REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 94966/16

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 19/10/2023

SIGNATURE: [redacted]

In the matter between:

NATANIEL FOUCHE — Plaintiff/Appellant

And

MINISTER OF POLICE — Defendant/Respondent

JUDGMENT : APPLICANTS APPLICATION FOR LEAVE TO APPEAL

Barit AJ

Introduction

[1] The Applicant in this application is seeking the Court to grant leave to appeal with respect to the judgment in the Trial Court on 2 August 2022, where the Applicant was the Plaintiff.

[2] The application has been opposed by the Respondent.

[3] The Applicant is Nataniel Fouche, an adult male, the Plaintiff in the case *a quo* who resides in Eldorado Park, Gauteng Province.

[4] The Respondent is the Minister of Police, cited in his official capacity as the Minister of Police responsible for the conduct and the affairs of members of the South African Police Services.

[5] The Applicant's contention in his application for leave to appeal, is in essence based on four main grounds

5.1 That the vehicle, an Audi A1, was his vehicle and therefore not stolen.

5.2 That the Applicant had a document entitling him to the vehicle, the Audi A1.

5.3 That the arrest of the Applicant by members of the South African Police, was unlawful.

5.4 The interest of justice.

Other grounds, in the Applicant's application were taken into consideration, but nothing turned on them, or alternatively were part of, or associated with one of the four mentioned grounds.

[6] In a nutshell, this matter concerns one Ms. Natasha T. Rawlins purchasing and paying (in full the amount of R325, 443.99) for an Audi A1, from Audi Centre Johannesburg. It was registered in her name, with the necessary licencing authority. Rawlins' erstwhile boyfriend, the Applicant, went to Audi Centre Johannesburg and departed with the car (the Audi A1). Unable to retrieve the vehicle from the Applicant, Rawlins (the Complainant) reported the vehicle as stolen at the Hillbrow Police Station. The vehicle was subsequently pinpointed (with the help of a tracking company) to be at the Pretoria Zoo. There the Applicant was arrested, and the vehicle impounded. The Applicant subsequently proceeded with a claim against the South African Police for *inter alia* unlawful arrest, damages, and the value of the vehicle. Before the trial took place Rawlins passed away.

Overview

[7] The Applicant's contention is that on 27 July 2016, he was arrested without a warrant of arrest on a charge of the theft of a motor vehicle and detained in custody from approximately 14:30 on 27 July 2016 until 12:00 on Friday 29 July 2016. He was then released without being charged. The Applicant *inter alia* sued the Respondent for general damages arising out of this alleged unlawful arrest and detention up to the time of his release, the alleged inhumane

conditions which he was subjected to whilst in police custody and for the impairment of his dignity.

[8] In the Court a quo, the Applicant, succeeded in being awarded an amount with respect to the inhumane conditions which he found himself subjected to whilst in police custody. However, he was not awarded anything further than that.

[9] The Applicant in the case in the Trial Court, in his Particulars of Claim, claimed general damages of R450,000.00 for assault, unlawful arrest and detention, which encompassed the following heads:

(i) Dignity and integrity;

(ii) Deprivation of personal liberty:

(iii) Discomfort and inconvenience; and

(iv) Bodily injuries.

[10] The Applicant also claimed special damages in the amount of R300,000.00 being the value of the Audie A1 motor vehicle that was confiscated and was in his possession at the time of his arrest.

[11] The Applicant denies that the motor vehicle, was ever owned by the Complainant. The Respondent states that the rightful owner was the Complainant, who caused the motor vehicle to be reported as stolen.

Section 17 (1) of the Superior Courts Act

[12] The Applicant, has brought this application with reference to Section 17 (1) of the Superior Courts Act, 13 of 2010.

