

IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST PROVINCIAL DIVISION, MAHIKENG

Reportable: YES / **NO**

Circulate to Judges: YES / **NO**

Circulate to Magistrates: YES / **NO**

Circulate to Regional Magistrates: YES / **NO**

CASE NO: 562/2017

In the matter between:

MATTHYS MACHIEL PIENAAR

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTOR

RESPONDENT

JUDGMENT

DJAJE J

[1] The applicant brings this application to appeal the judgment of this court which was handed down on **4 February 2021**. In the judgment the plaintiff's claim for malicious prosecution was dismissed with costs.

[2] The test to be applied in an application for leave to appeal is set out in section 17 (1)(a) of the Superior Courts Act 10 of 2013 which provides that:

“(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;*”

[3] This application is made on the basis that there were errors of fact and law in the assessment of the evidence. The applicant raised various grounds in the application for leave to appeal. I will not deal with each and every ground as they refer to the evidence that was dealt with in the judgment.

[4] In a claim for malicious prosecution the plaintiff must prove on a balance of probabilities that the prosecutor acted wrongfully and with malice. In this matter there was no evidence that either Mr Tlatsana or Advocate Chulu acted wrongfully or with malice when they decided to prosecute the applicant.

[5] The judgment fully dealt with the absence of wrongfulness by both Mr Tlatsana and Advocate Chulu and I do not wish to repeat the reasons in the judgment except to reiterate that the applicant failed to establish that his prosecution was malicious.

[6] After careful consideration of the submissions on behalf of both the applicant and the respondent, I am of the view that there are no reasonable prospects that another Court would come to a different conclusion. Consequently the application must fail. There is no plausible reason why costs should not follow the result.

Order

[7] Consequently, the following order is made:

1. The application for leave to appeal is dismissed.
2. The applicant is ordered to pay costs of the application.

J T DJAJE
JUDGE OF THE HIGH COURT

APPEARANCES

DATE OF HEARING : 28 May 2021

DATE OF JUDGMENT : 07 June 2021

COUNSEL FOR THE APPLICANT : ADV DU PLESSIS

COUNSEL FOR RESPONDENT : ADV D SMIT