



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2017/11257

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

28/6/2024
DATE

SIGNATURE

In the application for leave to appeal by

**THE MINISTER OF POLICE
AND
MOTUPA, MMAPUTHI MARIA**

APPLICANT

RESPONDENT

In the application by

**MOTUPA, MMAPUTHI MARIA
AND
THE MINISTER OF POLICE**

APPLICANT

RESPONDENT

In re the action between

**MOTUPA, MMAPUTHI MARIA
and
THE MINISTER OF POLICE
NATIONAL COMMISSIONER OF POLICE
STATION COMMISSIONER NORKEM PARK**

PLAINTIFF

FIRST DEFENDANT
SECOND DEFENDANT
THIRD DEFENDANT

JUDGMENT

MOORCROFT AJ:

Summary

Leave to appeal – no reasonable prospect of success

Order

[1] In this matter I make the following order:

1. *The application for the condonation of the late filing of the application for leave to appeal is granted, with no order as to costs;*
2. *The application for leave to appeal is dismissed;*
3. *The applicant for leave to appeal is ordered to pay the costs of the respondent in the application for leave to appeal on scale B.*

[2] The reasons for the order follow below.

Introduction

[3] This is an application for leave to appeal against a decision¹ handed down by me on 21 August 2023 after hearing argument on 24 July 2023 and considering additional heads filed by the parties on 11 August 2023. Due to an error the judgment was not

¹ *Motupa v Minister of Police* [2023] JOL 64252 (GJ).

received timeously by the parties and the applicant for leave appeal seeks an order condoning the late filing of the application. The application for condonation is not opposed.

[4] An appeal lies against the decision² of the court and not against the reason for the decision.³ Section 17(1)(a)(i) and (ii) of the Superior Courts Act provides that leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.⁴ Once such an opinion is formed leave may not be refused. Importantly, a Judge hearing an application for leave to appeal is not called upon to decide if his or her decision was right or wrong.

[5] In *Ramakatsa and others v African National Congress and another*⁵ Dlodlo JA speaking for the Supreme Court of Appeal placed the authorities in perspective. The Learned Justice of Appeal said:

“[10] .. I am mindful of the decisions at high court level debating whether house the use of the word ‘would’ as opposed to ‘could’ possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words,

² Section 16 (1) (a) of the Superior Courts Act 10 of 2013.

³ *Medox v Commissioner, South African Revenue Service* 2015 (6) SA 310 (SCA) para 10 and *Tecmed Africa (Pty) Ltd v Minister of Health and Another* [2012] All SA 149 (SCA) para 17.

⁴ See *S v Smith* 2012 (1) SACR 567 (SCA) para 7; *Mont Chevaux Trust (IT 2012/28) v Tina Goosen* 2014 JDR 2325 (LCC), [2014] ZALCC 20 para 6; *S v Notshokovu* 2016 JDR 1647 (SCA), [2016] ZASCA 112 para 2; *Member of the Executive Council for Health, Eastern Cape v Mkhitha and another* [2016] JOL 36940 (SCA) para 16; *The Acting National Director of Public Prosecution v Democratic Alliance* [2016] ZAGPPHC 489, JOL 36123 (GP) para 25; *South African Breweries (Pty) Ltd v Commissioner of the South African Revenue Services* [2017] ZAGPPHC 340 para 5; *Lakaje N.O v MEC: Department of Health* [2019] JOL 45564 (FB) para 5; *Nwafor v Minister of Home Affairs* [2021] JOL 50310 (SCA), 2021 JDR 0948 (SCA) paras 25 and 26; *KwaZulu-Natal Law Society v Sharma* [2017] JOL 37724 (KZP) para 29; *Shinga v The State and another (Society of Advocates (Pietermaritzburg Bar) intervening as Amicus Curiae)*; *S v O'Connell and others* 2007 (2) SACR 28 (CC); *Lephoi v Ramakarane* [2023] JOL 59548 (FB) para 4; *Mphahlele v Scheepers* NO 2023 JDR 2899 (GP), and Van Loggerenberg *Erasmus: Superior Court Practice* A2-55.

⁵ *Ramakatsa and others v African National Congress and another* [2021] JOL 49993 (SCA), also reported as *Ramakatsa v ANC* 2021 ZASCA 31.

the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.”

[6] To facilitate the reading of the judgment I refer to the parties as they were referred to in the application itself. The applicant as plaintiff claimed damages arising out of a shooting incident. The respondent conceded liability. The claim for medical expenses and the interest of 10.5% *per annum* payable on the claim became settled by 17 October 2022. The only outstanding issues then were the claim for past and future loss of income and general damages.

[7] The applicant alleged that both these claims have been compromised and that the compromise offer was accepted by her. This compromise was denied by the respondent.

[8] I set out the history of the matter in paragraphs 3 to 10 of the judgment and dealt with the defences raised in paragraphs 11 to 28. I concluded in paragraph 29 that the compromise was binding. I did not grant the punitive cost order sought.

[9] The question before the court was not (as argued for the respondent) whether damages could be awarded on application, but whether a compromise had been reached. If a compromise had been reached the issues relating to appropriate quantum, the correct retirement age, the opinions of various experts, and actuarial calculations have become settled.⁶

[10] There are no reasonable prospects of success on appeal and no compelling reasons why the appeal should be heard.

[11] For the reasons set out above I make the order in paragraph 1.

⁶ See also *Road Accident Fund v Taylor and others* [2023] ZASCA 64.


J MOORCROFT
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **1 JULY 2024**.

COUNSEL FOR THE APPLICANT: JW KLOEK

INSTRUCTED BY: MINNIE & DU PREEZ INC

COUNSEL FOR THE RESPONDENT: L TYATYA

INSTRUCTED BY: STATE ATTORNEY

DATE OF ARGUMENT: 26 JUNE 2024

DATE OF JUDGMENT: 1 JULY 2024