[13] Section 17 (1) (a) of the Superior Courts Act 10 of 2013 ("the Act") states that:

> *"Leave to appeal may only be given where the judge or judges concerned are of the opinion that - the appeal would have a reasonable prospect of success (Section 17 (1) (a) (i)) or; there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration. (Section 17 (1) (a) (ii))".*

[14] The Supreme Court of Appeal has held in the matter of *MEC for Health, Eastern Cape v Ongezwa Mkhitha & The Road Accident Fund,*[1] that the test for granting Leave to Appeal is as follows (para 16-17):

> *"Once again it is necessary to say that Leave to Appeal, especially to this Court, must not be granted unless there truly is a reasonable prospect of success. Section 17 (1) (a) of the Superior Courts Act 10 of 2013 makes it clear that Leave to Appeal may only be granted where the Judge concerned is of the opinion that the Appeal would have a reasonable prospect of success, or there is some other compelling reason why it should be heard". (My underlining)*
>
> *"An application for leave to appeal must convince the court on proper grounds that the Applicant would have a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable*

[1] MEC for Health, Eastern Cape v Ongezwa Mkhitha & The Road Accident Fund [2016] ZASCA 176 (25 November 2016).

case or one that is not hopeless, is not enough. There must be a sound rational basis to conclude that there "would be a reasonable prospect of success on appeal". (My underlining).

[15] This is apparently in contrast to a test under the previous Supreme Court Act, 1959 that Leave to Appeal is to be granted where a reasonable prospect was that another court might come to a different conclusion. *("Commissioner of Inland Revenue v Tuck).* [2]

[16] In the matter of *Fusion Properties 233 CC v Stellenbosch Municipality*,[3] it was stated:

"Since the coming into operation of the Superior Courts Act there have been a number of decisions in our courts which dealt with the requirements that an Applicant for leave to appeal in terms of Section 17 (1) (a) (i) and 17 (1) (a) (ii) must satisfy in order for leave to be granted. The applicable principles have over time crystallised and are now well established. Section 17 (1) provides, in material part, that leave to appeal may be granted 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….

[2] Commissioner of Inland Revenue v Tuck) 1989 (4) SA 888 (T) at 890 B/C.

[3] Fusion Properties 233 CC v Stellenbosch Municipality [2021] ZASCA 10 (29 January 2021) (para 18).

Accordingly, if neither of these discrete requirements is met, there would be no basis to grant leave".

[17] In Chithi and Others; in re: *Luhlwini Mchunu Community v Hancock and Others,* [4] it was held:

"The threshold for an application for leave to appeal is set out in section 17(1) of the Superior Courts Act, which provides that leave to appeal may only be given if the judge or judges are of the opinion that the appeal would have a reasonable prospect of success……"

[18] In S v Smith,[5] the court stated that:

"Where the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed therefore the Applicant must convince this court on proper grounds that the prospects of success of appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established then that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound rational basis for the conclusion that there are prospects of success on appeal."

[4] Chithi and Others; in re: Luhlwini Mchunu Community v Hancock and Others [2021] ZASCA 123 (23 September 2021) (para 10).

[5] S v Smith 2012 (1) SALR 567 (SCA) [para 7].

[19] The Supreme Court of Appeal in the matter of *Notshokovu v S,* [6] held that an Applicant *"faces a higher and stringent threshold, in terms of the Act compared to the provisions of the repealed Supreme Court Act 59 of 1959 (para 2)".* (My underlining).

[20] Reading Section 17 (1) (A) of the Act one sees that the words are: *"Leave to Appeal may only be given where the Judge or Judges concerned are of the opinion that - the appeal would have a reasonable prospect of success".* (My underlining)

[21] Bertlesmann J, in the *Mont Chevaux Trust v Goosen and Eighteen Others,*[7] stated the following:

> *"It is clear that the threshold for granting leave to appeal against the judgment of a High Court has been raised by the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court may come to a different conclusion, see Van Heerden v Cromwright and Others (1985) (2) SA 342 (T) at 343 H".*

[22] In a recent case, in this division, Mlambo JP, Molefe J, Basson J, cautioned that the higher threshold should be maintained when considering applications for leave to appeal. *Fairtrade Tobacco Association v President of the Republic of South Africa,*[8] the court stated:

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[6] See also the Supreme Court of Appeal in the matter of Notshokovu v S [2016] ZASCA 112, where it was held that an Appellant "faces a higher and stringent threshold, in terms of the Act compared to the provisions of the repealed Supreme Court Act 59 of 1959 (para 2)".

