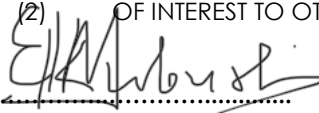




**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case Number: 36978/2022

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
	
E.M. KUBUSHI	DATE: 25 OCTOBER 2022

In the matter between:

MANTLADI TECHNOLOGIES (PTY) LTD

APPLICANT

and

THE NATIONAL TREASURY

FIRST RESPONDENT

THE DEPARTMENT OF HEALTH

SECOND RESPONDENT

MINISTER OF FINANCE

THIRD RESPONDENT

THE COMPETITION COMMISSION OF SOUTH AFRICA

FOURTH RESPONDENT

NUANGLE SOLUTIONS (PTY) LTD

FIFTH RESPONDENT

MOTHUDI SERVICES (PTY)LTD

SIXTH RESPONDENT

LOGAN MEDICAL & SURGICAL (PTY)LTD

SEVENTH RESPONDENT

ENDOMED MEDICAL & SURGICAL
SUPPLIES CC

EIGHTH RESPONDENT

JUDGMENT: LEAVE TO APPEAL

KUBUSHI J

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 10h00 on 25 OCTOBER 2022.

[1] On 24 August 2022, this Court handed down judgment dismissing the application launched by the Applicant, with costs including costs of two counsel. The Applicant hereby seeks leave to appeal against the said order and judgment, to the Supreme Court of Appeal *alternatively* to the Full Court of this Division.

[2] The application is opposed by the First Respondent and the Third Respondent (who also opposed the main application). The application is determined on the papers uploaded on Caselines, without oral hearing.

[3] The Applicant submits that should leave to appeal be granted, it should be granted directly to the Supreme Court of Appeal, because of the following reasons: the facts that have presented in this matter; the public's interest in the receipt of advanced wound care, versus the public's interest in the procurement process, which includes the protection of scarce public resources, must be balanced; the involvement of the Fourth Respondent and its initial views that the tender must be set aside and re-advertised are also unique to these proceedings; and, the Supreme Court of Appeal's pronouncements as to the relevance and involvement of the Fourth Respondent in tender matters, may also be required.

[4] The Applicant's main ground for the application for leave to appeal is that the Court considered the requisite for an interim interdict separately and in isolation, and not in conjunction with one another when it exercised its discretion to not grant the interim relief sought. The Applicant's submission, in this regard, is that the Court erred in its judgment when it failed to apply the sliding scale test when considering the application before it. The contention is that the Court, despite finding that the Applicant "raised strong grounds of review which are likely to succeed in the review application", had incorrectly placed too much emphasis on the balance of convenience leg of the requirements for the interim interdict favouring the Respondents in dismissing the Applicant's application. The Applicant submits, further, that if the sliding scale test is correctly applied, another Court would come to a different conclusion. In support of this argument, the Applicant relied on the judgment in *Olympic Passenger Services (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D).

[5] Underlying the main ground of the application for Leave to Appeal are four broad legal issues on which the Applicant founded its main ground of the application for leave to appeal, namely: (a) the *prima facie* right which the Court found to exist; (b) the Court's finding that the Applicant failed to establish the existence of an irreparable harm; (c) the Court's finding that the balance of convenience favoured the First Respondent and Third Respondent instead of the Applicant; and, (d) the Court's finding that the Applicant failed to properly demonstrate to this Court that it had no other satisfactory remedy.

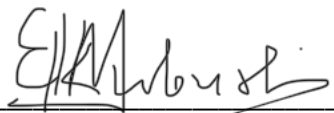
[6] The said grounds of appeal have been fully covered and considered in the judgment the Applicant seek to appeal. For the Applicant to succeed in obtaining the relief it sought in the notice of motion, all the requirements of the interim interdict must have been satisfied. In this matter, this Court found that only the requirement of a *prima facie* right was satisfied, on the basis that the review application, which the Applicant intends to launch, has strong prospects of success. Other than this requirement, the Court made a finding that the Applicant failed to establish the other requirements of an interim interdict.

[7] It is held that an Applicant for leave to appeal must convince the Court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal. See *MEC for Health, Eastern Cape v Mkhitha and Another* (1221/2015) [2016] ZASCA 176 (25 November 2016) at para 17.

[8] Having considered the grounds of appeal raised by the Applicant and the arguments for and against such application, raised by the parties in their respective heads of argument, this Court is of the opinion that the application for leave to appeal bears no reasonable prospects of success and another Court will not come to a different conclusion.

[9] The First Respondent and the Third Respondent sought the dismissal of the application with costs, including costs of two counsel.

[10] Consequently, the Application for Leave to Appeal the judgment of this Court handed down on 24 August 2022, is dismissed with costs, such costs to include costs of two counsel – one senior and one junior.


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

APPEARANCES:

APPLICANT'S COUNSEL:	ADV. D HINRICHSEN
APPLICANT'S ATTORNEYS:	CAVANAGH & RICHARDS ATTORNEYS
RESPONDENTS' COUNSEL:	ADV. A MOSAM SC ADV. M MUSANDIWA
RESPONDENTS' ATTORNEYS:	STATE ATTORNEY PRETORIA