

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR339/18

In the matter between:

APCAN RISK MANAGEMENT

Applicant

and

DETAWU OBO RANKANKANE AND 3 OTHERS

First Respondent

DONALD KGALAKE NKADIMENG

Second Respondent

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION HELD AT
POLOKWANE**

Third Respondent

Decided: In chambers

Delivered: 07 June 2019

JUDGEMENT: APPLICATION FOR LEAVE TO APPEAL

MALAN. AJ

Introduction

[1] This is an unopposed application for leave to appeal against a judgment of this Court handed down on 8 February 2019.

[2] The Superior Courts Act¹ has, in section 17 thereof, defined the test to be applied in deciding whether to grant leave to appeal:

¹ Act 10 of 2013.

“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 just and prompt resolution of the real issues between the parties.”

[3] The test to be applied is therefore a form of merit assessment in relation to the prospects of success that the prospective appellant would enjoy in appeal proceedings. For purposes of its assessment in this regard the Court may not rely on any preconceived notions of the merits arising from its original assessment of the application as it served before the Court but must approach the matter from a fresh perspective and with the sole intent of assessing the prospects that a different court may reasonably come to a different conclusion on the matter.

[4] The Court has given due consideration to the various arguments raised in support of the application for leave to appeal.

[5] The Court is persuaded that the approach adopted by the Court in relation to the judgment that is the subject matter of this application is not beyond challenge and that a degree of legitimate controversy may exist in relation to the judgment. The appeal would therefore have reasonable prospects of success. The Court is therefore satisfied that the application for leave to appeal should be granted and orders as follows:

Order

1. The application for leave to appeal is granted.
2. There is no order as to costs.

G. F. Malan

Acting Judge of the Labour Court of South Africa

LABOUR COURT