[7] *Mont Chevaux Trust v Goosen and Eighteen Others (2014 JDR) 2325 (LCC)* at para 6

[8] Fairtrade Tobacco Association v President of the Republic of South Africa (21686/2020) [2020] ZAGPPHC 311

"As such, in considering the application for leave to appeal, it is crucial for this Court to remain cognizant of the higher threshold that needs to be met before leave to appeal may be granted. There must exist more than just a mere possibility that another court, the SCA in this instance, will, not might, find differently on both facts and law. It is against this background that we consider the most pivotal ground of appeal".

[23] From the above, and in considering the Application for Leave to Appeal, the Court is aware that the bar has been raised. Hence, this higher threshold needs to be met before leave to appeal may be granted.[9]

The Vehicle

[24] The Applicant maintains that he did not steal the vehicle. Such was dealt with in the judgement in the Trial Court.

[25] Rawlins purchased and paid R325,443.99 for an Audi A1, on 18 July 2016 from the Audi Centre (an Audi dealership) in Johannesburg. While she was at the South African Revenue Services, obtaining a clearance certificate in respect thereof, the Applicant excused himself from her presence and proceeded to the

[9] In the Annual Survey of South African Law (2016) (Juta, Cape Town p706), the following is stated in a discussion on the case of Seathlolo v Chemical Energy Paper Printing Wood And Allied Workers Union (2016) 37 ILJ 1485 (LC). The court noted that Section 17 of the Act sets out the test for determining whether leave should be granted: "Leave to appeal may only be granted if the appeal would have a reasonable prospect of success. According to the court the "would" in Section 17 (1) (a) (i) raised the threshold. The traditional formulation of the test only required Applicants for leave to appeal to prove that a reasonable prospect existed that another court might come to a different conclusion. That test was also not applied lightly. The court noted that the Labour Appeal Court had recently observed that the Labour Court must not readily grant leave to appeal or give permission for petitions. It goes against the statutory imperative of expeditious resolution of labour disputes to allow appeals where there is no reasonable prospect that a different court would come to a different conclusion". (My underlining)

premises of Audi Centre, Johannesburg, where he took possession of the said vehicle without Rawlins's knowledge or authority.

[26] On 20 July 2016, when returning to the dealership to take delivery of her vehicle, Rawlins was advised that the Applicant had already taken possession of the vehicle on 18 July 2016.

[27] In evidence before this Court, Rawlins was unable to secure possession of the said vehicle from the Applicant and sought the assistance of the South African Police Services at the Hillbrow Police Station in this respect and laid charges against the Applicant Fouche. Officer Dlamini testified that he was the investigating Officer on the case (Case No. 640/07/2016), opened by Rawlins at the Hillbrow Police Station. This was done on the strength of her being the lawful registered owner of the vehicle, an Audi A1 with the Vin Number referred to on the registration documents which were confirmed to be correct.

[28] Officer Dlamini, the investigating officer, stated that after reading Rawlins's (the Complainant) statement and checking the ownership of the vehicle on the SAPS computer system, found that the motor vehicle was registered in the name of the Complainant (Rawlins). He subsequently acquired, from Audi Centre Johannesburg, numerous documents regarding the purchase of the Audi A1 in question, which confirmed that Rawlins was in fact, the rightful and lawful owner of the vehicle.

Theft / Stolen

[29] Officer Dlamini sought to retrieve the said vehicle, affording the Applicant several opportunities to come into the Hillbrow Police Station. The Applicant failed to do so, merely stating that it was his vehicle. The vehicle was then captured on the system as "theft/stolen", as the Applicant had demonstrated that he had no intention of returning the vehicle. Such designation of theft – stolen being in accordance with what Rawlins had informed the police with respect to what had occurred, in her effort to obtain the necessary help she asked for.

[30] According to the Law Insider Dictionary, [10] "theft" means the act of the wrongful taking away of the personal property of another, or the unlawful taking of property to the deprivation of another.

[31] Further, according to the Oxford Legal Dictionary,[11] "theft" means the act of the dishonest appropriation of property belonging to another with the intention of permanently depriving the other of it and includes any act showing that one is treating the property as one's own, which need not necessarily involve taking it away.

