

IN THE GAUTENG HIGH COURT, PRETORIA /ES

(REPUBLIC OF SOUTH AFRICA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ /  
NO.

(3) REVISED.

18/12/2013

DATE

*[Signature]*  
SIGNATURE

19/12/2013

CASE NO: 67151/2013

In the matter between:

JOHN HERMAN

Applicant

and

THE MINISTER OF JUSTICE AND  
CONSTITUTIONAL DEVELOPMENT

First Respondent

NKWADI SIMON MAREMANE

Second Respondent

JUDGMENT

**MOTHLE J**

1. Before me is an application for leave to appeal the order and judgment I handed down on 6 November 2013 (*“the main Judgment”*). For the sake of convenience and consistency, I will refer to the parties in name/title as in the main judgment. The roles are however reversed as the applicant in this application is *Herman*, a Sheriff in the Mokopane/Potgietersrus District; the First Respondent is the *Minister* (of Justice and Constitutional Development) and the Second Respondent is (Nkwadi Simon) *Maremane*.
2. In the application leading to the main judgment, the Minister approached this Court by way of urgency, seeking an order that Herman should hand over all processes, records and documentation in his possession as Sheriff, to the Court Manager of Mokopane Magistrate Court within 48 hours of the service of the order. Herman opposed the application mainly on the ground that the regulations state that he may retire at the age of 70. I found, amongst others, that the law provides that he should retire at age 65 and I granted the order for the relief sought.

3. The application for leave to appeal is based on several grounds which, for the purpose of this judgment I shall not repeat. Suffice to state that the grounds are a rehash of the issues and arguments raised in the main application, which arguments I have dismissed. Having read the documents on the application for leave to appeal and having heard the arguments by counsel, I dismissed the application and indicated that I will provide my reasons in due course. What follows hereunder are my reasons for dismissing this application.
4. It is trite that in an application for leave to appeal, the test is whether the applicant has reasonable prospects of success on appeal; i.e. whether the appeal court may come to a different conclusion. See *Van Heerden v Cronwright and Others 1985 (2) SA 342 (T)*.
5. At the hearing of this application, Herman's counsel in his submissions laid emphasis on the question of the retirement age. I have found that the Sheriff's Act 90 of 1986 ("the Act"), provides in section 4(1) that the age of retirement of a sheriff is 65 or such further age as may be determined by the Minister and that the age of retirement for messengers and sheriffs appointed in terms of the repealed legislation, is stated in the new Act

under section 64(3)(e) as 70 years. This section provides for transitional arrangements concerning Sheriffs and Messengers of court appointed in terms of the old (repealed) Act and are still in active service. It is common cause that Herman was appointed in terms of the new Act and is therefore not covered by the transitional arrangements as provided for in section 64(3)(e).

6. Herman's contention on this ground is premised on regulation 2(2)(c) of the Regulations promulgated by the Minister in terms of section 62 of the Act and published for the first time in Government Notice R 411 of 12 March 1990 (Government Gazette 12307) and thereafter amended several times. The regulation states thus:

*" ..... a vacancy in the office of sheriff of a lower court or superior court has occurred or will occur as a result of-*

*(c) the attainment by a sheriff of the age of 70 as contemplated in section 64(3)(e) of the Act or the attainment by a sheriff of the further age determined by the Minister under section 4(1) of the Act."*

7. This regulation refers to section 64(3)(e) which deals with the transitional arrangement concerning Sheriffs and Messengers of

court appointed in terms of the repealed Act. It does not apply to Herman. There is also no evidence that the Minister extended Herman's retirement age in terms section 4(1). I am thus persuaded that on this ground, no court will find differently.

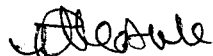
8. There was a further argument by Herman's counsel that the appointment of Maremane is invalid in that it refers to a High Court in Mokopane and there is no such court. This argument is bizarre. In the first place Herman's letterhead as Sheriff describes him as "***Balju/Sheriff Hooggeregshof/landroshof Potgietersrus/Mokopane Naboomspruit/ Mookgopong.***" (Hooggeregshof is High Court). He very clearly identifies himself as Sheriff for the High Court Potgietersrus/ Mokopane and Naboomspruit/Mookgopong.
9. Secondly, sheriffs are appointed to serve High Court processes in magisterial districts where there is no seat of a high court. That would include the magisterial district that is located within the jurisdiction of the High Court with a seat in a different location. I am thus persuaded that an appeal court will not find differently on this ground.
10. The other grounds of this application are a rehash of the argument on issues which are fully dealt with in the main

judgment. I need not repeat what I stated in the main judgment, suffice to state that for reasons stated therein, I am of the view that no other court will find differently on those grounds.

11. I am thus of the view that there no reasonable prospects of success on appeal and the appeal court would, in my view, not come to a different conclusion. This application must thus fail.

In the premises I make the following order:

1. That the application for leave to appeal is dismissed.
2. The applicant is ordered to pay the costs of the first respondent.



**S P MOTHLE**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG HIGH COURT, PRETORIA**

DATE OF HEARING: 6 DECEMBER 2013  
DATE OF REASONS FOR JUDGMENT : 19 DECEMBER 2013

FOR THE APPLICANT:	ADV VAN KOLLER
INSTRUCTED BY:	MESSRS JACQUES VAN DER MERWE ATTORNEYS 176 OLIVER STREET BROOKLYN PRETORIA.

FOR THE 1ST RESPONDENT:	ADV. MOTSHWENE
INSTRUCTED BY:	THE STATE ATTORNEY PRETORIA.