

**REPUBLIC OF SOUTH AFRICA**



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

**CASE NO: 81163/17**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED

**23 June 2021**

DATE

A handwritten signature in black ink, appearing to be "M. M. Pretorius", is written over the signature line.

SIGNATURE

In the matter between:

**MPHO JABARI**

**CYRIL BALOYI**

**FRANK MOGALE**

**REABETSWE NTSIE**

**GARETH RITTLES**

**PAUL SCOTT**

**MARIA MAGDALENA PRETORIUS**

**FIRST APPLICANT**

**SECOND APPLICANT**

**THIRD APPLICANT**

**FOURTH APPLICANT**

**FIFTH APPLICANT**

**SIXTH APPLICANT**

**SEVENTH APPLICANT**

and

**TELKOM LIMITED**

**FIRST RESPONDENT**

**WAYNE LARRY VINCENT LOUIS**

**SECOND RESPONDENT**

**COMBINE PRIVATE INVESTIGATORS**

**(PTY) LTD**

**THIRD RESPONDENT**

**IMVULA SECURITY SERVICES (PTY) LTD**

**FOURTH RESPONDENT**

**SMADA SECURITY, A DIVISION OF THE**

**SMADA GROUP (PTY) LTD**

**FIFTH RESPONDENT**

**This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on Caselines by the Judge or his/her secretary. The date of this judgment is deemed to be 23 June 2021.**

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**APPLICATION FOR LEAVE TO APPEAL**

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**COLLIS J**

**INTRODUCTION**

[1] This is an application for leave to appeal against the judgment and order I made on 29 January 2021. The full order of the court reads as follows:

“In the premises the following order is made:

- 1.1 The application is dismissed with costs on the basis of an unreasonable delay both in instituting and prosecuting the application.

1.2 The respondents are awarded costs on a party and party scale, including the costs of two counsel, where so employed.”

[2] The application is premised on the grounds as listed in the Application for Leave to Appeal dated 26 March 2021. In essence, the application is premised on two grounds. Firstly, that this court erred in dismissing the application without considering the merits of the review, simply on the basis that the applicants delayed in instituting the review and secondly, that the applicants had brought the application within the time period stipulated by section 7 of PAJA.

[3] Simultaneously with the application for leave to appeal, the applicants also applied for condonation for the late filing of the notice of application for the leave to appeal. At the hearing, condonation was first applied for and subsequently granted by the court.

## LEGAL PRINCIPLES

[4] Section 17 of the Superior Court’s Act provides as follows:<sup>1</sup>

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

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<sup>1</sup> Act 10 of 2013

*(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 to 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.*

[5] Section 16(2)(a)(i) provides:

*'16(2)(a)(i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.'*

[6] As to the test to be applied by a court in considering an application for leave to appeal, Bertelsmann J in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para 6 stated the following:

'It is clear that the threshold for granting leave to appeal against a 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 & 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.'

[7] 'In order to succeed, therefore, the appellant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other word, be a sound, rational basis for the conclusion that there are prospects of success on appeal.'<sup>2</sup>

[8] With reference to the provisions of section 16(2)(a)(i), when then at the hearing of the appeal where a decision of the issues that are the subject matter of the appeal, would have no practical effect or result, the appeal must be dismissed on this ground alone.

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<sup>2</sup> *S v Smith* 2012 (1) SACR 567 (SCA) at para 7

[9] A court in exercising its discretion in terms of section 16(2)(a)(i), must therefore first ask whether the issues between the parties are moot. In this regard, the decision of *Qoboshiyane NO and Others v Avusa Publishing Eastern Cape (Pty) Ltd and Others*<sup>3</sup> is instructive. In paragraph 5 of the said judgment, Wallis JA distinguished between two classes of cases where a decision will have no practical effect or result:

‘There are a number of cases where, notwithstanding the mootness of the issue between the parties, to the litigation, the court has dealt with the merits of an appeal. With those cases must be contrasted a number where the court has refused to deal with the merits.<sup>4</sup> The broad distinction between the two classes is that in the former a discrete legal issue of public importance arose that would affect matters in the future and on which the adjudication of this court was required, whilst in the latter no such issue arose.’

[10] ‘A case is moot and therefore, not justiciable if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law.’<sup>5</sup>

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<sup>3</sup> 2013 (3) SA 315 (SCA) and *Legal Aid South Africa v Magidiwana and Others* 2015 (2) SA 568 at para 15 and 16.

<sup>4</sup> *Port Elizabeth Municipality v Smit* 2002 (4) SA 241 (SCA) para 7

<sup>5</sup> *National Coalition for Gay & Lesbian Equality & Others v Minister of Home Affairs & Others* 2000 (2) SA 1 (CC)

[11] In casu, and with reference to the relief sought as per the Notice of Motion, the relief sought has become moot for the following reasons:

11.1 In respect of prayers 1,2 and 3, Mr Louis is no longer employed by the first respondent, and neither does the position in which the first applicant wishes to be appointed in, any longer exists within the first respondent;

11.2 In respect of prayers 4 and 5, the contracts entered into between the first, third, fourth and fifth respondents have terminated due to the effluxion of time.

[12] In further applying the reasoning employed in the *Qoboshiyane* decision, what then remains is whether there exists a discrete legal issue of public importance that would affect similar matters in the future? *In casu* this question cannot be answered in the affirmative as in the event that leave to appeal were to be granted to the applicants and an outcome in their favour ultimately made, this result will give effect to a position with an ultimate unaltered outcome to them.

[13] In the circumstances and having carefully heard counsel I as a result come to the conclusion that the application cannot succeed.

## ORDER

[14] Consequently I make the following order:

14.1 The application for leave to appeal is dismissed with costs, such costs to include the employment of two counsel.



**C.J. COLLIS**  
**JUDGE OF THE HIGH COURT**

### **Appearances**

Counsel for the Applicant	: Adv. S. MOHAPI
Attorney for the Applicant	: Blessed Mongwe Attorneys
Counsel for the First Respondent	: Adv. N. MAENETJE SC & N.FERREIRA
Attorney for the First Respondent	: Adams & Adams
Date of Hearing	: 01 June 2021
Date of Judgment	: 23 June 2021

**Judgment transmitted electronically.**