



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

- (1) REPORTABLE: Yes / No
(2) OF INTEREST TO OTHER JUDGES: Yes / No
(3) REVISED: Yes / No

Case no 21/19942

Date: 03 December 2024

WJ du Plessis

In the matter between:

LIBERTY HOLDINGS

First Applicant

and

RAKOKWANE MALOKA

First Respondent

STANDARD BANK OF SOUTH AFRICA

Second Respondent

And in the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED

Applicant

And

RAKOKWANE MALOKA

Respondent

And in the matter of:

LIBERTY HOLDINGS

First applicant

STANDARD BANK OF SOUTH AFRICA

Second applicant

And

RAKOKWANE MALOKA

Respondent

Coram: Du Plessis AJ

This judgment has been delivered by uploading it to the CaseLines digital database of the Gauteng Division of the High Court of South Africa, Johannesburg, and by e-mail to the attorneys of record of the parties. The delivery date and time is 10H00 on 3 December 2024.

JUDGMENT: LEAVE TO APPEAL

DU PLESSIS AJ

[1] This is an application for leave to appeal following two judgements delivered by myself. The first judgement dealt with an order granted on 29 January 2024 (the security of cost order), and the second judgement, handed down on 17 October 2024 (dismissal of the main application and declaring the applicant a vexatious litigant). The applicant in this application for leave to appeal is Mr. Maloka.

[2] The application for leave to appeal against the January 2024 order did not come to my attention until the “amended notice of motion for leave to appeal against judge the amended notice of motion, it became apparent that the applicant seeks leave to appeal not only against the October 2024 judgement but also the earlier January 2024 order.

[3] I am aware that the approach followed by considering both together is unorthodox. However, in the interests of justice and to ensure I address all points raised, I have carefully considered both leave to appeal applications. I deal only with the leave to appeal and not the alternative rescission application and the subsequent substantive relief that the applicant also seems to apply for.

[4] The order granted in October 2024 prohibited Mr Maloka from instituting any legal proceedings against any person in any court without leave from the court. I consider this application leave to appeal on the basis that the court's permission is not necessary in *this* instance, it being an application for leave to appeal against the judgment that declared him a vexatious litigant. However, after delivering this judgment, I am *functus officio*, and have no further authority to revisit the decisions made. It also means that the applicant is bound by the

order made in October 2024, which prohibits him from instituting any further legal proceedings without prior leave from the court.

Test for Leave to Appeal

[5] The test for granting leave to appeal is set out in section 17(1) of the Superior Courts Act, 10 of 2013, which provides that leave to appeal may only be granted if the court is of the opinion that:

- a. There is a reasonable prospect that another court may come to a different conclusion or
- b. There is another compelling reason why the appeal should be heard, such as an important question of law or public interest.

[6] In applications for leave to appeal, the merits of the appeal remain vital, as they are often decisive in determining whether there is a compelling reason to allow the appeal.

[7] I have considered the various applications, motions and headnotes filed for the leave to appeal. As before, these were often difficult to decipher, and in many instances, the legal principles and court rules were incorrectly applied. I have considered the leave to appeal application by organising the various grounds into the most pertinent themes that emerge from the documents to assess whether leave to appeal should be granted, considering the relevant facts, legal principles, and the grounds raised.

[8] For the following reasons, I am not persuaded that leave to appeal should be granted.

The limitation of the constitutional right of access to courts

[9] The applicant argues that the judgment(s) failed to adequately address constitutional considerations, particularly his right to access justice. The right of access to the courts, as enshrined in s 34 of the Constitution, is a fundamental right that guarantees individuals the opportunity to have their disputes resolved by an independent and impartial tribunal. However, this right is not absolute and can be limited in certain circumstances, particularly when a litigant's conduct abuses the judicial process.

