


**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED YES
<b>04 December 2020</b>	
DATE	SIGNATURE

**CASE NO: 14886/2016**

In the matter between:

THE COMMISSIONER FOR THE SOUTH AFRICAN  
REVENUE SERVICE

APPLICANT

And

ZIKHULISE CLEANING MAINTENANCE AND  
TRANSPORT CC

RESPONDENT

And

**CASE NO: 181010/2016**

In the matter between:

MABONGI FLORA-JUNIOR MPISANE

APPLICANT

And

ZIKHULISE CLEANING MAINTENANCE AND

TRANSPORT CC

FIRST RESPONDENT

THE COMMISSIONER FOR THE SOUTH AFRICAN

REVENUE SERVICE

SECOND RESPONDENT

**This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the Parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or his/her Secretary. The date of this judgment is deemed to be 04 December 2020.**

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## **JUDGMENT APPLICATION FOR LEAVE TO APPEAL**

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**COLLIS J**

INTRODUCTION

[1] This is an application for leave to appeal against the judgment and order I made on 14 October 2020. The full order of the court reads as follows:

1.1 “The applicant is granted leave in terms of section 177(3) of the Tax Administration Act, Act 28 of 2011 to institute these proceedings.

1.2 The *point in limine* raised by the respondent in terms of section 347(5) of the Companies Act 1973, is dismissed with costs, including the costs consequent upon the employment of three counsel.

1.3 The *rule nisi* issued by Ranchod J on 22 August 2019 is hereby confirmed and the respondent is placed under final winding-up.

1.4 The respondent is ordered to pay the costs of the application, including the costs of three counsel.”

[2] The application is premised on the grounds as listed in the Application for Leave to Appeal dated 3 November 2020.

## LEGAL PRINCIPLES

[3] Section 17 of the Superior Court’s Act provides as follows:<sup>1</sup>

*(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*

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<sup>1</sup> Act 10 of 2013

*(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 to appeal does not fall within the ambit of section 16(2)(a);*

*and*

*(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.*

[4] As to the test to be applied by a court in considering an application for leave to appeal, Bertelsmann J in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para 6 stated the following:

'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 Cronwright & 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.'

[5] 'In order to succeed, therefore, the appellant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other word, be a sound, rational basis for the conclusion that there are prospects of success on appeal.'<sup>2</sup>

[6] The applicant and the respondent on request by this court had filed written Heads of Argument in order to facilitate the virtual hearing of the matter.

[7] Having read the papers and having carefully heard counsel I come to the conclusion that there is no reasonable prospect that another court would come to a different conclusion on the order of the court.

## ORDER

[8] Consequently I make the following order:

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<sup>2</sup> S v Smith 2012 (1) SACR 567 (SCA) at para 7

8.1 The application for leave to appeal is dismissed with costs, such costs to include the costs of two counsel. These costs to be costs in the liquidation.



**C. J. COLLIS**

**JUDGE OF THE HIGH COURT**

**GAUTENG DIVISION PRETORIA**

APPEARANCES:

FOR APPLICANT

(In the leave to appeal application):      ADV. C. LOUW SC

INSTRUCTED BY:                                      FABER GOERTZ ELLIS AUSTEN INC

FOR RESPONDENT

(In the leave to appeal application):      ADV. E.M COETZEE SC &

ADV. C. NAUDE

INSTRUCTED BY:

MACROBERT ATTORNEYS

DATE OF HEARING:

26 NOVEMBER 2020

DATE OF JUDGMENT:

04 DECEMBER 2020

**Judgment electronically transmitted.**