[32] The historically accepted definition of theft is to be found in *R v von Elling*,[12] where the Appellate Division said:

> *"The ordinarily accepted definition of theft which I take from Gardiner and Lansdown on Criminal Law is as follows: 'Theft is committed when a*

[10] https://www/lawinsider.com/dictionary/theft.

[11] https://www/oxfordreference.com/view/10.1093oi/authority.20110803103634781https://www.oxfordreference.com/view/10.1093/ol/authority.20110803103634781.

[12] *R v von Elling*, 1945 AD 234; also see *R v Sibiya* 1955 (4) SA 247 (A) at 250C-D

person fraudulently and without claim of right made in good faith takes or converts to his use anything capable of being stolen with intent to deprive the owner thereof of his ownership, or any person having any special property or interest therein of such property or interest'

The court in *von Elling* continued:[13]

"*But a fraudulent taking of a thing from its owner, or any other fraudulent dealing with it, cannot, as a general rule, deprive the owner of his legal right of ownership in the thing. It can, however, deprive him of the benefits of his ownership (such as use and possession), and so long as the thief remains in adverse possession or control of the stolen thing, he is continuously guilty of a fraudulosa, contrectatio which deprives the owner of those benefits."*

[33] More recently, in *S v Boesak,*[14] Smalberger JA defined theft as follows:

"*Theft, in substance, consists of the unlawful and intentional appropriation of the property of another (S v Visagie [1990] ZASCA 124; 1991 (1) SA 177 (A) at 181I). The intent to steal (animus furandi) is present where a person (1) intentionally effects an appropriation (2) intending to deprive the owner permanently of his property or control over his property, (3) knowing that the property is capable of being stolen, and (4) knowing that he is acting unlawfully in taking it (Milton South African Criminal Law and Procedure vol II 3rd ed at 616)."*

[34] The Applicant, was found in possession of the vehicle, not registered in his name, claiming that he was the rightful owner of the vehicle. Further, producing an Offer to Purchase (a complete meaningless document) as evidence of his ownership of the vehicle.

[13] at 236-237

[14] S v Boesak [2000] ZASCA 112; 2000 (3) SA 381 (SCA) at para 96,

[35] In addition to this, it must be taken in the context of a WhatsApp message sent by the Applicant to Rawlins, on the 26 July 2016 at 15:45. The Applicant stated in a "WhatsApp Chat" with the Complainant, that:

> *"Those policeman could've shot me dead cause u reported the car stolen. . how could u :::::::::: Justice will be done ::::::::::::::::::"*

[36] Further, paragraph 1.4.2 of the Applicant's Heads of Argument (with respect to leave to appeal) dated 28 June 2023, states:

> *"Critically, the Complainant at no stage reported the vehicle as stolen, let alone by the Plaintiff."*

*However, f*rom the WhatsApp sent by the Applicant to the Complainant, it can be seen that the quote from the Heads of Argument contradicts both the WhatsApp message and the factual evidence before the court *a quo*. Therefore, the contention by the Applicant is without any validity whatsoever. It can be seen that Rawlins' reporting was well known to the applicant and recorded by himself in his own WhatsApp.

[37] There is absolutely no question about the fact that whether one calls it theft, theft by possession, or "stolen", the Applicant, was found in possession of a stolen vehicle, which he claimed to be his and supplied absolutely no proof that it was his or explanatory words with respect to why he was in possession of the vehicle which had been reported, in his own words as "stolen" (see para 35 above). Documents before the court showed that the invoice was made out from Audi Centre Johannesburg, in the name of Natasha T. Rawlins, to the

value R325,443.99. The invoice as paid for by means of a payment from the Standard Bank, Braamfontein Branch, with the funds coming from the account of Ms. N.T. Rawlins such being on the 18 July 2016. The invoice in question does not mention anything further other than what trimmings were part of the vehicle in question. These included items should as metallic paint, mats, etc. The total value of the vehicle being R325,433.99 with the invoice reading that it is for an Audio A1 motor vehicle, which was then the payment amount made by Rawlins to Audi Centre, Johannesburg.

[38] In addition to everything stated above, with respect to the vehicle being stolen, an aspect which enters the matter is that the Applicant is not telling the court that it is him that wrote the word “stolen” in a WhatsApp to the Complainant. The Applicant states that the Complainant had reported the vehicle as “stolen” and that was what had got him into trouble with the Police.

