

SOUTH AFRICA / JUDGMENT

**Lewis and Another v Vexma Properties
329 CC, In Re: Vexma Properties 329
CC v Lewis and Another (A774/14)
[2015] ZAGPPHC 325 (8 May 2015)
[2015] ZAGPPHC 325**

COURT

North Gauteng High Court, Pretoria

BEFORE

S. Potterill, F. Kganyago

CASE / FILE NUMBER

A774/14

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case Number: A774/14

DATE: 8/5/2015

REPORTABLE

OF INTEREST TO OTHER JUDGES

In the matter between:

EUGENE LEWIS.....First Applicant

ALLAN VAN WYNGAARDT.....Second Applicant

and

VEXMA PROPERTIES 329 CC.....Respondent

IN RE:

VEXMA PROPERTIES 329 CC.....Appellant

EUGENE LEWIS.....First Respondent

ALLAN VAN WYNGAARDT.....Second Respondent

JUDGMENT:

APPLICATION FOR LEAVE TO APPEAL

POTTERILL J

- [1] Pursuant to trial the plaintiff's claim against the defendants was dismissed with costs, such costs to include costs of counsel on a higher scale in the discretion of the Taxing Master.
- [2] This order was appealed against. The appeal was upheld by myself and Kganyago AJ.
- [3] The applicants (defendants in the main action) approached this court for leave to appeal against the order granted on appeal.
- [4] The respondent in this application (the plaintiff in the main action) raised a point in limine that this court is barred from entertaining such application for leave to appeal in terms of section 16(1)(b) of the Superior Courts Act 10 of 2013 ("the Act").
- [5] Section 16(1)(b) of the Superior Courts Act reads as follows:

"An appeal against any decision of a Division on appeal to it, lies to the Supreme Court of Appeal upon special leave having been granted by the Supreme Court of Appeal."

A "division" is in section 1 defined as being "means any Division of the High Court".

- [6] Section 17(3) of the Superior Courts Act sets out the procedure to be followed under section 16(1)(b) of the Act.
- [7] It was argued that the interpretation of section 16(1)(b) and section 17(3) of the Superior Courts Act is clear; the Supreme Court of Appeal now has the exclusive right to decide which cases is justified for consideration by that court. The practical effect thereof is thus that this Court cannot grant leave to appeal, only the Supreme Court of Appeal could do so.
- [8] On behalf of the applicants for leave to appeal it was argued that section 16(1)(b) only relates to full court appeals; i.e. judgments of a court consisting of three Judges.

I cannot agree with such submission. Nowhere in section 16(1)(b) of the Act does it specify that it only relates to a full court decision and not a full bench decision. Not on any construction or interpretation must that be read into section 16(1)(b) of the Act – *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

- [9] In *Van Wyk v The State* (20273/2014) and *Galela v The State* (20448/2014) [2014] ZASCA 152 (22 September 2014) the following was found:

"[19] The jurisdiction of this court to hear appeals from the high court whether as a court of first instance, or an appeal court is derived from this section and s 19 of the Act. Whereas under s 20(4) of the SC Act, the special leave of this court was only required in respect of an appeal from a decision of the full court (three judges) given on appeal to it, the special leave of this court is now also required where leave to appeal is sought in respect of a decision of two judges, given on appeal to it."

The Supreme Court of Appeal has accordingly thus found that the correct interpretation of section 16(1)(b) of the Act is that all

applications for leave to appeal must be sought with special leave of the Supreme Court of Appeal. The court also found that there is no distinction between a decision of the High Court on appeal to it in terms of section 16(1)(b) of the Act or a judgment or order of the High Court given on appeal to it.

[10] In paragraph [22] of the above judgment the court found:

“[22] Rule 6 of the rules of this court, which deals with applications for leave to appeal must be scrupulously followed. The application must succinctly set out the respects in which it is alleged the high court erred and the judgment must be subjected to a critical analysis, either as to the findings of fact or as to the exposition and application of the law. A generalised attack on the findings of the high court is insufficient, as is reliance on the notice of appeal, or a recitation of the grounds of appeal.”

[11] In paragraph [20] of the judgment the following is stated:

“[20] ... Although s 16(1)(b) of the Act has ameliorated the ‘cumbersome procedure’ to the extent that an unsuccessful petitioner in the high court no longer has to obtain the leave of the high court to appeal to this court, it has replaced it with the more stringent requirement that ‘special leave’ be obtained from this court.”

On behalf of the applicant in the application for leave to appeal before us it was argued that it could not be the intention to open the floodgates to the Supreme Court of Appeal with such applications. However this is countenanced with the stricter test for applications for leave to appeal as set out supra.

[12] In *Potgieter v S* (20109/2014)

[2015] ZASCA 15 (17 March 2015) it was once again found by the Supreme Court of Appeal that in terms of section 16(1)(b) of the Act an appeal to the Supreme Court of Appeal against a decision of a court on appeal to it lies only with the special leave of the Supreme Court of Appeal.

[13] I accordingly make the following order:

The application for leave to appeal is struck from the roll with costs, including the costs of two counsel.

S. POTTERILL

JUDGE OF THE HIGH COURT

I agree

F. KGANYAGO

ACTING JUDGE OF THE HIGH COURT

CASE NO: A774/14

HEARD ON: 30 April 2015

FOR THE APPLICANTS: ADV. M.P. VAN DER MERWE SC

INSTRUCTED BY: Couzyn, Hertzog & Horak

FOR THE RESPONDENT: ADV. H.F. JACOBS SC AND ADV. R.C. DE ALCANTARA

INSTRUCTED BY: Heiko Draht Attorneys

DATE OF JUDGMENT: 8 May 2015

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