

# 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: 4/5/2024

4/5/2024  
 DATE

SIGNATURE

**CASE NO: 54940/2012**

In the matter between:

**ALFRED MASHABA**

**Plaintiff/Respondent**

and

**MINISTER OF POLICE**

**Defendant/ Applicant**

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### JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

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*(The matter was heard in open court but judgment was reserved and handed down by uploading the judgment onto the electronic file of the matter on CaseLines. The date of uploading onto CaseLines is deemed to be the date of the judgment)*

BEFORE: HOLLAND-MUTER J:

[1] The trial was heard by this court on 15 August 2023; oral arguments were presented in open court on 11 September 2023 and after receiving written heads of arguments judgment was handed down on 18 December 2023.

[2] The defendant filed an application for leave to appeal onto CaseLines and after some delay all parties were available on 3 May 2024 to argue the application for leave to appeal.

[3] The procedure for leave to appeal is dealt with in **Section 17 (1)(a)(i) & (ii) of the Superior Court Act, Act 10 of 2013**. The position after the amendment of Section 17 is that a party moving an application for leave to appeal is burdened with a *higher threshold* to overcome than previously. A court should only grant leave to appeal where the judge or judges are of the opinion that the appeal would have a reasonable prospect of success. Previously the test was whether another court *may* come to another decision, but the use of the word "*would*" indicates a measure of certainty that another court will differ from the court of first instance and secondly the word "*only*" is indicative of a more stringent test to satisfy before leave for appeal is granted.

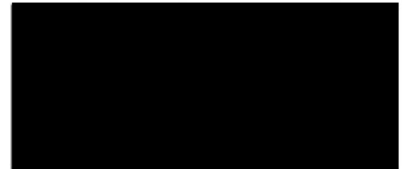
[4] For purpose of this judgment there is no need to repeat the factual finding in the main judgment. The question of prescription was addressed in detail in the main judgment and needs no further deliberation.

[5] Having heard both counsel and perusing the Application for Leave to Appeal, I am of the view that the applicant does not pass the stringent test that another court would differ from the judgment.

[6] The application for leave to appeal is refused with costs.

**Order:**

The application for leave to appeal is refused with costs.



HOLLAND-MUTER J

JUDGE OF THE PRETORIA HIGH COURT

Application for Leave to Appeal was heard on 3 May 2024.

Judgment was handed down on 6 May 2024 by uploading onto the electronic file of the matter on CaseLines

FOR PLAINTIFF/RESPONDENT: Adv P Leopeng

FOR DEFENDANT/APPLICANT: Adv S Jozana