IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case Number: 002870/2023

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

J MOGOTSI

DATE: 08 FEBRUARY 2024

In the matter between:

KOOPKRAG(PTY)LTD (Registration Number:[…])	Applicant
And	
TAUTE BOUWER & CILLIERS INC	First Respondent
CATHARINA ELIZABETH JEAN JOUBERT	Second respondent
HURSION PATHER (Identity Number:[…])	Third Respondent
SHERIFF OF THE HIGH COURT, UMZITO	Fourth Respondent
In re:	
CATHARINA ELIZABETH JEAN JOUBERT	Plaintiff

And

CHRISTO LUNDIE First Defendant

(Identity Number: […])

SHEREE SCHAAL Second Defendantt,

JUDGMENT ON LEAVE TO APPEAL

MOGOTSI AJ

[1] On 15 June 2023, this Court dismissed the applicant's application against the respondents with punitive costs. Aggrieved by the judgement, the applicant brought an application for leave to appeal wherein it outlines several grounds on which it asserts that the Court has erred in its findings. As such, the applicant argues that there exist reasonable prospects that another Court would find different from the decision reached by this Court, alternatively, that there are compelling reasons for the granting of the application for leave to appeal. Arguing to the contrary, the First and Second respondents oppose the application.

[2] The application is brought in terms of Section 17(1) (a) of the Superior Court Act 10 of 2013, which reads as follows:

> "Leave to appeal may only be given where the judge or judges concerned are of the opinion that:
>
> (a)
>
> (i) The appeal would have reasonable prospects of success; or
>
> (ii) There is some other compelling reason why the appeal should be heard, including conflicting judgments on a matter under consideration."

[3] What emerges from section 17(1) is that the threshold to grant a party leave to appeal has been raised.

[4] In Ramakatsa and Others v African National Congress and Another[1] the Court observed that:

> "I am mindful of the decisions at the high court level debating whether 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 conclude differently from that of the trial court. In other words, 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 a reasonable chance of succeeding must exist. A sound rational basis for the conclusion that there are prospects of success must be shown to exist."

[5] The applicant raised eight grounds of appeal, which can be summarised as follows:

> [5.1] The court erred in finding that the second respondent leased the vehicle to Ms Schaal.
>
> [5.2] The court erred in finding that the applicant became aware of the sale of the vehicle on 11 September 2022 and that the applicant was requested to provide the fourth respondent with an affidavit.
>
> [5.3] The court incorrectly interpreted and rejected the principles outlined in the matter of Gans V Telecom Namibia Ltd[2].
>
> [5.4] The court erred in finding that the applicant had caused a non-joinder by not joining Ms Schaal.

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[1] Case no 724/2019 (2021] ZASCA 31 (31 March) 2021
[2] 2004 (3) SA 615 (SCA) (20040 25 IU 995 (SCA), (2004) 2 ALL 609 (SCA) para 19

[5.5] The court erred in finding that the applicant does not allege that the sale in execution was conducted irregularly.

[5.6] The court erred in finding that the Magistrates' Court order interfered with the applicant's ownership.

[5.7] The court erred in finding that the applicant should be liable for the cost of the first and second respondents' opposition to the application on a punitive scale.

[5.8] The court erred in failing to take cognisance of Regulation 53 of the National Traffic Regulations.

[6] I now deal with the grounds of appeal.

[7] The applicant's first ground of appeal is based on selective perusal of the judgment. It should be noted that the judgement reads further as follows: "The latter obtained a default judgment against Ms Schaal and Mr Lundi in the Magistrate's Court Pretoria for the amount of R42 000,00 for arrear rental".

[8] A finding is a decision reached after a trial or an investigation. The court did not make a finding that the second respondent leased the vehicle to Ms Schaal. The sentence appears under the heading "Introduction" and is therefore not a finding of this court.

