



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

In the matter between:

Case Number: 29047/2015

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES:
NO
(3) REVISED: NO
DATE 02 September 2024
SIGNATURE [Redacted]

CASH CRUSADERS FRANCHISING (PTY) LTD

1ST Applicant

OSCAR JABULANI SITHOLE N. O.

2ND Applicant

CHRISTOPHER PETER VAN ZYL N. O.

3RD Applicant

SELBY MUSAWONKE NTSIBANDE N.O.

4TH Applicant

and

MATTHEWS TUWANI MULAUDZI VIOLET

1ST Respondent

MABONTSI MULAUDZI

2ND Respondent

In re: MATTHEWS TUWANI MULAUDZI

1ST Applicant

VIOLET MABONTSI MULAUDZI

2ND Applicant

and

CASH CRUSADERS FRANCHISING (PTY) LTD

1ST Respondent

OSCAR JABULANI SITHOLE N. O.

2ND Respondent

CHRISTOPHER PETER VAN ZYL N. O.

3RD Respondent

SELBY MUSAWONKE NTSIBANDE N.O.

4TH Respondent

THE MASTER OF THE HIGH COURT, PRETORIA

5TH Respondent

JUDGMENT ON LEAVE TO APPEAL

KHWINANA AJ

INTRODUCTION

- [1] This is an application for leave to appeal to the full bench of the above honourable court against my judgment granted on this the 06th December 2023.
- [2] They argue that the judge made errors in both law and fact by ruling in favour of the respondents. The respondents, however, maintain that the judge's decision was legally and factually correct.
- [3] Section 17(1) of the Superior Courts Act, Act 10 of 2013 ("the Superior Courts Act"), regulates applications for leave to appeal and provides:
- '(1) Leave to appeal may only be given 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, including conflicting judgments on the matter under consideration;
- (b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and (c) where the decision sought to be appealed does not dispose resolution of the real issues between the parties.'
- [3] The test in an application for leave to appeal prior to the Superior Courts Act was whether there were reasonable prospects that another court may come

to a different conclusion. Section 17(1)¹ has raised the test, as Bertelsmann J, correctly pointed out in *The Mont Chevaux Trust v Tina Goosen & 18 Others*² 2014 JDR 2325 (LCC) Bretelsman J held 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.'

[4] In *Westinghouse Brake and Equipment (Pty) Ltd v Builder Engineering (Pty) Ltd*³ the Appeal Court (as it then was) reiterated the general principle that in order for an applicant for leave to appeal to succeed, the applicant must demonstrate that it has a reasonable prospect of success on appeal. It was also stated that an appeal would be allowed where the matter is of great importance or where the matter is of public importance whether the court is of the view the decision might affect other questions.

[5] The Supreme Court of Appeal held in *Dexgroup (Pty) Ltd v Trustco Group*⁴ that:

¹ *Commissioner of Inland Revenue v Tuck* 1989 (4) SA 888 (T) at 890

² 2014 JDR 2325 (LCC) paragraph [6].

³ 1986 (2) SA 555 (A).

⁴ 2013 (60 Sa 520 (SCA) para 24

“The need to obtain leave to appeal is a valuable tool in ensuring that scarce judicial resources are not spent on appeals that lack merit. It should, in this case, have been deployed by refusing leave to appeal.

- [6] After considering the arguments presented by both the applicants' and respondents' counsel, I find no evidence that I have misdirected myself on either the facts or the law. The applicant's leave to appeal is on parts of my judgment, save to say the reasons have been given in my judgment.
- [5] In my view there is no reasonable prospect that another court could come to a different conclusion.
- [5] In the result:
1. Leave to appeal is refused.
 2. Draft order is amended and marked X.
 2. Applicant to pay Costs.




ENB KHWINANA

**ACTING JUDGE OF NORTH
GAUTENG**

HIGH COURT, PRETORIA

DATE OF HEARING: 31 JULY 2024

DATE OF JUDGMENT: 02 SEPTEMBER 2024