

SOUTH AFRICA / JUDGMENT

Smith v Parker Beusekom Partnership - Application for Leave to Appeal (773/2021) [2023] ZAFSHC 382 (6 October 2023)

[2023] ZAFSHC 382**COURT**

Free State High Court, Bloemfontein

BEFORE

Mhlambi

CASE / FILE NUMBER

773/2021

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Policy**IN THE HIGH COURT****OF SOUTH AFRICA,****FREE STATE****DIVISION, BLOEMFONTEIN****Case No: 773/2021****Reportable: NO****Of Interest to other****Judges: NO****Circulate to Magistrates:**

NO

In

the matter between:

SHAUN

SMITH

Applicant

and

PARKER

BEUSEKOM PARTNERSHIP

Respondent

JUDGMENT**BY: MHLAMBI, J****DELIVERED ON: 06 OCTOBER 2023****APPLICATION FOR LEAVE TO APPEAL**

- [1] The application for leave to appeal is based on various grounds. It is, in the main, directed towards paragraph 8 of the judgment where I found, amongst others, that the applicant had not made out a case against the respondent for the furnishing of security for costs.
- [2] On 14 June 2022 the respondent, as the plaintiff in the action, amended his particulars of claim by substituting his South African address with an address at 4[...] Ha'Dolev, section 3, Caesarea 3[...] Israel. On 29 September 2022, the applicant filed its notice of demand for security for costs in terms of Rule
47. The first notice in terms of this Rule was delivered on 23 February 2022.
- [3] The applicant's contention in the grounds of appeal is that the court formed the view that the applicant failed to meaningfully deal with the first notice, instead of finding that the respondent's situation changed at /or about the issuing of the first notice with the applicant being brought under the impression that the respondent resided in Plettenberg bay. The court failed to find that the situation of both the applicant and the respondent, with regard to the second notice for security, was different from that underlying the first notice.
- [4] The court therefore failed to consider that the respondent's status changed from that of an incola to peregrinus when he emigrated to Israel and that the change took place during the litigation. The second notice demanding security for costs was issued as soon as the plaintiff amended his particulars of claim recording the fact of his residence in Israel. Having considered the case law, it is obvious that the courts are amenable to granting relief for more extended periods than in casu. Consequently, I am of the view that in these circumstances, another court would come to a different conclusion.
- [5] I therefore make the following order:

Order:

1. The application for leave to appeal to the full bench of this court is granted.
2. Costs will be costs in the appeal.

MHLAMBI, J

On behalf of the applicant: Adv. J Els Instructed by: McIntyre Van der Post 12 Barnes Street Westdene Bloemfontein
On behalf of the respondent: Adv. CD Pienaar Instructed by: Hendre Conradie INC 119 President Reitz Ave Westdene BLOEMFONTEIN

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