

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2021/14735

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
15/1/2024	[REDACTED]
DATE	MOKOSE SNI

In the matter between:

TRIDEVCO (PROPRIETARY) LIMITED

1st Applicant

WITFONTEIN X16 BROEDERY CC

2nd Applicant

and

MINISTER OF AGRICULTURE, LAND REFORM

1st Respondent

AND RURAL DEVELOPMENT

DELEGATE OF THE MINISTER OF AGRICULTURE,

2nd Respondent

LAND REFORM AND RURAL DEVELOPMENT

REGISTRAR OF DEEDS, PRETORIA

3rd Respondent

EKURHULENI METROPOLITAN

4th Respondent

LEAVE TO APPEAL - JUDGMENT

MOKOSE J

[1] The first, second, third and fourth respondents (hereinafter referred to as “the applicants” in this application for leave to appeal) have applied for leave to appeal to the Supreme Court of Appeal, alternatively, the Full Court of this Division against the whole judgment and order I delivered on 20 July 2023 under Case No. 14735/2021 where an order for the application sought was dismissed with costs.

[2] The applicants seek leave to appeal on several grounds as stated in their application for leave to appeal. Counsel for the applicants addressed the court on the salient points raised in the application. These points were opposed by counsel for the respondent on the grounds that I have reasoned out in my judgment.

[3] Leave to appeal may be granted where a judge is of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. In the matter of *Caratco (Pty) Limited v Independent Advisory (Pty) Limited*¹ it was pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reasons would include an important point of law or an issue of public importance that will have an effect on future disputes in our courts. The court also emphasised that the merits remain vitally important and are often decisive.

[4] The test laid down in Section 17 of the Act is now a subjective one and no longer an objective test. There must be a measure of certainty that another court will differ from the court whose

¹ 2020 (5) SA 35 (SCA)

judgment is sought to be appealed against.² The court held in the case of *The Mont Chevaux Trust v Tina Goosen & 18 Others* (*supra*) that:

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

[5] I had dealt in depth with all the issues raised in the application for leave to appeal in my judgement. After listening to submissions by both counsel for the applicants and counsel for the respondent and after reading the application for leave to appeal, I am of the view that there are prospects that another court would come to a different conclusion.

[6] In the premises, the following order is granted:

- (i) leave to appeal is granted to the Supreme Court of Appeal; and
- (ii) the costs of the application for leave to appeal are costs in the appeal.



MOKOSE J

15 January 2024

² *The Mont Chevaux Trust* (IT2012/28) v *Tina Goosen & 18 Others* 2014 JDR 2325 at para [6]