



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY**

CASE NO: 142/2021
Heard: 22/03/2022
Delivered: 22/04/2022

In the matter between:

THEMBANI CLIFFORD KHOSA

Applicant

and

SISHEN IRON ORE COMPANY (PTY) LIMITED

Respondent

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

Mamosebo J

- [1] This is an application for leave to appeal to the Full Bench of this Division, against my judgment and order handed down on 29 October 2021 in which I granted an eviction order against the applicant, Mr Thembani Clifford Khosa, and the occupiers of 4970 Karlien Street Onderwyserspark, Kathu, and costs. They were to vacate the property by 31 January 2022. The application is opposed.

- [2] Whereas Mr Khosa enrolled the application for leave to appeal to be heard on 22 March 2022, on that day, without any substantive application he applied for a postponement. Mr Khosa was advised by this Court previously on 02 February 2022 to approach the Legal Aid Office for assistance before enrolling the matter, which he did. He was informed on or about 23 February 2022 that his application was unsuccessful. The request for a postponement was refused and the parties were invited to proceed with their submissions.
- [3] The application is premised on the grounds that this Court erred in:
- 3.1 Arriving at a finding that the applicant is no longer an employee of the respondent whilst the arbitrator's decision has been challenged on review in the Labour Court.
 - 3.2 Rejecting the respondent's submission that he will be inconvenienced in his preparation for the Labour Court when evicted from the property.
 - 3.3 Its finding that the applicant has failed to disclose his financial position fully due to holding directorships in certain companies.
 - 3.4 Not considering the symbiosis with his cousins, namely, the respondent providing accommodation while the cousins provide basic needs.
- [4] The test for applications for leave to appeal is governed by section 17 of the Superior Courts Act¹, which stipulates:

"17(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 a matter under consideration;*
- (b) The decision sought on appeal does not fall within the ambit of section 16(2)(a); and*
- (c) ..."*

- [4] The provisions of section 17(1) raise the threshold of the test for leave to appeal.² The applicant must demonstrate to the Court that there are reasonable prospects that the appeal would succeed. Nugent JA made the following pronouncements in *S v Mabena*³

"[22] It is the right of every litigant against whom an appealable order has been made to seek leave to appeal against the order. Such an application should not be approached as if it is an impertinent challenge to the Judge concerned to justify his or her decision. A court from which leave to appeal is sought is called upon merely to reflect dispassionately upon its decision, after hearing argument, and decide whether there is a reasonable prospect that a higher court may disagree."

- [5] Determining whether to grant leave to appeal on the basis that the appeal would have a reasonable prospect of success is higher and more stringent. Our courts have already interpreted the phrase "*would*", found in section 17(1)(a)(i) of the Act, as indicative of some form of certainty or realistic chance of success.
- [6] Mr Khosa simply rehashed the arguments that are dealt with in the main judgment. His right to occupy the mine property ended after his services were terminated. The fact that he is or will be

² The Mont Chevaux Trust v Tina Goosen & 18 Others 2014 JDR 2325 (LCC) at para 6; MEC for Health, Eastern Cape v Mkhitha and Another [2016] ZASCA 176 (25 November 2016) at paras 16-17 and Notshokovu v S [2016] ZASCA 112 (7 September 2016) at para 2

³ 2007 (1) SACR 482 (SCA) at 494 (para 22)

inconvenienced in his preparation for the Labour Court hearing if he was evicted from the property bears no relevance to the prospects of success. The same holds true for the purported symbiotic relationship with his cousins. Mr Khosa has also not shown the existence of some other compelling reason why the appeal should be heard.

[7] In the premises, I am of the view that there are no reasonable prospects of success on appeal in that another court, on appeal, would arrive at a different conclusion based on the facts, than this Court arrived at. The application for leave to appeal to the Full Bench of this Division should therefore fail.

[8] On the question of costs. There is no reason why costs should not follow the result.

[9] Resultantly, the following order is made:

The application for leave to appeal is dismissed with costs.



M.C.MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

For the Applicant:
Instructed by:

Mr. T.C. Khosa
In person

For the Respondent:
Instructed by:

Adv. J.W Kloek
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