



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

In the matter between:

Case Number: 3473/20

- |     |                                    |
|-----|------------------------------------|
| (1) | REPORTABLE: NO                     |
| (2) | OF INTEREST TO OTHER JUDGES:<br>NO |
| (3) | REVISED: NO                        |

DATE 09

SIGNATURE

A. RAE

APPLICANT

AND

ROAD ACCIDENT FUND

RESPONDENT

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JUDGMENT

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**KHWINANA AJ**

**INTRODUCTION**

- [1] This is an application for leave to appeal to the full bench of the above honourable court against my judgment granted on this the 27<sup>th</sup> day of September 2021.

[2] Section 17(1) of the Superior Courts Act, Act 10 of 2013 ("the Superior Courts Act"), regulates applications for leave to appeal and provides:

'(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.'

[3] The test in an application for leave to appeal prior to the Superior Courts Act was whether there were reasonable prospects that another court may come to a different conclusion. Section 17(1)<sup>1</sup> has raised the test, as Bertelsmann J, correctly pointed out in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para :

'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 Cornwright & 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.'

[4] The applicant's leave to appeal is on parts of my judgment, save to say the reasons have been given in my judgment.

[5] In terms of Rule 42 (1) provides that a court may mero motu or on application, rescind or vary;

(a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;

(b) An order or judgment in which there is an ambiguity, error or omission;

(c) An order or judgment granted as a result of a mistake common to the parties.

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<sup>1</sup> Commissioner of Inland Revenue v Tuck 1989 (4) SA 888 (T) at 890

[6] I have noted an error on the draft order in relation to the percentage in favour of the plaintiff where it reads less 75% whereas it must read less 25% of the plaintiff's proven or agreed claim. I accordingly vary that portion of my judgment in terms of Rule 42 (1) (b) and rectify it to read less 25% on the draft order. I have therefore amended the draft order and marked it X.

In the result:

1. Leave to appeal is refused.
2. Draft order is amended and marked X to read less 25%
2. No order as to Costs.



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**ENB KHWINANA**  
**ACTING JUDGE OF NORTH**  
**GAUTENG**  
**HIGH COURT, PRETORIA**

DATE OF HEARING: 02 DECEMBER 2021

DATE OF JUDGMENT: 09 FEBRUARY 2022