The Arrest

[39] The Applicant has taken issue with the fact that he was arrested.

[40] Officer Modau and his colleagues were busy with routine crime prevention duties on 27 July 2016, when at approximate 14:00, he received information that had been relayed to the police by the vehicle tracking company that the suspected stolen vehicle’s tracker signal indicated that the vehicle was to be found at the Pretoria Zoo.

[41] The safety and security of vulnerable persons (including women) becomes hollow and meaningless if the police do not act promptly and respond with appropriate seriousness.

[42] In the light of the above, Officer Modau was duty-bound to uphold the law and effect an arrest of the plaintiff, a male suspect in accordance with section 40 (1) (e)[15] read together with 40 (1) (b) of the Criminal Procedure Act. [16]

[43] It is common cause that the Applicant was arrested without a warrant on 27 July 2016 by Officer Modau who was acting in the course and scope of his employment with the defendant. This followed a lawful complaint by Rawlins at the Hillbrow Police Station where she sought the assistance of the Police to recover her vehicle from Fouche who had taken possession of an Audi A1 purchased by her from Audi Centre Johannesburg, without Rawlin's authority. The arresting officer met the jurisdictional requirements to arrest the appellant.

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Offer to Purchase

[44] The Applicant has made a major issue of what is a "offer to purchase". The Applicant maintains that the offer to purchase, signed by both the Applicant as

[15] **Section 40 Arrest by peace officer without warrant**
(1) A peace officer may without warrant arrest any person-
(a) …
(b) whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody;
(c) …
(d) …
(e) who is found in possession of anything which the peace officer reasonably suspects to be stolen property or property dishonestly obtained, and whom the peace officer reasonably suspects of having committed an offence with respect to such thing;

[16] Act 51 of 1977.

well as Audi, gives him title to the vehicle. The reliance on this document even goes further with the Applicant having tried to convince the arresting Officer that such gave him title and he was the owner of the vehicle based on it.

[45] However, on inspection of clause 12 of the form under the heading "Signature", the following is noted:

45.1 On the form where it states purchaser, it has a signature which appears to be that of the Applicant. It also appears to have what could be a signature and name of a witness to Fouche's signature, which are both illegible. This form was not ratified or signed by the Dealer Principal/Sales Manager of Audi Centre Johannesburg, and does not contain a witness signature or name with respect to the blank space re Audi. Therefore no signature or name whatsoever with respect to Audi Centre.

45.2 Hence, the "offer to purchase" did not result in a binding agreement of sale of any vehicle to the Applicant, let alone that of the Complainant's Audi A1. There is no basis in law to assume that a lawful contract had come into existence in respect of this "offer to purchase".

45.3 The contention by the Applicant that the 'offer to purchase' was signed by Audi is not borne out by the document where the space for Audi to sign is blank.

[46] The "offer to purchase" document in question, which is purely a form of no value whatsoever, was attempted by the Applicant to be passed off as his proof of ownership of the vehicle to the arresting Officer. Moreover, the Applicant stated that the signature of the witness (a signature which cannot be made out nor is

there a name attached to it), to the Applicant is proof that Audi has signed the document. For want of any better words, with there being no signature re Audi and further no witness to the non-existent signature, re Audi, such contention by the Applicant must be totally disregarded. Leading back to the obvious conclusion that the document is meaningless and worthless. One can only say that based on that alone, the Police Officer should he not have arrested the Applicant, and impounded the vehicle, would have been derelict in his duties.

Interest of Justice

[47] The Applicant has raised the issue of "interest of justice".

a) Rawlins (the Complainant) had a Constitutional right not to be deprived of her property as provided for in Section 25 (1) and (4) (b) of the Constitution.[17] Section 25 of the Constitution under the heading "property", is applicable to the Complainant and states in paragraph (1) and in paragraph (4) (b):

"(i) No-one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(iv) For the purposes of this section – property is not limited to land".

b) A male person (the Applicant), without authorisation to possessing and using the Complainant's (a woman) vehicle, did just that. Further, he refused to return it, which actions amounted to theft. This is unacceptable.

