

SOUTH AFRICA / JUDGMENT

## QCK Lezmin 4791 CC and Others v Sikhova Importers CC and Another (1619/2020) [2022] ZANCHC 12 (4 March 2022) [2022] ZANCHC 12

COURT

Northern Cape High Court, Kimberley

BEFORE

Moses AJ

CASE / FILE NUMBER

1619/2020

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IN THE HIGH COURT OF SOUTH AFRICA

NORTHERN CAPE DIVISION, KIMBERLEY

Case No. 1619/2020

Heard: 10/02/2022

Delivered: 4 /03/2022

Reportable: YES / NO

In the application between: -

QCK LEZMIN 4791 CC

Applicant

(First Respondent in proceedings a quo)

LORE TRADE AND INVESTMENTS (PTY) LTD

Second Applicant

(Second Respondent in proceedings a quo)

DULOSTYLE (PTY) LTD

Third Applicant

(Third Respondent in proceedings a quo)

and

SIKHOVA IMPORTERS CC

First Respondent

(First Applicant in proceedings a quo)

RE: HARD ROCK MINING (PTY) LTD

Second Respondent

(Second Applicant in proceedings a quo)

## **JUDGMENT:**

APPLICATIONS FOR LEAVE TO APPEAL

Moses AJ

## **INTRODUCTION**

1. This is an application for the leave to appeal my judgment and orders dated 12 November 2021, by the abovestated applicants respectively on the grounds set out in their respective notices of application for leave to appeal.
2. The application was, by agreement, between the parties and the directive of this Court, heard and agreed virtually on 10 February
2022. Judgment was reserved pending this judgment.
3. At the end of the said hearing, Mr Wagener, who appeared for all three applicants, hereafter the First -, Second and Third Applicants, referred this Court to certain case law and authorities which have a bearing on part of my aforesaid judgment that “...it is trite that even a bona fide possessor of spoliated property can, in a particular case, be ordered to restore the possession so spoliated.” This finding was based on two reported judgments referred to by this Court, namely *Malan v Dippenaar* 1969(2) SA 59(O) at 65G to 66A, and *Painter v Strauss* 1951(3) SA 307(O).
4. Since these authorities were not referred to and/or listed in his heads of argument submitted at the time, Mr Wagener undertook to furnish this Court with the said list, which he did, and which is appreciated by this Court.
5. Mr Van Twisk, who appeared for the applicants in the application a quo and for them as the respondents opposing these applications, also requested a copy thereof for his consideration and reply upon receipt thereof, which he did, and which is also appreciated.
6. The grounds upon which the applicants based their respective applications for leave to appeal are meticulously set out in their respective notices of application for leave to appeal and amplified in the comprehensive heads of argument by Mr Wagener on behalf of the three

- (3) applicants, filed of record. Hence it is not necessary to repeat it herein.
7. Mr Van Twisk had also filed his comprehensive set of heads of argument on behalf of the respondents, as well as a supplementary note regarding the additional list of authorities submitted by Mr Wagener.
8. I have carefully considered the grounds listed by the applicants in support of their applications for leave to appeal as well as their written and oral submissions advanced on their behalf by Mr Wagener. I have also carefully considered the written and oral submissions advanced by Mr Van Twisk on behalf of the Respondents. I return to these hereunder.
9. Before I do so, I consider it apposite to start with the threshold test for an application for leave to appeal to succeed which is that the applicants must demonstrate that there is a reasonable prospect of success on appeal. See section 17(1)(a) of the Superior Courts Act 10 of 2013 – The Superior Courts Act.
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Prepared on 10 October 2026 · Esheria