



**IN THE LABOUR COURT OF SOUTH AFRICA
DURBAN**

Case no: D788/2021

Not Reportable

In the matter between:

ZAKHELE MHLONGO

Applicant

and

AMAJUBA DISTRICT MUNICIPALITY

First Respondent

HER WORSHIP THE MAYOR: CLLR V.V. BAM

Second Respondent

Decided in Chambers

Delivered: 23 December 2022

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

ALLEN-YAMAN AJ

- [1] The first and second respondents have applied for leave to appeal against the judgment of this court of 15 August 2022. The applicant has opposed the application.
- [2] Having set out the various grounds upon which they premise their application for leave to appeal, the first and second respondents concluded as follows,

'CONCLUSION

The Respondents are of the humble opinion that they have reasonable prospects of success in an appeal and that the prospects are not remote but have realistic chances of succeeding. Furthermore, the grounds for leave to appeal and for the appeal have merits, is not for purposes of delaying the finalisation of this matter, is arguable on appeal and cannot be said to be hopeless.

The Respondents submit that there exist a reasonable prospect that the factual matrix could receive different treatment on appeal as there are some legitimate dispute on the law as raised.

The Respondents humbly submit that there are sound and rational basis for submitting that there are reasonable prospects of success on appeal given both law and facts. Another court may very well come to a different conclusion to that reached by the Learned Judge.'

- [3] The statements as aforesaid postulate the test for leave to appeal applicable prior to the enactment of s17(1) of the Superior Courts Act, 10 of 2013. The test introduced by the enactment of that section established a higher threshold to be met for the granting of leave to appeal than that which previously applied.¹ The Supreme Court of Appeal considered s17(1) and stated,

*'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.'*²

¹ *Notshokovu v S* [2016] ZASCA 112 (7 September 2016) at paragraph 2

² *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] ZASCA 176 (25 November 2016) at paragraph 17

- [4] Accordingly, and having considered the first and second respondents' application for leave to appeal by applying the prescripts of section 17(1)(a)(i) of the Superior Courts Act, 10 of 2013, I am not of the opinion that the proposed appeal enjoys any reasonable prospects of success, nor that there is any other compelling reason why the proposed appeal should be heard. In the circumstances, the application for leave to appeal will be dismissed.
- [5] Whilst the applicant, in his submissions, asked for an order dismissing the application for leave to appeal with costs, other than having suggested that the application for leave to appeal was 'hopeless' he did not articulate any specific basis upon which I should exercise my discretion to grant a costs order in his favour.
- [6] It is not a principle of this court that costs will automatically follow the result, without more the fact that the first and second respondents have been unsuccessful in their application for leave to appeal is insufficient a basis upon which I can exercise my discretion and order them to pay the applicant's costs of opposing the application. Each party will be required to bear their own costs of the application.

Order

1. The first and second respondents' application for leave to appeal is refused.
2. Each party is to bear its own costs of the application.

Kelsey Allen-Yaman

Acting Judge of the Labour Court of South Africa

APPEARANCES:

(Decided in Chambers)

APPLICANT: Mhlanga Inc

RESPONDENTS: Roy Ramdaw and Associates Inc

Labour Court