

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:

19/9/2024
DATE

[REDACTED]
SIGNATURE

CASE NO: 2023/049211

In the matter between:

SIMPHIWE HAMILTON

Applicant/Respondent in Leave to appeal

and

**MEMBER OF EXECUTIVE COUNCIL RESPONSIBLE FOR ECONOMIC
DEVELOPMENT, GAUTENG**

1st Respondent/Appellant in leave to Appeal

GAUTENG GROWTH & DEVELOPMENT AGENCY

2nd Respondent

JUDGMENT : APPLICATION FOR LEAVE TO APEAL

(Judgment was heard in open court but handed down electronically to the parties and their legal representatives by e-mail and uploading it onto the electronic file of the matter on CaseLines. The date of uploading is deemed to be the date of the judgment)

BEFORE: **HOLLAND-MUTER J**

[1] The appellant filed an application for leave to appeal and such application was set down for hearing on 16 August 2024.

[2] Due to a mistake on the e-mail address to the appellant, the notification for the said date never reached the offices of the appellant's attorney of record.

[3] The application for leave to appeal was removed from the roll on 16 August 2024 for lack of any appearance on behalf of the appellant. The matter was merely removed without any deliberation of the merits of the application.

[4] When the appellant became aware of the above, the attorney of record contacted the court's registrar and they were informed that they should file an application for rescission of the removal from the roll together with an explanation of the situation.

[5] The appellant filed the application for rescission of the order of 16 August 2024 together with an affidavit to explain the above. The matter was set down for hearing on 18 September 2024.

[6] Having heard counsel on behalf of the appellant, with no objection from the other party's counsel, the order granted on 16 August 2024 was rescinded.

[7] There was a further interlocutory issue regarding the mandate of the current attorneys of record on behalf of the appellant but after hearing both

counsel, the court was satisfied that the necessary mandate was proper. The court requested the parties to continue with the application for leave to appeal.

[8] In order to persuade any court in terms of section 17(1)(a) of the Superior Court Act, 10 of 2013, to grant leave to appeal, such leave will only be granted when the judge concerned is of the opinion that the appeal **would** have a reasonable prospect of success; or that there is other compelling reason(s) why the appeal should be heard.

[9] Having heard the submissions made before the court, I am of the view that there is no prospect of success or other compelling reasons why leave to appeal should be granted in this matter. See **Mont Chevaux Trust v Goosen 2014 JDR 2325 (LCC)**.

[10] Previously, before section 17 was amended, the test was whether another court **might** come to a different conclusion on the evidence. The bar has now been raised in that the measure is now whether another court **would** come to another conclusion. A certain measure of certainty is now required that another court would differ from this court. I am not convinced that another court would differ from this judgment.

ORDER:

1. The application for rescission of the judgment granted on 16 August 2024 is granted and that order is set aside.
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2. The application for leave to appeal previously enrolled is re-enrolled and to be heard on this day.

3. The mandate of the attorneys acting on behalf of the appellant is deemed to be valid.

4. The application for leave to appeal is refused with costs, costs to be for senior counsel.

Dated at Pretoria on this 19 September 2024



HOLLAND-MUTER J

Judge of the Pretoria High Court

TO:

On behalf of Respondent/Applicant: Adv R Mogagabe SC

On behalf of appellant/1st Respondent: Adv B Joseph SC

Heard on 18 September 2024

Judgment handed down on 19 September 2024
