

SOUTH AFRICA / JUDGMENT

Mbongozi v Mac Mkunyanana Investments (Leave to Appeal) (135/2023) [2024] ZAECMHC 102 (9 July 2024)

[2024] ZAECMHC 102

COURT

Eastern Cape High Court, Mthatha

BEFORE

P.C.N Mjame

CASE / FILE NUMBER

135/2023

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IN THE HIGH COURT OF SOUTH AFRICA

[EASTERN CAPE DIVISION: MTHATHA]

CASE NO: 135/2023\

REPORTABLE: YES/NO

In the matter between

PANKI MBONGOZI

APPLICANT

And

MAC MKUNYANA INVESTMENTS

RESPONDENT

JUDGEMENT

ON LEAVE TO APPEAL

[1] This is an application for leave to appeal, to the Full Court of this Division, against the judgement and order of this court delivered on the 14th November 23.

[2] The applicant has raised the following grounds of appeal:

2.1 The Learned Judge erred in finding that the Applicant has not met the requirements for the mandament van spolie.

2.2 The Learned Judge erred in finding that the refusal by the Respondent to hand over possession of the property to the Applicant does not amount to spoliation.

2.3 The Learned Judge erred in finding that the Applicant was not unlawfully deprived of possession of her properties.

2.4 The Learned Judge erred in finding that the Respondent is in possession of the moveable property based on the tacit hypothec over them (without a Court order)

2.5 The Learned Judge erred in finding that the Applicant was not in peaceful and undisturbed possession of property.

2.6 The Learned Judge erred in finding that the Applicant consented to place her properties at the disposal of the Respondent because of the lease agreement.

2.7 The Learned Judge erred in finding that the Respondent was correct in keeping the property of the Applicant so as to sell it and recoup the unpaid rentals.

[3] The application for leave to appeal is opposed by the Respondent.

Applicant's

submissions

[4] It was submitted that the applicant is of the view or opinion that another court could come to a different decision or conclusion.

There are prospects of success if the leave to appeal is granted.

[5] It was further submitted that the applicant has met all the requirements of spoliation.

[6] The respondent relied on the lien on his argument. The respondent has not met the defence of spoliation.

Respondent's

submissions

[7] The respondent submitted that the test is clear in section 17(1) of the Superior Court Act 10/2013. The Act says there must be reasonable prospects of success.

[8] There are no prospects of success on appeal. The respondent submitted that the application be dismissed with costs.

APPLICATION OF LAW

[9] The test for granting leave to appeal is set out in section 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013(the Act),

that the leave to appeal may only be granted where the Judge concerned is of the view that the appeal would have a reasonable prospect of success, or where there is some other compelling reason, such as conflicting judgements in the matter under consideration.

- [10] Consequent to the repeal of SCA 59 of 1959 it is generally accepted that a stricter test applies. The Court must decide whether the appeal would have a reasonable prospect of success and there must be a sound, rational basis for any conclusion to that effect. See- Four-wheel Drive Accessory Distributors CC vs Rattan NO 2019(3) SA 451(SCA) @463 F
- [11] Applications for leave to appeal require careful, dispassionate analysis of both the facts and the law. Proper consideration must be given to whether the appeal would have a reasonable prospect of success. The test is not whether another court “may come to a different conclusion” (See) VN obo MEC for Health & Social Development of the EC Province [2022] ZAECQBHC13 @par.3
- [12] On reading the Notice of Application for leave to Appeal, the grounds of appeal and submissions by the Applicant and the Respondent, I am of the view that there is no reasonable prospect of success on appeal.

ORDER

[13] In the result I make the following order:

- (a) The application for leave to appeal is dismissed with costs.

P.C.N MJAME

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

For the Applicant: Mr Badli

Potelwa &Co

43 Wesley Street

MTHATHA

For Respondent: Mr Hobbs

Drake Flemmer & Orsmond Inc.

T H Madala Chambers

14 Durham Street

Mthatha

Date Heard: 05/07/24

Date Delivered :09/07/24

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