

SOUTH AFRICA / JUDGMENT

Du Plessis v Benson and Others (9982/2018) [2021] ZAGPJHC 576 (20 October 2021)

[2021] ZAGPJHC 576**COURT**

South Gauteng High Court, Johannesburg

BEFORE

G Ally

CASE / FILE NUMBER

9982/2018

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IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG LOCAL
DIVISION, JOHANNESBURG
CASE

NO: 9982/2018

Reportable: No

Of interest to other

judges: No

Revised: Yes

In

the matter between:

DU
PLESSIS: GERT
CORNELIUS
Applicant
and

BENSON:

JOHAN
MARVIN
First Respondent

BENSON: GLORIA
VALENTIA
Second Respondent
THE
UNLAWFUL OCCUPIERS
OF
Third Respondent
74
KENT AVENUE, MONTCLARE, RANDBURG
THE
CITY OF JOHANNESBURG METROPOLITAN
Fourth Respondent
MUNICIPALITY

JUDGMENT

ALLY AJ

INTRODUCTION

1. For convenience the parties are described as in the application for eviction.
2. This is an application for leave to appeal launched by the First and Second Respondents against the whole of my judgment dated 18 February 2021 wherein the First, Second and Third Respondents were evicted from the property described as Erf 70 Montclare Township, situated at 74 Kent Avenue, Montclare, Randburg.
3. The Application is opposed by is opposed by the Applicant.

EVALUATION AND ANALYSIS

4. The law and principles regarding applications for leave to appeal in terms of Section 16 and 17 of the Superior Courts Act[1] have now become settled.[2] Essentially, the bar has been raised in considering whether to grant an application for leave to appeal or not. In this regard I agree with the principles as set out in *H & A Manufacturing & Another v Bower & Others*:

Section 17 makes provision for leave to appeal to be granted where the presiding judge is of the opinion that either the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard, including whether or not there are conflicting judgments on the matter under consideration.[3]

5. The test has changed and the threshold is higher and more stringent as outlined above. Therefore, the First and Second Respondents in this matter must convince this Court that there is a reasonable possibility that another Court would come to a different conclusion.

6. The main thrust of the First and Second Respondents submissions in this application for leave to appeal relate to the issue of *lis pendens* specifically in regard to the pending application for leave to appeal before my sister Weiner J.
7. It is true that the Superior Courts Act[4] and Rule 49 of the Uniform Rules of Court make no mention of the lapsing of an application for leave for leave to appeal. However, I am still convinced that an Applicant for leave to appeal may not stand by for years without prosecuting such application for leave to appeal and the conduct of such Applicant by so standing by idly whilst reaping the fruits of such tactics is, in my view, a clear intention of dilatory tactics which cannot be countenanced by the Courts[5]. The only authority close to the view I hold in this matter, is the matter of *ABSA Bank Ltd v Howell & Another* 2019 GPJHC (Case No: 16168/2017) wherein my brother Nothse AJ states:

“ It is now trite law that it is desirable and in the public interest that finality must be reached within a reasonable time in respect of litigation. The Courts have the power, as part of their inherent jurisdiction, to regulate their own proceedings to refuse and

regarded as lapsed, an application that has not been prosecuted after an unreasonable delay.[6]”

8. I remain therefore unconvinced that another Court ‘would’ find differently than I have found in this case nor is there a compelling reason for granting the First and Second Respondent leave

to appeal.

9. The First and Second Respondent raised the issue of the wrong property being sold. It is noteworthy that the tile deed makes mention of erf 70 Montclare Township which is the exact same property that was sold in execution. The issue of 8 Clement street, in my view, is a red herring and does not assist the First and Second Respondents. Accordingly I remain unconvinced that another Court

‘would’ find differently.

CONCLUSION

10. Having considered all the submissions made on behalf of the First and Second Respondents and the Applicant, the application for leave to appeal must fail and costs must follow the result.

The following Order shall issue:

- a) The application for leave to appeal by First and Second Respondents is dismissed with costs.

G ALLY

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 21 October 2021.

APPEARANCES

HEARD VIA TEAMS : 14 October 2021

DELIVERED

: 20 October 2021

APPLICANTS

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[1] Act 10 of 2013

[2] The Mont Chevaux Trust v Tina Goosen 3 November 2014 (Unreported judgment LCC Case No: LCC14R/2014; The Acting National Director of Public Prosecution v Democratic Alliance (unreported Case No: 19577/09 dated 24 June 2016); First Reality (Pty) Ltd v Mitchell & Others 2021 ZALCC 21 dated 23 August 2021 @ para 2

[3] H & A Manufacturing & Another v Bower & Others 2020 KZNDHC at para 5

[4] supra

[5] The leave to appeal application was filed on 4 November 2014: See Caselines Section 007 - 33

- [6] Wolgroeiers Afslaers (Edms) Bpk v Munisipaliteit van Kaapstad 1978 (1) SA 13 (A) at 38H–42D; Radebe v Government of the Republic of South Africa 1995 (3) SA 787 (N) at 798A–F; Associated Institutions Pension Fund v Van Zyl 2005 (2) SA 302 (SCA) at 321B; Gqwetha v Transkei Development Corporation Ltd 2006 (2) SA 603 (SCA) at 606G–H and 612D–E; Chairperson, Standing Tender Committee v JFE Sapela Electronics (Pty) Ltd 2008
- (2) SA 638 (SCA) at 649I–650B; Madikizela-Mandela v Executors, Estate Late Mandela 2018 (4) SA 86 (SCA) at 91A–D; Section 173 of the Constitution of the Republic.
- [6] Wolgroeiers Afslaers (Edms) Bpk v Munisipaliteit van Kaapstad 1978 (1) SA 13 (A) at 38H–42D;

Radebe v Government of the Republic of South Africa 1995 (3) SA 787 (N) at 798A–F;

Associated Institutions Pension Fund v Van Zyl 2005 (2) SA 302 (SCA) at 321B;

Gqwetha v Transkei Development Corporation Ltd 2006 (2) SA 603 (SCA) at 606G–H and 612D–E;

Chairperson, Standing Tender Committee v JFE Sapela Electronics (Pty) Ltd 2008

(2) SA 638 (SCA) at 649I–650B;

Madikizela-Mandela v Executors, Estate Late Mandela 2018 (4) SA 86 (SCA) at 91A–D;

Section 173 of the Constitution of the Republic.

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Prepared on 13 October 2026 · Esheria