

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☐ / No ☒

CASE NO: 33669/2021

Date: 12 April 2024

WJ du Plessis

In the matter between:

FRIDAH MOSIMA MASHILO

APPLICANT

and

JOHANN RICHARD LEMMER

FIRST RESPONDENT

ANNA MARIA ELIZABETH LEMMER

SECOND RESPONDENT

JAN HENDRIK MARX

THIRD RESPONDENT

STEPHAN FOURIE ATTORNEYS

FOURTH RESPONDENT

REGISTRAR OF DEEDS, SOUTH AFRICA

FIFTH RESPONDENT

**THORNBROOK GOLF ESTATE PROPERTY
OWNERS' ASSOCIATION NPC**

SIXTH RESPONDENT

JUDGMENT

DU PLESSIS AJ

Background

- [1] On 17 November 2023 I delivered judgment in the matter between the Applicant, Ms Mashilo, and the first to third Respondents, where, in essence, I stayed an eviction application (the counter application), referring the matter to trial as there is a material dispute of fact that cannot be resolved on the papers. The first to third Respondents are appealing the order. The parties will be referred to as they were in the application.

Leave to appeal

- [2] In terms of the provisions of section 17(1) of the Superior Courts Act,¹ leave to appeal may only be granted when the appeal would have a reasonable prospect of success; or where there is some other compelling reason why the appeal should be heard.
- [3] The threshold to be met by an applicant for leave to appeal in terms of the provisions of section 17(1) of the Superior Courts Act was recently explained by the Supreme Court of Appeal in the matter of *Ramakatsa v African National Congress*² as follows:

“[10] Turning the focus to the relevant provisions of the Superior Courts Act, leave to appeal may only be granted where the judges concerned are 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. This Court [...] 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 reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that ‘but here too the merits remain vitally important and are often decisive’. I am mindful of the decisions at high court level debating whether the

¹ 10 of 2013.

² [2021] ZASCA 31.

use of the word 'would' as opposed to 'could' possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates 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 other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist."

Grounds for appeal

- [4] Having read the heads of argument and the authority sighted therein and having heard counsel on the points raised, I find that there are no reasonable prospects that another court would come to a different conclusion, nor is there a compelling reason why an appeal should follow.

Order

- [5] I, therefore, make the following order:

1. The application for leave to appeal is dismissed, with costs.


WJ DU PLESSIS

Acting Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be sent to the parties/their legal representatives by email.

Counsel for the Applicant:	Ms C Spangenberg
Instructed by:	E Champion Attorneys
Counsel for the 1 st , 2 nd and 3 rd respondent:	Ms K Fitzroy
Instructed by:	Rianie Strijdom Attorney
Date of the hearing:	13 March 2024
Date of judgment:	12 April 2024