

SOUTH AFRICA / JUDGMENT

Ngobese v Coetzee (1401-2017)

[2018] ZAGPPHC 877 (16 March 2018)

[2018] ZAGPPHC 877**COURT**

North Gauteng High Court, Pretoria

BEFORE

Sardiwalla

CASE / FILE NUMBER

1401-2017

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Source record**HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 1401-2017

DATE: 2018-03-16

In
the matter between
KENNETH
MUZONNJANI NGOBESE
APPLICANT
and
BRINK
PHILLUS COETZEE
RESPONDENT

JUDGMENT**[LEAVE TO APPEAL]**

SARDIWALLA (J): This is an application for leave to appeal, arising from an order that had handed down in the Gauteng Local Division, Johannesburg on 29th November 2017 in terms of which I ordered that the Application in that matter was to stand as a Summons; the Applicant was to file a Declaration within 30 days; costs were reserved; and the matter was referred to oral evidence.

Today I have before me an Application for Leave to Appeal by the Respondent in that matter, who is now the Applicant, and the Application for Leave to Appeal consists essentially a Notice for Leave to Appeal. It reads a Notice for Leave to Appeal, and there is reference to the issue of Section 18(3) and the Administration of Estates Act, and submissions that my order dismissing the point in limine raised by Respondent (Applicant in the main Application) had locus standi in the application.

It is also submitted that the appeal has a reasonable prospect of success that I erred on the facts and in the law. That is as much as the notice says. ·it is not supported at all by an analysis of the order; submissions as to why the order is appealable; nor are there Heads of Argument by the Applicant; and naturally no Heads of Argument by the Respondent where filled, save for the submissions made from the bar, which obviously the Respondent has not had the opportunity to prepare and consider.

Indeed the court has been in the similar predicament. When I enquired about the judgment or the order, it was then produced from the attorney's file, and handed to me and a copy to the Respondent. It was not even attached to the application. Now if one analyses Rule 49(1)(b) and the rationale and reasoning in respect of the grounds of appeal required in terms of Rule 49(1)(b), it requires that the grounds must be clearly and succinctly set out, in clear and unambiguous terms, so as to enable the court and the Respondent to be fully and properly informed of the case which the Applicant seeks to make out, and the Respondent is to meet in opposing an Application for Leave to Appeal.

Respondent in this matter indicated clearly that he had inadequate information to respond to, and hence there is no response nor Heads of Argument on his part. Rule 49(3) makes it pre-emptory in this regard. Rule 49(1)(b) must also be regarded as being pre-emptory. In my view the submissions and rambling Notice of Appeal filed in this case wilfully falls short of what is required.

The point is that the Notice must clearly set out the grounds, and it is not for the court to have to analyse any document in an attempt to establish what grounds the Applicant intended to rely on and made from the bar, but did not clearly set out in supporting such an Application. On this basis alone the Application to me seems to be fatally defective and must be dismissed. I am also, over and above these aspects, not convinced in the least that there are any prospects of success on appeal, based on these submission from the bar and the Notice of Appeal.

Accordingly the Application for Leave to Appeal is refused, the Applicant to pay the costs.

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SARDIWALLA J

JUDGE OF THE HIGH COURT

DATE: 25 May 2018

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Prepared on 10 October 2026 · Esheria