[17] The Constitution of the Republic of South Africa Act 108 1996.

c) Cognisance must be taken of the protection afforded to females, recognised as a vulnerable group in our society.

d) Blame must not be placed on the officials who are entrusted with enforcing the law of being the culprits.

Salient Factors

[48] The gist of the case in the court a quo was as follows:

48.1 Rawlins bought the Audi.

48.2 Rawlins paid Audi R325,443.99 for the Audi A1.

48.3 The Audi was registered in the name of Rawlins.

48.4 Rawlins erstwhile boyfriend went to Audi, collected the vehicle and went off with it.

48.5 Rawlins made every attempt to get possession of her vehicle which failed. Rawlins reported the incident to the police in order to recover her vehicle.

48.6 Between the tracking company and the Police, the vehicle was pinpointed at the Pretoria Zoo on 27 July 2016.

48.7 The vehicle together with the Applicant was found by the Police and the tracking company where it had been pinpointed.

48.8 The Applicant informed the Police at the Zoo, that the vehicle was his and that he was the owner. Further, the Applicant tried to pass off the worthless “offer to purchase” as proof of ownership.

48.9 The Police did a due diligence, by communications and were informed that the vehicle was in fact the property of Rawlins.

48.10 Thereafter, the Applicant was arrested and the vehicle was taken to the Police pound.

The Award

[49] The Applicant has also taken issue with the award given by myself in my judgement of the Trial Court. The following factors are pertinent:

49.1 This award was in respect of the harsh pretrial accommodation in which the Applicant was held, the unbearable conditions he had to endure, and the impairment of his dignity. This was uncontested by the Respondent, and therefore this claim for damages succeeded.

49.2 With respect to the value of such awards, the precedents supplied by the Applicant, are of no help to this matter and the unique circumstances of this case.

49.3. The Trial Court was steeped in the atmosphere of the matter before it, and hence, the award was regarded by myself as a fair and reasonable award, specifically based on the conditions mentioned in this paragraph.

Hence there is no reason to interfere with the award as given by the court *a quo.*

Conclusion

[50] In terms of practical application, the arrest of the Applicant was lawful, and hence, justified.

[51] It was established that Rawlins, the Complainant was the rightful owner of the Audi A1, which was registered in her name, impounded by the police and

subsequently returned to her on 4 August 2016, as per Case Docket SAPS (Hillbrow).

[52] The evidence before the court *a quo,* supports only one conclusion – that the Applicant was lawfully arrested. Further, it was Rawlins who opened a case against the Applicant, causing the vehicle to be listed as stolen. A factor well known to the Applicant by his own admission in his WhatsApp to the Complainant.[18]

[53] Based on factual evidence before the Court, the Appellant was not the legal or rightful owner of the Audi A1, nor did he provide any evidence or witness statements to prove otherwise. The so-called 'Offer to Purchase' being a worthless sheet of paper.

Judgment

[54] The Supreme Court of Appeal's test for granting leave to appeal was stated in 2016 in *MEC for Health, Eastern Cape v Ongezwa Mkhitha & The Road Accident Fund* (in para 14 above),[19] as: Leave to appeal 'must not be granted unless there [is] truly a reasonable prospect of success'. Further, this application for leave to appeal to another court has not passed the bar which has been raised in terms of section 17 of the Superior Court Act of 2013. Hence, this application leads myself to believe that any appeal would not have a reasonable prospect of success. In addition, there are no compelling reasons

[18] See paragraph 35 herein above.
[19] MEC for Health, Eastern Cape v Ongezwa Mkhitha & The Road Accident Fund [2016] ZASCA 176 (25 November 2016).

why the appeal should be heard, including conflicting judgements on the matter under consideration.

Order

I, therefore, issue the following order:

The application for leave to appeal is dismissed with costs.

L BARIT

Acting Judge of the High Court
Gauteng Division, Pretoria

Heard on: 5 July 2023
Judgment delivered on: 19 October 2023

APPEARANCES

For the Appellant:	Mr B van Tonder
	Instructed by Thomson Wilks Inc. Attorneys
For the First Respondent:	Advocate T M Ngoepe
	Instructed by State Attorney Pretoria