



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO. 5867/2013

In the matter between:

GASTON SAVOI

FIRST APPLICANT

INTAKA HOLDINGS (PTY) LTD

SECOND APPLICANT

FERNANDO PRADERI

THIRD APPLICANT

and

THE NATIONAL PROSECUTING AUTHORITY

FIRST RESPONDENT

THE SOUTH AFRICAN POLICE SERVICE

SECOND RESPONDENT

ORDER

The application for leave to appeal is dismissed with costs.

JUDGMENT

Delivered on: 11 September 2018

Mnguni J

[1] The applicants in this matter seek leave to appeal to the full court of this division against the whole of my judgment and order handed down on 23 February 2018 on various grounds enumerated in the notice of application for leave to appeal filed on 15 March 2018 in which they contend that I have either erred or misdirected myself in the judgment of the matter. I have been urged by the applicants' counsel to find that the applicants would have reasonable prospects of success and that another court may reasonably come to a different conclusion.

[2] Failing that, I have been urged that in terms of s 17 (1) (a) (i) and (ii) of the Superior Courts Act¹ there are further compelling reasons why leave to appeal should be granted in that the judgment sets up an opposition between its refusal to order disclosure and the orders of disclosure that had been granted by Henriques J and Vahed J in two other related matters.

[3] Dealing first with the matter that was before Henriques J the record will demonstrate that two applications were before her, namely, applications in terms of Uniform rules 30 and 35 (12). The application which was before me was in terms of rule 35 (11). Coming to the matter that served before Vahed J, the issues raised in relation thereto were pertinently dealt with in my judgment.

[4] In the course of argument the applicants' counsel referred to the following three cases: *Bridon International GMBH v International Trade Administration*

¹ 10 of 2013.

Commission & others,² *Helen Suzman Foundation v Judicial Service Commission*,³ and *Siyakhuphuka Investment Holdings (Pty) Ltd v Ports Regulator of South Africa Transnet SOC & others*.⁴ On the strength of those cases counsel submitted that I should grant leave because my judgment seems to be at odds with what was decided in those cases. It will only take a moment's reflection to understand how misplaced that argument is. It is plain from a reading of those three cases that they deal with specified documents/reports in a civil matter. This application concerns documents in permanent stay proceedings.

[5] I have deliberately captured the grounds on which the permanent stay application is anchored. It is common cause that by and large all grounds relate to the abuse of process. In para 58 of my judgment I isolated the insurmountable hurdle which the applicants face in that regard. The presiding officer is best placed to rule on the evidence in accordance with recognised procedures and applicable principles of law.

[6] In so far as a reasonable prospect of success and whether another court may reasonably come to a different conclusion are concerned, the submissions amounted to a repeat of what was argued before me and which I endeavoured to deal with to the best of my ability in my judgment of 23 February 2018.

² *Bridon International GMBH v International Trade Administration Commission & others* 2013 (3) SA 197; [2012] 4 ALL SA 121 (SCA); (538/2011) [2012] ZASCA 82 (30 May 2012).

³ *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1; 2018 (7) BCLR 763 (CC); (CCT289/16) [2018] ZACC 8 (24 April 2018).

⁴ *Siyakhuphuka Investment Holdings (Pty) Ltd v Ports Regulator of South Africa Transnet SOC & others* (5520/2016) [2018] ZAKZDHC 19 (21 May 2008).

[7] Having carefully reflected on each ground I remain unpersuaded that there is any reasonable prospect of another court coming to a different conclusion on the facts and circumstances of this case. I am also unable to find any compelling reasons why leave to appeal should be granted to the applicants.

[8] If I am wrong in that regard, then the applicants have a remedy of applying to the President of the Supreme Court of Appeal for leave. It follows from what I have set out briefly above that I am not disposed to granting leave to appeal.

[9] With regard to the question of costs, I note that the applicants have not complained that I have failed to exercise my discretion judicially.

Order

[10] In the circumstances the following order shall issue:

The application for leave to appeal is dismissed with costs.

Mnguni J

Appearances

Heard: 06 September 2018

Delivered: 11 September 2018

For the Applicant: Mr G. MARCUS SC

Assisted By: Mr M. Du PLESSIS

INSTRUCTED BY: Edward Nathan Sonnenbergs Inc.

c/o Nicholson & Hainsworth Attorneys.

REF.: (W Van der Colff/0292511) / (Brett Nicholson/BNL2328)

TEL.: 033-343 22 21

For the Respondent: ADV. U.R.D MANSINGH

INSTRUCTED BY: STATE ATTORNEY, KZN

c/o CAJEE SETSUBI CHETTY

REF: (Mr Patrick Kevan/cet/119/0004/2013/S/P13)

TEL: 033-345 67 19