[9] The applicant's counsel submitted that the court's decision was influenced by the fact that it incorrectly found that the applicant leased a vehicle to Ms Schaal. The applicant's counsel failed to demonstrate how this error influenced the court's decision. I have, nonetheless, perused the judgment and I am content that this error did not have a bearing on the final decision arrived at by this court. I am, therefore, not persuaded by the submission of the applicant's counsel in this regard.

[10] The court did not make a finding that the applicant became aware of the sale in execution on 11 September 2022 and the applicant was requested to provide the fourth respondent with an affidavit. The relevant sentence in the judgment commences with the phrase "It appears." The applicant is misinterpreting the judgement or unwittingly ignoring the phrase 'It appears".

[11] The applicant is again misinterpreting the judgement relating to the third ground of appeal. The judgment deals with locus standi of the person who deposed to the applicant's founding affidavit and not the mandate of the applicant's attorneys. The issue emanates from the first respondent's affidavit and not from Rule 7 application which unequivocally deals with the mandate of the applicant's attorneys of record. The applicant's attorneys were properly instructed hence I deliberately omitted to deal with the Rule 7 application. In the Gans and Another v Telekom Namibia mentioned supra, the founding affidavit was deposed to by the applicant's attorney and in casu it was deposed to by a General Manager. I am, therefore, not persuaded by the submission of the applicant's counsel that this court incorrectly applied the authority lain in the matter referred to supra.

[12] In its founding affidavit, the applicant does not deal with the fact that the sale in execution was irregular hence the court made such a determination.

[13] The purchaser of the vehicle in casu acted in good faith and section 70 of the Magistrates' Court Act 32 of 1944 affords him protection. Therefore, I am not persuaded by the submissions of the applicant's counsel that this court erred in finding that the sale of the vehicle interfered with the ownership of the vehicle.

[14] The submission by the applicant's counsel that the applicant caused a non-joinder by failing to cite Ms Schaal has been correctly considered by the court in its judgment and I am not persuaded to find in favour of the applicant.

[15] The applicant was advised, which advice this court found to be correct, that section 2 (1) (b) of the Security by Means of Movable Property Act 57 of 1993 does not apply to the facts in casu. The crisp issue in casu does not relate to section 2 (1) (b) of Act 57 of 1993. This once again demonstrates the respondent's misinterpretation of the judgment. It, however, follows that there is no compelling

reason to grant the application for leave to appeal.

[16] The applicant's approach to this matter from its inception is worth mentioning. The applicant is inclined to omit to follow the strict letter of the law and when not successful shifts the blame to others. Had the applicant submitted an affidavit as advised by the fourth respondent, or at least accepted the settlement amount that was offered, they could have avoided dragging the respondents to court on numerous occasions.

[17] Had Ms Schaal and Mr Lundi adhered to their agreement with the second respondent, this matter would not have been set down in court on numerous occasions. The applicant, however, chose to pour cold water on this issue, elected not to cite Ms Schaal and up to this stage continues to protect her for no apparent reason.

[18] I am mindful that the applicant brought an urgent application putting the respondents out of pocket for a matter which was struck off the roll. The applicant then unsuccessfully approached this court and dragged the respondents to court again. I am not persuaded that this court erred in ordering the applicant to pay punitive costs.

[19] Once again, the applicant launched the application based on unfounded technical issues and misinterpretation of the judgment and in the process dragging the respondents to court again. In the premises, I am of the view, that a punitive cost order is appropriate in respect of this application.

ORDER.

Therefore, I make the following order.

1. The application for leave to appeal is dismissed.
2. The applicant is ordered to pay the costs of the application on an attorney and client scale.

J MOGOTSI

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Date of judgment: 08 February 2024

APPEARANCES:

For the Applicants:	Adv AA Sasson instructed by Tim Du Toit & CO Incorporated.
For the First Respondent:	Adv M Coetzee instructed by Taute, Bouwers & Celliers Incorporated.
For the Second Respondent:	Adv JJ Bouwer instructed by Hopgood Attorneys Incorporated