

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

CASE NUMBER: 17229/2006

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE: 22 AUGUST 2023

SIGNATURE

In the matter between:

W[...] L[...] N[...]

APPLICANT

(Identity number: 6[...])

And

A[...] J[...] N[...]

RESPONDENT

(Identity number: 6[...])

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 her Secretary. The date of this judgment is deemed to be 22 August 2023.

JUDGMENT

COLLIS J

1.This is an application for leave to appeal against the judgment and order made on 19 May 2023.

2. The application is premised on the grounds as listed in the Application for Leave to Appeal dated 9 June 2023.

3. In anticipation of the hearing of the application for leave to appeal, the parties were requested to file short heads of argument. They both acceded to this request so directed by the Court. The Court expresses its gratitude to the parties for the heads so filed.

LEGAL PRINCIPLES

4. Section 17 of the Superior Court's Act provides as follows:¹

“(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 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. In casu the applicant relies on the grounds of appeal mentioned in section 17(1)(a) of the Superior Courts Act 10 of 2013, namely, that the appeal would have

¹ Act 10 of 2013

reasonable prospects of success and or that there exists a compelling reason why the appeal should be heard.

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 categorized as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.’²

8. In *Fair-Trade Independent Tobacco Association v President of the Republic of South Africa and Another*³ the Full Court of this Division observed that:

² *S v Smith* 2012 (1) SACR 567 (SCA) at para 7.

³ Case no: 21688/2020 [2020] ZAGPPHC 311 (24 July 2020) at [6].

“As such, in considering the application for leave to appeal it is crucial for this Court to remain cognizant of the higher threshold that needs to be met before leave to appeal may be granted. There must exist more than just a mere possibility that another court, the SCA in this instance, will, not might, find differently on both facts and law. It is against this background that we consider the most pivotal grounds of appeal.”

9. The crisp issue for determination before this Court was whether a writ of execution that was issued by the Registrar in respect of arrear maintenance in respect of major children should be set aside or not.

10. In finding against the applicant this Court concluded that the applicant lacked the necessary *locus standi*, to have applied for the issuing of the writ in circumstances where the existing court order only provided for the respondent to pay maintenance to minor children and the existing court order had not been amended to provide for payment of maintenance of major dependent children.

11. As such this Court concluded that the underlying *causa* had fallen away and the writ could not have been validly issued by the Registrar. On the basis that the major dependent children's entitlement to receive and enforce maintenance rights vest in the adult children, this Court concluded that the applicant lacked the necessary *locus standi*.

12. Having therefore read the papers and having carefully heard counsel I come to the conclusion that there is no reasonable prospect that another court would come to a different conclusion on the order of the Court in terms of section 17(1)(a)(i) or (ii) of the Superior Courts Act 10 of 2013.

ORDER:

13. Consequently, the following order is made:

13.1. Leave to appeal is refused, with costs of two counsel.

C.J. COLLIS
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

APPEARANCES:

Counsel for the Applicant: Adv N Erasmus

Attorney for the Applicant: Potgieter Louw Attorneys Pretoria

Counsel for the Respondent: Adv JP VAN DEN BERG SC

Assisted by: Adv. GT KYRIAZIS

Attorney for the Respondent: Couzyn Hertzog & Horak Attorneys Pretoria

Date of Hearing: 11 August 2023

Date of Judgment: 22 August 2023