[10] In security for costs matters, courts may impose restrictions on a litigant's right to continue litigation by requiring them to provide security for costs, especially when there is a risk that the applicant will be unable to satisfy any adverse costs order. This limitation balances the litigant's right to access justice with the need to protect the opposing party from undue financial prejudice.

[11] Similarly, in matters involving vexatious litigants, where a litigant persistently engages in frivolous or meritless legal proceedings that abuse the court's processes, the court may declare the litigant vexatious and impose restrictions on their right to litigate without prior court approval. This serves to protect the integrity of the judicial system and prevent undue burdens on the courts and other parties. In both situations, while the right to access the courts is curtailed, such limitations are justifiable under s 36 of the Constitution, as they are necessary to ensure the fair and efficient administration of justice and to protect the legal rights of others.

[12] This issue was extensively dealt with in both judgments, and there is no reasonable prospect that another court will come to a different conclusion.

Failure to Establish Jurisdiction

[13] The applicant argues that both judgments were rendered without proper jurisdiction. However, after carefully considering the relevant facts and legal framework, it is clear that the court had jurisdiction to deal with the matters before it. No cogent legal argument or authority supports the applicant's claim of a jurisdictional defect, and it does not raise any new or compelling issues that would warrant an appeal.

[14] The applicant's argument regarding jurisdiction appears to be based on his dissatisfaction with the outcome of the case. It is not supported by any compelling legal issues or factual evidence warranting an appeal.

Failure to Exercise Judicial Discretion

[15] The applicant claims that the court failed to exercise its judicial discretion properly, particularly with regard to the dismissal of the main application and the declaration of him as a vexatious litigant. I exercised my discretion based on the applicant's repeated failure to

comply with court orders, his persistent filing of meritless applications, and his disregard for procedural rules. The decision to declare the applicant a vexatious litigant was based on well-established legal principles set out in the judgement, and supported by his conduct in litigation.

[16] The applicant had been warned on multiple occasions that his continuous disregard for court orders could result in severe consequences. Yet, he continued to institute proceedings without complying with the clear directives of the court. For instance, despite being ordered several times to provide security for costs, the applicant refused. The court also considered that the applicant's legal claims were often frivolous, vexatious, and challenging to follow, making it clear that he was not using the court process to seek legitimate redress.

[17] The decision to declare the applicant a vexatious litigant was based on well-established legal principles set out in the judgement. The court is tasked with balancing the right of access to the courts with the need to prevent abuses of the legal process. In this case, despite numerous warnings, the applicant's persistent filing of meritless applications and disregard for court orders justified the exercise of discretion to declare him a vexatious litigant.

[18] Thus, the applicant's claim that the court failed to properly exercise its discretion in dismissing his application and declaring him a vexatious litigant does not raise any reasonable prospect of success on appeal.

Misdirection

[19] The applicant alleges the court misdirected itself in its findings and applying the law. After reviewing the judgment, I am satisfied that the legal principles were correctly applied and the findings were based on a sound understanding of the facts. The applicant's claim of misdirection is without merit and does not warrant leave to appeal.

Apprehension of bias and malice

[20] The applicant claims that the judgments were influenced by an apprehension of bias and delivered with malice. These are serious allegations that require concrete evidence. The applicant has provided no evidence of bias or malice in the proceedings. The judgments were

based on the applicant's conduct and the legal principles governing vexatious litigation, and they were delivered in accordance with the law. This ground is speculative and unsupported by the facts. The same goes for the allegation of conspiracy to prejudice.

Conclusion

[21] After considering all the grounds for leave to appeal, I find none meet the criteria for granting leave. The applicant has failed to demonstrate that another court would reach a different conclusion, and the grounds raised are speculative, unsubstantiated, and without merit. The decisions made in the January and October 2024 judgments were based on sound legal principles and a proper exercise of judicial discretion.

Order

[22] I, therefore, make the following order:

1. The application for leave to appeal is dismissed.

WJ du Plessis
Acting Judge of the High Court

For the Applicants:

Self-represented