REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

(1) (2) (3)	REPORTABLE: NO OF INTEREST TO OT REVISED YES	HER JUDGES: NO
04 De	cember 2020	
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:

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.

JUDGMENT APPLICATION FOR LEAVE TO APPEAL

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:¹
 - (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

¹ 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.'2

[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.

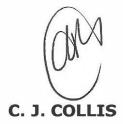
[7] Having read the papers and having carefully heard counsel I come to the conclusion that there is no reasonable prospect that another court would come to a different conclusion on the order of the court.

ORDER

[8] Consequently I make the following order:

² 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.



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.