becomes the subject of an application for leave to appeal. The default position, as such, is that once an application for leave to appeal has been launched, the execution of a court order is suspended. In order to execute such an order, leave for its execution must be granted on a substantial application to the court. It is common cause that, in this instance, no such leave has been applied for.

[15] I conclude, therefore, that leave to appeal should be refused.

[16] Both parties have applied in case of success to be awarded costs including costs of two counsel. The respondent being the successful party is entitled to costs including costs of two counsel.

[17] The application for leave to appeal is dismissed with costs including costs of two counsel.



E.M KUBUSHI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearance:

Applicants' Counsel	: Adv. A Bava SC Adv. E. Kromhout
Applicants' Attorneys	: Gildenhuis Malatji Incorporated
Respondent's Counsel	: Adv. M Kufa Adv. N. Moropene
Respondent's Attorneys	: Machaba Attorneys.
Date of hearing	: 11 January 2021
Date of judgment	: 25 January 2021