

SOUTH AFRICA / JUDGMENT

Eybers NO v Beaufort West Minerals (11584/2010) [2011]

ZAWCHC 191 (1 April 2011)

[2011] ZAWCHC 191

COURT

Western Cape High Court, Cape Town

BEFORE

Fourie

CASE / FILE NUMBER

11584/2010

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IN

**THE HIGH COURT OF SOUTH AFRICA
(WESTERN
CAPE HIGH COURT, CAPE TOWN)
CASE**

NUMBER:

11584/2010

DATE:

1
APRIL 2011
In

the matter between:

LEON
ROELOF EYBERS N.O.
.....Applicant
and
BEAUFORT
WEST MINERALS
.....Respondent

JUDGMENT

Application for Leave to Appeal

FOURIE, J:

In this matter respondent seeks leave to appeal against the whole of my judgment delivered on 24 February 2011. The application is opposed. It is trite that to succeed with an application of this nature, respondent has to show that it has a reasonable prospect of success on appeal. However, the importance of the matter to the parties also plays a role in

deciding whether to grant or refuse leave to appeal. I have considered the grounds of appeal on which respondent relies, as set out in the application for leave to appeal, as well as the oral submissions made by counsel on behalf of the parties. I wish to make one observation with regard to the submissions made on behalf of respondent. It was contended that the extract from Honor6: South African Law of Trusts, 5th Edition, page 322-3, referred to in paragraph 5 of my judgment, is not supported by the authority quoted therefor, namely the decision in *Ethiopian Church Trustees v Soniica* 1926 EDL 107 at 112. It was submitted that at page 112 of this judgment, the court deals with the issue of joinder and not the absence of locus standi, and accordingly it does not serve as support for the general statement in Honors, i.e. that there appears to be no requirement or formality regarding the authorisation of a co-trustee to act on behalf of all the other trustees of a trust. A reading of the judgment, however, shows that at the bottom of page 111 and top of 112, the court did deal with an argument in regard to the absence of locus standi. On my reading thereof, it provides clear support for the aforesaid statement in Honore. Upon reflection I believe that the conclusion reached in my judgment is correct, but as the matter, *inter alia*, involves the interpretation of agreements concluded by the parties, it may be that another court may hold a different view with regard to the intention of the contracting parties. I also take into account that this matter is obviously of extreme importance to both parties. In these circumstances I incline to the view that leave to appeal should be granted. I agree with the view expressed by counsel for the parties that this is a matter which deserves the attention of the Supreme Court of Appeal. In the result the following order is made: Leave is granted to respondent to appeal to the Supreme Court of Appeal against the whole of my judgment delivered on 24 February 2011.

The costs of the application for leave to appeal are to be costs in the appeal. FOURIE, J
deciding whether to grant or refuse leave to appeal.

I have considered the grounds of appeal on which respondent relies, as set out in the application for leave to appeal, as well as the oral submissions made by counsel on behalf of the parties. I wish to make one observation with regard to the submissions made on behalf of respondent. It was contended that the extract from Honor6: South African Law of Trusts, 5th Edition, page 322-3, referred to in paragraph 5 of my judgment, is not supported by the authority quoted therefor, namely the decision in *Ethiopian Church Trustees v Soniica* 1926 EDL 107 at 112.

It was submitted that at page 112 of this judgment, the court deals with the issue of joinder and not the absence of locus standi, and accordingly it does not serve as support for the general statement in Honors, i.e. that there appears to be no requirement or formality regarding the authorisation of a co-trustee to act on behalf of all the other trustees of a trust. A reading of the judgment, however, shows that at the bottom of page 111 and top of 112, the court did deal with an argument in regard to the absence of locus standi. On my reading thereof, it provides clear support for the aforesaid statement in Honore.

Upon reflection I believe that the conclusion reached in my judgment is correct, but as the matter, inter alia, involves the interpretation of agreements concluded by the parties, it may be that another court may hold a different view with regard to the intention of the contracting parties. I also take into account that this matter is obviously of extreme importance to both parties. In these circumstances I incline to the view that leave to appeal should be granted. I agree with the view expressed by counsel for the parties that this is a matter which deserves the attention of the Supreme Court of Appeal.

In the result the following order is made:

Leave is granted to respondent to appeal to the Supreme Court of Appeal against the whole of my judgment delivered on 24 February 2011.

The costs of the application for leave to appeal are to be costs in the appeal.

FOURIE, J

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