

SOUTH AFRICA / JUDGMENT

Thompson and Another v Heinsen and Another (A691/2016) [2019] ZAGPPHC 359 (10 July 2019) [2019] ZAGPPHC 359

COURT

North Gauteng High Court, Pretoria

BEFORE

Nair

CASE / FILE NUMBER

A691/2016

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, PRETORIA

(1)

REPORTABLE:

YES/NO

(2)

OF

INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED.

CASE NO: A 691/2016

10/7/2019

In the matter between: CATHERINE HELEN THOMPSON
1st APPLICANT
COUPLES
INVESTMENT CC
2ND APPLICANT
And
KRUGEL
HEINSEN
1st
RESPONDENTFIRST
RAND BANK LIMITED
2ND
RESPONDENT

JUDGMENT

NAIR AJ

[1] The applicant applies for leave to appeal following the dismissal of the application on 4 January 2019.

[2] Section 17 of the Superior Courts Act 10 of 2013 stipulates:

17. (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 judgements on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and. The section which deals with circumstances in which leave to appeal may be granted is section 17 (1) of the Superior Courts Act 10 of 2013 (the Superior Courts Act).

[3] In SOUTH AFRICAN BREWERIES (PTY) LTD ("SAB") and THE COMMISSIONER OF THE SOUTH AFRICAN REVENUE SERVICES ("SARS (3234/15) [2017] ZAGPPHC 340 ...) Hughes J states as follows

"What specifically relevant in this case, is section 17 (1) (a). For easy reference I set out section 17 (1) in its entirety below: "(

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; (b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real

issues between the parties." [My emphasis] 2 [5] The test which was applied previously in applications of this nature was whether there were reasonable prospects that another court may come to a different conclusion. See *Commissioner of Inland Revenue v Tuck* 1989

- (4) SA 888 (T) at 8908. What emerges from section 17 (1) is that the threshold to grant a party leave to appeal has been raised. It is now

only granted in the circumstances set out and is deduced from the words 'only' used in the said section. See *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para [6], *Bertelsmann J* held as follow: "It is clear that the threshold

for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against." [My emphasis] [6] The entire argument of SARS is centred upon the first ground

[4] The main grounds of appeal as set out in the application for leave to appeal are:

4.1 The court failed to consider that there were two separate claims and dismissed the entire application instead of dealing with the claims individually.

4.2 The court erred in dismissing the applicants claim against the first respondent because the first respondent was not a party to the agreement between the applicants and second respondent.

4.3 The court erred in not finding that the first respondent had breached the mandate by negligently paying out the money on demand of the second respondents attorneys.

4.4 The court lost sight of the fact that the proceedings were instituted against the second respondent.

4.5 The court should have found that the failure by the second respondent to immediately reinstate the contract upon realising its mistake

amounted to resiling from the contract.

4.6 The court also erred in conducting there was a dispute of fact in respect of the question whether the second respondent had acted intentionally and erroneously and then dismissing the claim based on the istensible existence of a dispute of fact.

[5] The court indeed dealt with the issues raised in the application for leave to appeal during the judgment and explained why no liability

accrued to the first respondent. The judgment also clearly delineates between the two respondents and the claim against each party.

- [6] The application for leave to appeal was opposed by the first and second respondent and I find merit in both respondents' counsel arguments. Of importance is the fact that there were two agreements in issue. The order sought for breach of the settlement agreement is indeed sought against both respondents. From the settlement agreement it is clear that the first respondent was not party to same. In respect of the mandate between the applicant and the first respondent, the cause has not been pleaded that he breached this agreement was not negligence pleaded.
- [7] I am however of the view that the ground mentioned in paragraph 11 of the application for leave to appeal being that the court erred in dismissing the claim based on the ostensible existence of a dispute of fact justifies the granting of the application based on the test set out above.

ORDER

[7.1] Having heard the argument presented by both counsel, the application for leave to appeal is granted on the ground raised in paragraph 11 of the application for leave to appeal.

DESMOND NAIR

ACTING JUDGE : HIGH COURT

PRETORIA

CASE: : A 691/2016

APPEARANCES

COUNSEL FOR THE APPLICANT

: T P KRUGER

INSTRUCTED BY

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DATE OF HEARING

DATE OF JUDGMENT

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