

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case no: 66075/2018

(1)	REPORTABLE: YES / <input checked="" type="radio"/> NO
(2)	OF INTEREST TO OTHER JUDGES: YES / <input checked="" type="radio"/> NO
(3)	REVISED.
<u>28/04/21</u> <u>[Signature]</u>	
DATE	SIGNATURE

In the matter between:

CRAIG STANLEY COOPER

Applicant

and

BABSIE SMIT

First Respondent

SA HOME LOANS (PTY) LTD

Second Respondent

REGISTRAR OF DEEDS

Third Respondent

In re:

CRAIG STANLEY COOPER

Applicant

and

BABSIE SMIT

First Respondent

SA HOME LOANS

Second Respondent

REGISTRAR OF DEEDS

Third Respondent

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 12h00 on the 28th April 2021.

SHABALALA, AJ

INTRODUCTION

1. This is an application for leave to appeal by the First Respondent to the Full Bench of this division, alternatively the Supreme Court of Appeal, against the whole judgment delivered on 19 March 2020. The application for leave to appeal is opposed by the Applicants.
2. For the sake of convenience, I will refer to the parties as they are cited in the main judgment. After delivery of the judgment on 19 March 2020, the First Respondent filed a notice of application for leave to appeal which contained the

grounds of appeal. The notice of application for leave was filed together with a condonation application for late filing of the leave application.

3. The condonation application was opposed by the Applicant until at the hearing of the leave application. Counsel for Applicant formally withdrew the Applicant's opposition to the condonation application. Upon consideration of the First Respondent's condonation application which stood unopposed after the withdrawal of opposition, I granted condonation for the late filing of the leave application.
4. The leave application was subsequently argued by the parties.

THE TEST IN AN APPLICATION FOR LEAVE TO APPEAL

5. The applications for leave to appeal are governed by ss 16 and 17 of the Superior Court Act 10 of 2013. Section 17 makes provisions for leave to appeal to be granted where the presiding judge is of the opinion that either the appeal would have a reasonable prospect of success or there is some compelling reason why the appeal should be heard, including whether there are conflicting judgments on the matter under consideration.
6. A reasonable prospect of success has previously been defined to mean that there is a reasonable possibility that another court may come to a different decision.

7. With the enactment of section 17 of the Act, the test has now obtained statutory force and is to be applied using the word “*would*” in deciding whether to grant leave. In other words, the test is would another court come to a different decision.
8. In *Notshokovu v S* (157/15) [2016] ZASCA 112 (7 September 2016) at paragraph 2, it was held that an appellant faces a higher and more stringent threshold in terms of the new Act compared to the provisions of the repealed Supreme Court Act 59 of 1959. (See *Van Wyk v S*, *Galela v S* [2014] ZASCA 152; 2015 (1) SACR 584 (SCA) para [14].
9. In *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2016] ZAG PPHC 489 (24 June 2016), Ledwaba DJP, writing for the full court, considered the test as envisaged in s17 of the Superior Courts Act. At paragraph 25 of the aforementioned judgment, he dealt with the test set out in the *Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others* case where Bertelsmann J held the following:

“It is clear that the threshold for granting leave to appeal against the judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright and Others* 1985 (2) SA 342 (T) at 343H. The use of the word “*would*” in the new statute, indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”
10. In this particular matter, I would have to determine whether another court would [*my emphasis*] come to a different decision. I have considered the application for leave to appeal and oral submissions of the parties. Furthermore, I extend my gratitude and appreciation to counsel for the submissions made therein.

11. The grounds for the leave to appeal are succinctly stated in the First Respondent's notice of application for leave to appeal and need not be repeated in this judgment. Suffice to state that this court looked at and studied the main judgment and the aforementioned grounds of appeal.
12. I am satisfied that all the issues raised in this application for leave to appeal were fully covered and considered in the judgment. I am therefore of the view that there are no reasonable prospects of success of the appeal. Put differently, I hold the view that there is no prospect that another court, sitting as court of appeal, may come to a different conclusion in this case than what this court had arrived at. Therefore, the application for leave to appeal falls to be dismissed.
13. In the circumstances, the following order is made:

The application for leave to appeal is dismissed with costs.



SHABALALA, AJ
Acting Judge of the High Court
GAUTENG DIVISION, PRETORIA

DATE OF JUDGMENT: 28 April 2021.

APPEARANCES:

Applicant's Counsel:	Adv J.R. Minnaar
Applicant's Attorneys:	Roestoff Attorneys

First Respondent's Counsel:

Adv Z. Kriel

First Respondent's Attorneys:

Schoeman Esterhuizen