

SOUTH AFRICA / JUDGMENT

Intelligent PI (Pty) Ltd and Others v Tukei and Another (48358/2021) [2022] ZAGPJHC 48 (10 February 2022) [2022] ZAGPJHC 48

COURT

South Gauteng High Court, Johannesburg

BEFORE

Roland Sutherland

CASE / FILE NUMBER

48358/2021

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 48358/2021

REPORTABLE: / No

OF INTEREST TO OTHER JUDGES: No

10/02/2022

In the matter between:-

INTELLIGENT PI (PTY) LTD & OTHERS

Applicants

And

KEITH GEOFFREY TUKEI

First Respondent

BRIDGET KIRUNGI TUKEI

Second Respondent

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on the of 10/2/2022.

APPLICATION FOR LEAVE TO APPEAL JUDGMENT

SUTHERLAND, DJP:

1. This application for leave to appeal, launched by the applicants a quo, came before me on 10 February 2022. The delay between 19 October 2021, when the order was granted and this hearing, is explained by the time taken to get a transcription of the orally delivered

judgment.

2. I have had regard to the Notice of application for leave to appeal which was filed, setting out various grounds of complaint and the oral argument advanced by the applicant. Nothing novel has been submitted and the contentions echo those which I previously held to have no merit. Largely, the thesis advanced is at cross purposes with the issue that was placed before initially.
3. The critical issue upon which the case turns is whether an order should be granted staying an eviction order. The applicant had made tentative moves to appeal against the eviction order but, as is plainly addressed in the judgment, the appeal lapsed for want of prosecution. Relief by way of a stay of the eviction writ was dependent on the merits of an explanation as to the delay in seeking appropriate relief and the merits of the contemplated appeal. The papers revealed no proper basis for either.
4. The issues chosen to be emphasised in oral argument were that I had exercised my discretion inappropriately, ignored the effect of an eviction on the family of the applicant, and that I had denied the applicant a constitutional right to access to a court of appeal. No factual matrix exists to support these contentions.
5. In my view there are no prospects of another court taking a view that the order refusing a stay should be overturned. Accordingly, the application must be dismissed.
6. The application for leave to appeal is, furthermore, self-evidently a mere ploy to protract the applicant's occupation and delay the eviction. Costs on the attorney and client scale were rightfully sought.

THE ORDER

The application for leave to appeal is dismissed with costs on the attorney and client scale.

Roland Sutherland

Deputy Judge President of High

Court of South Africa

Heard: 10 February 2022

Judgment:

10 February 2022

For the Applicant: Adv B Ndlovu

Peter Zwane Attorneys

For the Respondent: Adv P J Kok

Petker & Associates Inc. Attorneys

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