REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 22553/2019

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

31/03/2021 pp

DATE SIGNATURE

In the matter between :-

T M	APPPLICANT
AND	
C W N.O	FIRST RESPONDENT
N M D	SECOND RESPONDENT
T E D	THIRD RESPONDENT
THE MASTER OF THE HIGH COURT	FOURTH RESPONDENT

JUDGMENT (APPLICATION FOR LEAVE TO APPEAL)

Kollapen J

[1] This is judgment in the application for leave to appeal against the whole of the judgment and order of this court of the 16 November 2020. The grounds on which the application is advanced are fully set out in the application for leave to appeal filed and dated the 7 December 2020 and they include that:-

a) The Court erred in making a factual finding that the applicant never assumed any parental responsibilities and rights and did not contribute in any manner to the raising of M, as to his maintenance or any other costs involved in his upbringing whilst there was a factual dispute on the papers in relation to this.
b) That the Court erred both in fact and in law in finding that based upon such factual finding, that the applicant was accordingly not M's parent and did not qualify as a parent in terms of the Intestate Succession Act 81 of 1987 ("the ISA").
c) The Court erred in not holding that the word "parent" in the Intestate Succession Act is a reference to blood relationships.

[2] The first respondent abides the decision of the Court while the second and third respondents oppose the application.

[3] Section 17(1) of the Superior Courts Act 10 of 2013 provides that the test to be applied in determining whether leave to appeal should be granted is whether the judge is "of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling reasons why the appeal should be heard". The Supreme Court of Appeal stressed in *S v Smith 2012 (1) SACR 567 (SCA) AT PAR 7*:

> *"What the test of reasonable prospects of success postulates is dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. 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 words, be a sound, rational basis for the conclusion that there are prospects of success on appeal."

[4] It is against these principles that the application before this Court falls to be considered.

[5] The applicant has made much of what he has termed a factual dispute with regard to whether he assumed parental responsibilities in respect of the minor child M. In this regard and notwithstanding what he may say with regard to his alleged contribution, the reality of the matter and the legal position is far from being in dispute. The applicant did not acquire any parental rights in respect of M in terms of Section 21 of the Children's Act Number 38 of 2005 and if it could be said that he acquired any rights which in law he could have acquired, such rights were terminated in express terms by the order of this Court of 26 April 2018. That order remains unchallenged and there has been no application for the restoration of any such rights as contemplated in that order.

[6] Accordingly whatever the applicant may say in advance of the argument that a factual dispute exists is academic in the light of the findings made by this Court on the 26 April 2018 that he held no such rights. There is no prospect that another court would come to different conclusion.

[7] On the question of the interpretation of the ISA and the insistence of the applicant that 'parent' much always mean biological parent, for the reasons given in the main judgment such an interpretation would be offensive to both the provisions of the Constitution and the Children's Act and it cannot be said that there is a reasonable prospect that another court would come to a different on this issue.

[8] Finally, the applicant contended that there is a compelling reason why leave should be granted as the matter involved the determination of a novel point. Leaving aside the question of whether novelty should trigger the grant of leave, the decision of this Court involved the application and interpretation of the ISA in the context of known and acceptable principles of our law and jurisprudence as they relate to children and their parents (as defined by the law) and accordingly raised nothing new as a matter of law which may require the granting of leave.

[9] The application for leave to appeal accordingly falls to be dismissed.

[9] The application for leave to appeal accordingly falls to be dismissed.

Order

I make the following order:

The application for leave to appeal is dismissed with costs.

NJ. KOLLAPEN
JUDGE OF THE HIGH COURT, PRETORIA

APPEARANCES

COUNSEL FOR THE APPLICANT	:	**Adv G DOBIE**
Instructed by	:	**TWALA ATTORNEYS**
COUNSEL FOR THE 1ST RESPONDENT	:	**Adv M VAN ROOYEN (WATCHING BRIEF)**
Instructed by	:	**VDT ATTORNEYS INC.**
COUNSEL FOR THE 2ND, 3RD RESPONDENT	:	**Adv F GROBLER SC**
Instructed by	:	**FRIEDMAN ATTORNEYS**
DATE OF HEARING	:	**18 FEBRUARY 2021**
DATE OF JUDGMENT	:	3 MARCH 2021