

COPY



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case No: 11187/16P

In the matter between:

ANTHONY BRINK

APPLICANT

and

**THE INFORMATION OFFICER
LEGAL AID SOUTH AFRICA**

RESPONDENT

ORDER

In an application for leave to appeal:

- (a) The application for leave to appeal is granted to the Full Court of the KwaZulu-Natal Division of the High Court;
- (b) The costs of the application will be the costs in the appeal.

JUDGMENT

Poyo Dlwati J:

[1] This is an application for leave to appeal against my judgment and order that was handed down on 6 March 2020.

[2] The grounds of appeal were embodied in the notice of appeal, dated 27 March 2020, and I do not intend repeating them. The application for leave to appeal was filed during the national lockdown. In line with the Practice Directives issued by the Judge President on 1 May 2020 I determined that the application can be disposed of without an oral hearing. I thereafter issued further directions in line with the Practice Directive that the parties ought to submit written submissions, and thereafter I would determine the application. The applicant declined the request whilst the respondent filed its submissions and I am grateful to it for doing so.

[3] Whilst I do not wish to divert my focus from the issues raised in this application, by commenting on the disrespectful language used in the notice of application, I do wish to correct one assertion which is continually repeated throughout the notice. The assertion is that I had worked for the Legal Aid South Africa at some point and therefore, it is my former employer and its officials are my former colleagues. I have never worked for the Legal Aid South Africa and therefore it is not my former employer. I had stated on record what the relations were which I had with some of its officials, despite which the applicant agreed that I could deal with the matter.

[4] Section 17(1) of the Superior Courts Act 10 of 2013 regulates the applications for leave to appeal. It provides that leave to appeal 'may only be granted where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success' or 'there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration'. As correctly held in *Acting National Director of*


Public Prosecutions & others v Democratic Alliance: In re Democratic Alliance v Acting National Director of Public Prosecutions & others [2016] ZAGPPHC 489; also reported as [2016] JOL 36123 (GP), the ‘use of the word “would” indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against’ (quoting with approval from *The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others* [2014] ZALCC 20 para 6).

[6] At the core of the application was the interpretation of the provisions of the Promotion of Access to Information Act 2 of 2000. Having considered the requirements of s 17(1) of the Superior Courts Act, the notice of appeal and the submissions made on behalf of the respondent, I am of the view that if another court would interpret differently the provisions of the Promotion of Access to Information Act in relation to the applicant’s case, the applicant would have reasonable prospects of success in the appeal. Furthermore, due to various accusations made by the applicant in his notice of appeal, I am of the view that it is in the interest of justice and perhaps a compelling reason to grant leave to appeal.

Order

[7] Accordingly, I make the following order:

- ‘(a) The application for leave to appeal is granted to the Full Court of the KwaZulu-Natal Division of the High Court;
- (b) The costs of the application will be the costs in the appeal.’



Poyo Diwati J

APPLICATION FOR LEAVE TO APPEAL ON THE PAPERS / CHAMBERS

DATE OF JUDGMENT: 11 JUNE 2020

APPELLANT:

MR ANTHONY BRINK
IN PERSON
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RESPONDENT

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