REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1)	**NOT REPORTABLE**
(2)	**NOT OF INTEREST TO OTHER JUDGES**

DATE: 9TH JANUARY 2024

(1) CASE NO: 2023-052191

In the matter between:

SASOL OIL (PTY) LIMITED	Applicant
And	
BITLINE SA 951 CC t/a SASOL ROODEPOORT WEST	First Respondent
JASSAT, BASHIR	Second Respondent
AMRICH 58 PROPERTIES (PTY) LIMITED	Third Respondent

---

(2) CASE NO: 2023-052612

In the matter between:

SASOL OIL (PTY) LIMITED	First Applicant
AMRICH 58 PROPERTIES (PTY) LIMITED	Second Applicant
And	
BITLINE SA 951 CC t/a SASOL ROODEPOORT WEST	Respondent

Neutral Citation: *Sasol Oil v Bitline SA 951 and Other (2023-052191); Sasol Oil and Another v Bitline SA 951 (2023-052612)* **[2024] ZAGPJHC ----** (09 January 2024)

Coram: Adams J

Heard: 09 February 2024

Delivered: 09 February 2024 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 12:30 on 09 February 2024.

Summary: Application for leave to appeal – s 17(1)(a)(i) of the Superior Courts Act 10 of 2013 – an applicant now faces a higher and a more stringent threshold – applications for leave to appeal refused.

ORDER

---

(1) The first and the second respondents' application for leave to appeal in the matter under case number: **2023-052191**, is dismissed with costs, such costs to be paid by the first and the second respondents, jointly and severally, the one paying the other to be absolved.

(2) In the matter under case number: **2023-052612**, the respondent's application for leave to appeal is dismissed with costs, such costs to include the costs consequent upon the utilisation of two Counsel, one being a Senior Counsel, where so employed.

JUDGMENT [APPLICATIONS FOR LEAVE TO APPEAL]

Adams J:

[1]. I shall refer to the parties as referred to in the original two opposed applications under the above two separate case numbers, in respect of which I

had, on 11 December 2023, handed down one judgment. In 'the first matter' under case number 2023-052191, the first and the second respondents ('the respondents') are the first and the second applicants in their application for leave to appeal and the applicant ('Sasol Oil') is the respondent herein. In 'the second matter' the respondent ('the first respondent' or 'Bitline SA') is the applicant in its application for leave to appeal and the first applicant ('Sasol Oil') and the second applicant ('Amrich 58') are the respondents herein.

[2]. In the first matter I had granted interdictory relief against the respondents in favour of Sasol Oil in relation to a franchise agreement which was entered into between Sasol Oil and Bitline SA and which agreement had been cancelled by Sasol Oil. The respondents were *inter alia* interdicted from carrying on the business of a Sasol service and a filling station as contemplated in terms of the franchise agreement. Sasol Oil was also granted leave to gain access to the business premises and the site in order to affect an onsite disablement of the Sasol's systems. The respondents apply for leave to appeal that order, as well as the costs order which was granted against them.

[3]. In the second matter I had granted an eviction order against Bitline SA in favour of Sasol Oil and Amrich 58, which is the owner of the immovable property on which the Sasol business premises are located. Bitline SA also applies for leave to appeal that eviction order, as well as the costs order which I had granted against it.

[4]. As was the case in the main applications, I am of the view that it is convenient to deal with both of the applications for leave to appeal in one judgment.

[5]. The application for leave to appeal in the first matter is mainly against the court granting a final interdict in circumstances where, according to the respondents, the applicant had not made out a case for such interdictory relief. The court *a quo* erred, according to the respondents, in not properly applying the *Plascon Evans* principle in its assessment of the facts in the matter. I should have decided the application, so the contention on behalf of the respondents goes, on

Bitline SA's version unless such version could have been considered as farfetched and clearly untenable.

[6]. Nothing new has been raised by the respondents in this application for leave to appeal. In my original judgment, I have dealt with most of the issues raised and it is not necessary to repeat those in full. Suffice to restate what I said in my judgment, namely that it has to be accepted that the Franchise Agreement terminated on 30 June 2022. This, in turn, means that the respondents have no right – none whatsoever – to continue the Sasol business. This is so even if one is to accept Bitline SA's version that the agreement had been extended to 31 January 2023. Conversely, this means that Sasol Oil has a clear and unimpeachable right entitling it to insist on the respondents handing back the business to them, from which it then follows that all the other requirements for an interdict are met.

