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

Case No: 14052/2022

(1) REPORTABLE: YES/NO

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

(3) REVISED:

DATE: **05/06/2023**

SIGNATURE:

In the matter between:

EUROPLAW GROUP INCORPORATED

Applicant

(Registration number: 2[...])

and

GEOFFREY TURNER

First Respondent

KEITH MATTHEWS

Second Respondent

CHRISTOPHER HARTLEY CARTER

Third Respondent

HENRY YOUNG

Fourth Respondent

IN RE:

Case No: 14052/2022

GEOFFREY TURNER

First Applicant

KEITH MATTHEWS

Second Applicant

CHRISTOPHER HARTLEY CARTER

Third Applicant

HENRY YOUNG

Fourth Applicant

and

EUROPLAW GROUP INCORPORATED

Respondent

(Registration number: 2[...])

JUDGMENT

PHOOKO AJ

INTRODUCTION

[1] This is an application for leave to appeal against a judgment and order of this court delivered on 19 April 2023. The order reads as follows:

- (a) That the Respondent be and is hereby placed under final liquidation in the hands of the Master.
- (b) That the costs be costs in the administration of the Respondent.

[2] The Applicant, Respondent in the main application had sought a one-month postponement from the granting of a final liquidation order against it, the company. The application for postponement was refused on various grounds including the fact that this Court was put in a difficult situation to second guess what the basis for postponement was, there was no proper application and/or information whatsoever placed before it, and that the Applicant had an opportunity of one year to satisfy its indebtedness towards the Respondents, Applicants in the main application.

[3] Aggrieved by the ruling, the Applicant launched this leave to appeal against the judgment of this Court.

GROUND OF APPEAL

[4] The Applicant's grounds of appeal are inter alia that the court erred and when:

4.1 it found that the Applicant is unable to comply with its obligations under and responsibilities towards the Respondents,

4.2 it found that the Applicant is factually and commercially insolvent and unable to pay its debts,

4.3 it found that the Applicant did not comply with the requirements for postponement as articulated in *Myburgh Transport v Botha t/a SA Truck Bodies* 1991 (3) SA 310

[5] Based on the above, the Applicant is of the view that the court ought to inter alia have found that the Applicant had made out a case for postponement and that the Applicant is factually and commercially solvent to satisfy its indebtedness towards the Respondents.

[6] Consequently, the Applicant submitted that the appeal would have a reasonable prospect of success as provided for in section 17(1)(a)(i) of the Superior Courts Act.

THE ISSUE

[7] The issue to be determined is whether there are reasonable prospects that, if leave to appeal is granted, the appeal would succeed.

APPLICABLE LEGAL PRINCIPLE

[8] It is now settled in our law that the threshold for the granting of leave to appeal has been raised in that leave to appeal may only be granted if the appeal would

have a reasonable prospect of success.¹ The possibility of another court holding a different view no longer forms part of the test of whether to grant leave to appeal.²

[9] It was held in *Mont Chevaux Trust v Tina Goosen & 18 Others* that “the use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against”.³ Consequently, “leave to appeal should be granted only when there is “a sound, rational basis for the conclusion that there are prospects of success on appeal”.⁴

[10] This is the yardstick for evaluating the submissions of the parties in ascertaining whether the evidence and/or submissions before this Court indicate that there is a reasonable prospect that the appeal, if leave to appeal is granted, would succeed.

APPLICANT’S SUBMISSIONS

[11] The Applicant’s submissions largely focussed on the factors to be considered in granting or refusing an application for postponement such as to show good and strong reasons, *bona fide*, prejudice, and the application to be brought timeously.

[12] Based on the above, the Applicant submitted that there was a reasonable prospect of success on appeal, if leave to appeal is granted.

RESPONDENT’S SUBMISSIONS

[13] Counsel for the Respondent argued that the Applicant did not demonstrate that he meets the threshold for the granting of leave to appeal. Based on this ground alone, the appeal should be dismissed.

EVALUATION OF EVIDENCE AND SUBMISSIONS

¹ Section 17(1) (a) (i) of the Superior Courts Act, 10 of 2013 (“the Superior Courts Act”).

² *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para 6.

³ *Ibid.*

⁴ *S v Smith* 2011 (1) SACR 567 (SCA) at para 7.

[14] The Applicant's submissions were brief. Counsel mostly conceded that there was inter alia no evidence placed before the court and that there was no compliance with the rules including the absence of a version under oath to proffer an explanation for the postponement.

[15] Even though the aspect of prospects of success formed part of the counsel's heads of argument, this was not entirely dealt with during the oral argument. To the contrary, counsel's submissions were far from persuading this Court that if leave to appeal were to be granted, the appeal would succeed.

[16] I am persuaded by counsel for the Respondent that the Applicant has failed to meet the requisite threshold for leave to appeal to be granted because the appeal would not have reasonable prospects of success in the substantive application. I have dealt with this aspect in my judgment of 19 April 2023 and need not repeat it here save to indicate that there was no full and satisfactory explanation of the circumstances that gave rise to the application for postponement.⁵ In any event, the postponement was previously granted to satisfy the same debt, but nothing materialized out of that deferral.

[17] Consequently, the Applicant's case does not meet the requirements mentioned in section 17(1)(a)(i) of the Superior Courts Act, there being no reasonable prospects of success.

[18] There is no basis on which to find that the costs of the leave to appeal should not follow the results.⁶

ORDER

[19] I, therefore, make the following order:

(a) The Application for leave to appeal is dismissed.

⁵ See *National Police Service Union and Others v Minister of Safety and Security and Others* 2000 (4) SA 1110 (CC).

⁶ *Neuhoff v York Timbers Ltd* 1981 (1) SA 666 (T).

(b) The Applicant is ordered to pay the costs of this application on party and party scale.

M R PHOOKO
ACTING JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA

Delivered: This judgment 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 05 June 2023.

APPEARANCES:

Counsel for the Applicant: Adv F Botes

Instructed by: De Meyer Attorneys

Counsel for the Respondent: Adv R Raubenheimer

Instructed by: CJ Willemse & Babinszky Attorneys

Date of Hearing: 01 June 2023

Date of Judgment: 05 June 2023