



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case number: 2022/055474

- [1] REPORTABLE: NO
[2] OF INTEREST TO OTHER JUDGES: NO
[3] REVISED: NO

SIGNATURE

DATE: 03 OCT 2024

In the matter between:

ENGEN PETROLEUM LIMITED

Applicant

and

SEDIA GROUP (PTY) LTD T/A ENGEN NORTHMEAD

Respondent

Summary:

Application for Leave to Appeal – Test Restated – Leave to appeal refused

JUDGEMENT

Z KHAN AJ

- [1] This is an application for leave to appeal by the Respondent in the principal application. I delivered judgment on 20 February 2024 and the reasons for such decision have been delivered and I not repeat such reasons.
- [2] The Respondent in this matter is represented intermittently by an attorney that comes on record at certain times and not others. The papers including heads of argument were professionally drawn and then Respondents attorneys did not attend at Court. Again, the attorney again enters the matter and withdraws on 15 May 2024 before the hearing on 17 May 2024.
- [3] There is also the further matter of the Respondent Companies director participating in these proceedings.
- [4] The Respondent applied for a postponement from the bar so that he could obtain funds to secure further representation. No indication as to why he did not secure funds or an attorney or when such funds would become available. I refused the postponement after hearing opposing submissions and the Applicants need for finality.

- [5] The Respondent then proceeded to skilfully argue the matter before me armed with legal submissions. The Application for leave to appeal sets out the reasons for the application. I traversed these grounds with the Respondent.
- [6] The nub of the Respondents application for leave to appeal is that he has secured a government tender and can thus proceed to do business with Applicant (who indicate that they do not wish to trade with Respondent) and that Respondent wants time to sell the petrol station business. The petrol station has not been active for some time, the agreement between the parties has ended by efflux of time and there is no obligation on the Applicant to sell the franchise to any person that the Respondent introduces.
- [7] The further point in papers (but not in argument) relates to the Beadica argument. I also considered the test set out in that judgment and cannot come to the assistance of the Respondent.
- [8] This Respondent merely wants leave to appeal so that he can (in his mind and admittedly during argument) turn a profit. That is not the purpose of leave to appeal.
- [9] The test to be applied in an application for leave to appeal is set out in section 17(1)(a) of the Superior Courts Act 10 of 2013 which provides that:
- “(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;”

[10] The Supreme Court of Appeal set out the application for a test to grant leave to appeal in *Cook v Morrisson and Another* 2019 (5) SA 51 (SCA) as follows:

“[8] The existence of reasonable prospects of success is a necessary but insufficient precondition for the granting of special leave. Something more, by way of special circumstances, is needed. These may include that the appeal raises a substantial point of law; or that the prospects of success are so strong that a refusal of leave would result in a manifest denial of justice; or that the matter is of very great importance to the parties or to the public. This is not a closed list (*Westinghouse Brake & Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd* 1986 (2) SA 555 (A) at 564H – 565E; *Director of Public Prosecutions, Gauteng Division, Pretoria v Moabi* 2017 (2) SACR 384 (SCA) ([2017] ZASCA 85) para 21).”

[11] I am satisfied that there is no reasonable prospect of success and no novel legal issue raised by Respondent.

[12] The usual order relating to costs in an application for leave to appeal is that the cost of the appeal follows the suit.

ORDER

[13] I make the following order:

[14] The application for leave to appeal is dismissed with costs.


[REDACTED]
Z KHAN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to Caseline. The date and time for hand-down is deemed to as reflected on the Caseline computer system.

DATE OF HEARING : 17 May 2024

**DATE OF JUDGMENT : 17 May 2024 (an order and ex tempore reasons
were furnished**

THIS REASONS FOR JUDGMENT:

**3 October 2024 (A request having now been
received for same)**

APPEARANCES:**COUNSEL FOR THE APPLICANT:****ADV D MOKALE****ATTORNEY FOR THE APPLICANT:****GOVENDER DLADLA
PATEL ATTORNEYS****COUNSEL FOR THE RESPONDENT:****IN PERSON****ATTORNEY FOR THE RESPONDENT:****PAUL T LEISHER INC
(WITHDREW)**