[7]. In the second matter, the application for leave to appeal is mainly against my factual finding that both the applicants have standing to apply for the respondent's eviction from the business premises. The court *a quo* erred, so Bitline SA contends, in accepting that Amrich 58 was the owner of the property in question as it did not make out such a case in its founding papers. This contention is without merit as Amrich's ownership of the premises, confirmed by public documentary evidence, was not disputed by Bitline SA.

[8]. Also, in the second application for leave to appeal, nothing new has been raised by the respondent. I have dealt in my original judgment with most of the issues raised and it is not necessary to repeat those in full. On a conspectus of the evidence before me in the eviction application, the applicants were entitled to the relief claimed by them in that application and the defences raised by Bitline SA in opposition to the said application were nothing more that it grasping at straws.

[9]. The traditional test in deciding whether leave to appeal should be granted was whether there is a reasonable prospect that another court may come to a different conclusion to that reached by me in my judgment. This approach has now been codified in s 17(1)(a)(i) of the Superior Courts Act 10 of 2013, which

came into operation on the 23rd of August 2013, and which provides that leave to appeal may only be given where the judges concerned are of the opinion that 'the appeal would have a reasonable prospect of success'.

[10]. In *Mont Chevaux Trust v Tina Goosen*[1], the Land Claims Court held (in an *obiter dictum*) that the wording of this subsection raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. I agree with that view, which has also now been endorsed by the SCA in an unreported judgment in *Notshokovu v S*[2]. In that matter the SCA remarked that an appellant now faces a higher and a more stringent threshold, in terms of the Superior Court Act 10 of 2013 compared to that under the provisions of the repealed Supreme Court Act 59 of 1959. The applicable legal principle as enunciated in *Mont Chevaux* has also now been endorsed by the Full Court of the Gauteng Division of the High Court in Pretoria in *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others*[3].

[11]. In the matters *in casu*, I am not persuaded that the issues raised by the respondents in their applications for leave to appeal are issues in respect of which another court is likely to reach conclusions different to those reached by me. Another court is unlikely to find, as contended by the respondents, that the applicants failed to make out cases for the relief sought by them in the two applications. In my view, the appeals do not have reasonable prospects of success.

[12]. Leave to appeal should therefore be refused in both matters.

Order

[13]. In the circumstances, the following orders are made in respect of the two applications for leave to appeal: -

---

[1] *Mont Chevaux Trust v Tina Goosen,* LCC 14R/2014 (unreported).

[2] *Notshokovu v S,* case no: 157/2015 [2016] ZASCA 112 (7 September 2016).

[3] *Acting National Director of Public Prosecutions and Others v Democratic Alliance In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* (19577/09) [2016] ZAGPPHC 489 (24 June 2016).

(1) The first and the second respondents' application for leave to appeal in the matter under case number: **2023-052191**, is dismissed with costs, such costs to be paid by the first and the second respondents, jointly and severally, the one paying the other to be absolved.

(2) In the matter under case number: **2023-052612**, the respondent's application for leave to appeal is dismissed with costs, such costs to include the costs consequent upon the utilisation of two Counsel, one being a Senior Counsel, where so employed.

L R ADAMS
Judge of the High Court of South Africa
Gauteng Division, Johannesburg

HEARD ON:	9th February 2024
JUDGMENT DATE:	9th February 2024 – judgment handed down electronically.
FOR SASOL OIL (APPLICANT IN THE FIRST MATTER):	Advocate Schalk Aucamp
INSTRUCTED BY:	DM5 Incorporated, Illovo, Johannesburg
FOR THE AMRICH 58 PROPERTIES (SECOND APPLICANT IN SECOND MATTER):	Adv J J Brett SC, together with Adv J L Kaplan
INSTRUCTED BY:	Hirschowitz Flionis Attorneys, Rosebank, Johannesburg
FOR THE BITLINE SA 951 (FIRST RESPONDENT IN THE FIRST MATTER) AND THE SECOND RESPONDENT:	Advocate J A Venter
INSTRUCTED BY:	Des Naidoo & Associates, Parktown, Sandton