

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 43883/2016

In the matter between:

AMAECHI OLUA

Applicant

and

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO	
(2) OF INTEREST TO OTHERS JUDGES: YES /NO	
(3) REVISED ✓	
12 APRIL 2021	<i>[Signature]</i>
DATE	SIGNATURE

STANDARD BANK OF SOUTH AFRICA LTD

First Respondent

**SHERIFF OF THE HIGH COURT OF SOUTH AFRICA,
CENTURION WEST, PRETORIA**

Second Respondent

In re

STANDARD BANK OF SOUTH AFRICA LTD

Plaintiff

and

AMAECHI OLUA

Defendant

JUDGMENT IN LEAVE TO APPEAL

NGALWANA AJ

Introduction

[1] This is an application for leave to appeal against a judgment I handed down on 7 December 2020.

[2] It was brought to my attention on 4 March 2021 although it appears to have been uploaded on CaseLines on 18 January 2021.

[3] Upon learning of the application, I requested the parties to submit heads of argument which would enable me to determine whether or not a need to hear oral argument arises. Having considered both sets of heads of argument, for which I am grateful to both legal representatives, and the grounds of appeal advanced on behalf of the applicant, I am satisfied that it is not necessary to schedule a date for oral argument. Given that the issues have already been identified, argument has already been advanced on the merits of those issues, and the applicable standard in applications of this kind is capable of being determined on written argument, there is in my view no pressing need for oral argument. In the final analysis, both parties have already been heard orally, and their written submissions have been taken into account.

The Standard

[4] It is axiomatic that the applicable standard in applications for leave to appeal has traditionally been whether there is a reasonable possibility that another Court may come to a different conclusion than that reached by the Court of first instance.

[5] Now the position is governed by the Superior Courts Act 10 of 2013 which says leave to appeal may be granted where

5.1 the appeal would have a reasonable prospect of success;¹ or

5.2 there is some compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;²
or

5.3 the decision sought will have a practical effect or result;³ and

¹ Section 17(1)(a)(i)

² Section 17(1)(a)(ii)

³ The effect of section 17(1)(b) read together with section 16(2)(a)(i) is that where the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.

5.4 the appeal would lead to a just and prompt resolution of the real issues between the parties even where the decision sought to be appealed does not dispose of all the issues in the case⁴.

Analysis

[6] On the undisputed facts of this case the application meets none of these requirements. The applicant posits the wrong standard. In his notice of application for leave to appeal he expresses the applicable standard as being whether another court “*may come to a different conclusion*”⁵. This is not the applicable standard. The threshold standard is whether another could would reach a different conclusion. Thus, the applicant starts off on a wrong footing by setting the threshold standard lower than the law requires.

[7] The first respondent would have this court dismiss the application on that ground alone. That, in my view, would be inappropriate. What matters is not the threshold standard the applicant posits; it is rather whether the legal argument advanced in support of the grounds of appeal identified meets the required standard. It is that to which I now turn.

⁴ Section 17(1)(c)
⁵ CaseLines 063-25 para 28

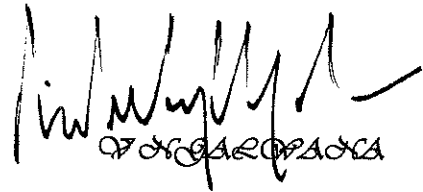
[8] Leave to appeal is not there merely for the asking. That is why the legislature has designed a threshold standard for it in the Superior Courts Act. It is often tempting for a Judge who has many other cases to attend to, and for an Acting Judge (whose stint has ended) who is called upon to revisit his judgment that he delivered months previously, and who has other remunerative work to do, to seek to unburden himself by simply granting leave thereby making his problem the appeal bench's problem, or refusing leave on the thinnest of bases: such as the basis on which I am invited by the first respondent to dismiss this application. Neither approach is helpful either to the applicant or to the appeal bench. It is also not helpful in the development of jurisprudence on applications for leave to appeal.

[9] This is not a case for the development of such jurisprudence. In my view, the application discloses no prospects of succeeding on appeal. Many of the grounds advanced traverse new factual material that was never raised in the pleadings before court in the main application. Much of that material, in any event, in my view does not constitute grounds of appeal but rather, possibly, unmeritorious grounds of review. What is more, the applicant seeks to challenge court proceedings to which he and his counsel voluntarily participated after being afforded ample opportunity by this court to consult.

[10] In truth, this application, it seems to me, is a continuation of the abuse of court process that this court identified in the main judgment. The nature of the grounds advanced, the argument mounted, and failure to comply with this court's directions on the filing of heads of argument, would ordinarily justify an adverse costs order on an attorney and client scale which the applicant escaped (by a whisker) in the main application. He was, at noon on Tuesday 9 March 2021, directed to file heads of argument by 12 noon on Friday 12 March 2021 so that the first respondent could file its heads by 12 noon on Friday 19 March 2021. The issues were clear. A lengthy 26-page notice of application for leave to appeal had been filed in the preparation of which much of the work would already have been done, and I had only the month of March to work on this judgment given the busy couple of months that lay ahead in my busy practice. I did not wish to delay the handing down of judgment in this case thus prejudicing the parties. Without any condonation application for the late filing, but merely an explanation at the tail end of his heads of argument, the applicant only delivered his heads of argument on Thursday 18 March 2021. They reached me on Tuesday 23 March 2021. Consequentially, the first respondent filed on Sunday 21 March 2021 without the benefit of the applicant's heads. Nevertheless, in my discretion, I shall resist the urge to order a punitive costs order against the applicant.

Order

Leave to appeal is dismissed with costs



ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 12 April 2021.

Date heads received: 21 March 2021 Uploaded on CaseLines for First Respondent

23 March 2021 Delivered by email for Applicant

Date of judgment: 12 April 2021

Appearances:

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