


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 24020/2022

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED.
15 May 2025	
DATE	SIGNATURE

In the matter between:

NYATHI NHLANHLA HOPEWELL

Plaintiff/Applicant

And

ROAD ACCIDENT FUND

Defendant/Respondent

APPLICATION FOR LEAVE TO APPEAL: JUDGMENT

Introduction

[1] This is an application for leave to appeal by Hopewell Nhlanhla Nyathi (applicant)

against the judgment and order of this court handed down on 7 November 2024. The applicant claimed for damages arising from personal injuries sustained by him in a motor vehicle accident which occurred on 8 September 2019. The issue of liability had already been settled between the parties and the defendant conceded to the 100% in favour of the applicant.

[2] The applicant appointed experts for the determination of general damages and loss of (past and future) earnings. The experts assessed the applicant and provided opinions on the plaintiff's injuries and sequelae, as well as the plaintiff's previous, current and future employability. On the other hand, the respondent elected not to appoint any experts on this matter.

[3] On 7 November 2024, I made the following order:

- "1. General damages are awarded to the plaintiff in the amount of R1 350 000.00.
2. Plaintiff's claim for damages for loss of Past and Future Earnings is dismissed.
3. The defendant is ordered to pay the plaintiff's costs limited to the issues of liability and general damages.
4. The plaintiff is ordered to pay the defendant's costs relating to the issue of loss of earnings"

[4] The applicant contends that the order was erroneously made and is accordingly seeking leave to appeal against the whole of the judgment and the above order. This application for leave to appeal is opposed by the respondent. The grounds of leave to appeal are detailed in the notice of leave to appeal, thus, there is no need to repeat the same in this judgment.

The Law

[5] An application for leave to appeal is governed by Section 17(1) of the Superior Court Act 10 of 2013, which stipulates 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;
- (b) the decision sought on 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."

- [6] The Supreme Court of Appeal in *MEC for Health, Eastern Cape v Mkhitha and Another* held that section 17(1)(a) of the Superior Courts makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.¹
- [7] The correct interpretation of section 17(1)(a)(i) is therefore whether there are reasonable prospects of success on appeal to be determined on a rational basis.² In other words, there must exist a realistic chance of success on appeal based on proper grounds. Lastly, it was held that the section requires a truly reasonable prospect of success.³
- [8] In the context of section 17(1)(a)(ii) of the Superior Courts Act, a "compelling reason" for an appeal to be heard, includes conflicting judgments on the matter under consideration, or other similar compelling circumstances that warrant a higher court's review. In *Van Zyl N.O and Another v Cometa Trading (Pty) Ltd*⁴ the court held that:

¹ [2016] ZASCA 176 at para 16.

² See also *Land and Agricultural Development Bank of South Africa and Another v Van den Berg and Others* [2022] 1 All SA 457 (FB) (8 November 2021).

³ See also *MEC for Health, Eastern Cape v Mkhitha and Another* Footnote 1 above at para 17.

⁴ [2025] ZAWCHC 112 (17 March 2025) at para 15. See also *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA) (25 March 2020) at para 2.

“... . Compelling reasons include, among others, the involvement of substantial public interest, an important question of law, differing judicial interpretations, or a discrete issue of statutory interpretation with implications for future cases.”

- [9] It was held that where it is proposed that compelling reasons exist the court is required to consider the compelling reasons also in conjunction with the merits of the appeal, which it was held remain often decisive.⁵ In other words, in considering whether compelling reasons exist that warrant appellate interference, the court may grant leave on that basis, but not without due regard to the merits.

Analysis

- [10] Having read the application for leave to appeal, the written heads of arguments, hearing counsel for the parties and taking into account the provisions of section 17(1)(a)(i) and (ii) of the Superior Court Act, the court deems it in the interest of justice that another court should consider the issue regarding past and future loss of earnings and future medical expenses claims made by the plaintiff.
- [11] I am satisfied that my interpretation is judicially sound but the Full Bench may differ considering the nature of the issues advanced by the plaintiff in this application for leave to appeal. In my view, compelling reasons exist that warrant appellate interference.

⁵ *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA) (25 March 2020) at para 2. See also *Van Zyl N.O and Another v Cometa Trading (Pty) Ltd* at para 15.

Order

[12] In the result, I make the following order:

1. Application for leave to appeal to the Full Bench is granted.
2. Costs to be costs in the appeal.



**MD BOTSI-THULARE AJ
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

APPEARANCES

For the Applicant: Adv KG Sadiki instructed by Jerry Nkeli and Associates Inc

For the Respondent: Ms T Tivana instructed by State Attorney

Date of Hearing: 12 March 2025

Date of Judgment: 15 May 2025