

SOUTH AFRICA / JUDGMENT

Pretorius and Another v Pretorius N.O. and Others [2023] ZAGPPHC 204; 15895/2021 (15 March 2023) [2023] ZAGPPHC 204

COURT
North Gauteng High Court, Pretoria

BEFORE
Maumela

CASE / FILE NUMBER
15895/2021

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(NORTH

GAUTENG HIGH

COURT,

PRETORIA)

Case

No 15895/2021

REPORTABLE:

NO.

OF

INTEREST TO OTHER JUDGES: NO.

REVISED.

In

the matter between: Jana
 Annelise
 Pretorius
 First Applicant
 (Identity
 Number [...])
 Jana
 Annelise
 Pretorius
 Second Applicant
 And
 Jana
 Annelise Pretorius NO
 First Respondent
 (Identity

No: [...])
 Jen
 Lievens
 NO
 Second Respondent
 (Passport
 No: [...])
 Rhino
 Pride
 Foundation
 Third Respondent
 (Reference
 Number: IT
 001464/15 (G))
 The
 Master of the High
 Court
 Fourth Respondent

JUDGMENT

Maumela J.

INTRODUCTION

1. This is an application for leave to appeal. The applicants seek leave to appeal to the Supreme Court of Appeal alternatively to the Full Court of this Division against the whole of the judgment and order handed down by this Court on the 14th of September 2022 ("the judgment"). Leave to appeal is sought against both the judgment in regard to the counter application as well as the judgment in regard to the application brought by the applicants for an interim interdict ("the main application").

2. The parties will be referred to as they were in the original application and as they have been referred to in the judgment. Where reference is made to the respondents, this refers to the first and second respondents in the original application.
3. The judgment was about an application for an interim interdict brought by the applicants as well as the counter application brought by the respondents. The respondents submitted that the fundamental and central basis for the application for leave to appeal and on which virtually all of the grounds stand is that the common cause facts and issues on the papers justified the relief sought in the counter application and a dismissal of the main application.

TEST FOR LEAVE TO APPEAL

4. It is trite that leave to appeal is sought in terms of Section 17(1)(a) of the Superior Courts Act, 10 of 2013 ("the Superior Courts Act"), which provides as follows:

"(1). Leave to appeal may only be given where the judge or judges concerned are of the opinion that -

(a). (i). the appeal would have a reasonable prospect of success; or

(ii). there is some other compelling reason why the appeal

should be heard, including conflicting judgments on the matter under consideration"

5. It is so that removal of a trustee has its own requirements as set out in section 20 (1) of the Trust Property Control Act 57 of 1998 ("the Act") as well as in the case of *Gowar and Another v Gowar and others* [1] which was also confirmed in the recent case of *Fletcher v McNair* [2]. In that case, the Court sets out principles applicable, as follows:

"(a) . the Court may order the removal of a trustee only if such removal will, as required bys 20(1) of the Act, be in the interests of the Trust and its beneficiaries;

(c). the power of the Court to remove a trustee must be exercised with
circumspection;

(d). the sufficiency of the cause for removal is to be tested by a
consideration of the interests of the estate;

(e). where there is disharmony, the essential test is whether it imperils the Trust estate or its proper administration;

(f).

(h). the decisive consideration is the welfare of the beneficiaries and the proper administration of the Trust and the Trust property."

6. For the respondents to succeed in the application for leave to appeal, they have to show court that the removal of the first applicant was in the interests of the trust and its beneficiaries. Over and above that, the removal has to be procedurally correct. The court found that the respondents did not afford the first applicant her right to be heard. The audi alteram partem rule, (a rule of natural justice), and the provisions of the Constitution were disregarded. The Constitution is the Supreme Law of the country and has to be complied with at all times.[3]
7. The respondents simply relied on the fact that they were in the majority in taking the decision to remove her from the trust and they consider themselves to be authorised to do so by applicable clauses in the Trust Deed.
8. What the respondents contend suggests that the court ought to have agreed with their approach which undermines the first applicant's right to be heard and which also violates the first applicant's constitutional rights. Section 8 (1) of the Constitution provides as follows: "The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state." The court views that there are no prospects of success for the respondents in an approach which simply overlooks considerations for the rules of natural justice and the provisions of the Constitution.
9. During argument in the urgent application, it came to light that an action is underway wherein most of the aspects will be dealt with. This Court also takes into consideration the reality that the outcome of the action which has been lodged does not mark a closing of the proverbial door for the parties. Any of the parties who might be aggrieved by the outcome of the action shall have leeway to take the matter forward on appeal.
10. Having considered all aspects raised by both sides, inclusive of the judgment against which an appeal is sought to be brought, the Court views that the appeal would not have a reasonable prospect of success. Consequently, the application for leave to appeal stands to be dismissed. In the result, the following order is made:

ORDER.

10.1. The application for leave to appeal is dismissed with costs.

T. A. Maumela.

Judge of the High Court of South Africa.

Date of Judgment :15 March 2023

On behalf of the first and second Applicants: Adv C Da Silver Sc

Adv S M Van Vuren

Instructed by:

Coetzee Dickinson INC

On behalf of the first and second Respondents: Adv J P Vorster Sc

N Marshall

Instructed by:

Visser Attorneys

On behalf of the third and fourth Respondents : No opposition

[1] 2016

(5) SA 225 (SCA).

[2] (1350/2019)

[2020] ZASCA 135 (23 October 2020).

[3] See section 2 of the Constitution.

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