

SOUTH AFRICA / JUDGMENT

Du Raan v Fedbond Nominees (Pty) Ltd and Another (47785/2009) [2018] ZAGPPHC 112 (2 March 2018) [2018] ZAGPPHC 112

COURT

North Gauteng High Court, Pretoria

BEFORE

Makume

CASE / FILE NUMBER

47785/2009

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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA
CASE NO: 47785/2009
2/3/2018

In

the matter between:	JAN
	DU
	RAAN
	Applicant
	and
	FEDBOND
	NOMINEES (PTY)
	LTD
	First
	Respondent
	FEDSURE PARTICIPATION MORTGAGE BOND
	MANAGERS
	(PTY)
	LTD
	Second
	Respondent

JUDGMENT**ON APPLICATION FOR LEAVE TO APPEAL**

MAKUME, J:

- [1] The applicant who was still the applicant in the judgment that I handed down on the 6th November 2017 seeks leave to appeal against the whole of the judgment and order including the issue of costs.
- [2] The grounds of appeal are centred largely on my interpretation of the repealed Rule 66(1) of the Uniform Rules of Court as well as to whether the judgment granted by the court during the year 2009 had supannuated or not.
- [3] The test to be applied in determining an application for leave to appeal is set out in Section 17(1) of the Superior Court Act No. 10 2013 which stipulates as follows:

"Leave to appeal may only be given where the judge or judges concerned are of the opinion that:-

- (a) i) the appeal must have a reasonable prospect of success or
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 on 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] The applicant did not submit heads and relied on the heads of argument filed and considered by me during the hearing in October

2017. Before me was accordingly broad grounds of appeal supported with oral submissions by counsel in which it is set out how I erred in my interpretation of Rule 66(1) of the Uniform Rules of Court and how I applied incorrect legal principles in finding against the applicant. There is however nowhere in the application nor in counsel's submission where any attempt was made to persuade me that the appeal would have a reasonable prospect of success or even that another court may come to a different conclusion. The applicant does not say to what court the appeal should be directed.

- [5] It is clear that the test envisaged in Section 17(1) is peremptory and is two fold. Counsel for the respondent in opposing the application

not only filed comprehensive heads but referred me to authorities in support of the test to be applied when considering such application.

found the heads and the authorities referred to helpful.

- [6] Hughes J in *Nannen and Others vs Momentum and Others* (6796/05, 2275/05) [2017] ZAGPPHC 433 (14 June 2017) in dealing with the test said the following:

"What emerges from Section 17(1) is that the threshold to grant a party leave to appeal has been raised. It is now only granted in the circumstances set out and is deduced from the words "only" used in the said section. See: *Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at paragraph [6] Bertelsmann J held as follows: "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 reasonable prospects that another court might come to a different conclusion. See: *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (t) at 343 H. 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."

- [7] It is trite that an applicant seeking leave to appeal must set out its grounds of appeal succinctly and in clear terms to enable not only the court but the respondent to understand the case the applicant seeks to make out before the court of appeal. The papers before me do not meet this requirement. However, it seems that the leave to appeal is based on what is set out in paragraph 3 of the notice which reads as follows:

"That his lordship Justice Makume erred in finding that the writ subsequently issued after the court order had become superannuated on 1 October 2002 in terms of the old Rule 66(1) and after the new Rule 66 came into operation that a writ so issued was not affected by the old Rule 66(1) where Section 12(2) of the Interpretation Act 33 of 1957 specifically provides that the effect of the law or in this instance a Rule of court repealed is as follows:

3.1 that the new rule shall not revive anything not in force or existing at the time at which the appeal takes effect and that the superannuation therefore stands."

- [8] Counsel for the applicant maintains that once the 3 years had expired from the date the judgment was handed down in 2009 then it is the end of this judgment the judgment creditor can get no benefit out of it. I do not agree this is a wrong interpretation because a judgment granted remains valid for 30 years.
- [9] Cotzee AJ in the matter of *Metcash Trading Ltd vs Hickman* 2012 (4) SA 53 GSJ in dealing with an application in which the applicant sought to revive a judgment in terms of the repealed Rule 66(1) said the following at page 55 paragraph 5.
- [5] The respondent argued in limine that the judgment of Boruchowitz J is so ambiguous and obscure that it cannot be revived. The judgment constituted the refusal of summary judgment on condition that security is provided, failing which summary judgment was granted. It is common cause that the contemplated security was not provided. This may render the judgment unusual but certainly not so ambiguous and obscure that I can and should disregard it. It remains a court judgment which has not become prescribed."

[10] In this matter when the respondent issued the Writ of Execution which is now being challenged the old Rule 66(1) had been repealed and the judgment still existed. The old Rule 66(1) contained provisions regulating procedure. It is also evident that the applicant misinterpreting the effect of Section 12(2) of the Interpretation Act which reads as follows:

12(2) Where a law repeals any other law, then unless the contrary intention appears the repeal shall not:-

c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed.

[11] The right to execute the judgment granted in 2009 could never have been lost after 3 years. That was never the intention of the legislature (See: Transnet vs Ngcezula [1994] ZASCA 192; 1995 (3) SA 538 A).

[12] All in all the applicant has failed to meet the test stipulated in Section 17(1) of the Superior Court Act 10 of 2013

[13] In the result:-

a) The application for leave to appeal is refused

b) The applicant is ordered to pay costs of this application.

DATED at JOHANNESBURG on this the day of FEBRUARY 2018.

M A MAKUME

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

DATE OF HEARING

: 20 FEBRUARY 2018

DATE OF DELIVER IN

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