

SOUTH AFRICA / JUDGMENT

Enyuka Property Holdings (Pty) Ltd v Delpont Van Den Berg Inc. and Another (56232/2020) [2022] ZAGPPHC 322 (20 May 2022)

[2022] ZAGPPHC 322

COURT

North Gauteng High Court, Pretoria

BEFORE

Millar

CASE / FILE NUMBER

56232/2020

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Policy

IN THE HIGH COURT

OF SOUTH AFRICA

(GAUTENG DIVISION,
PRETORIA)

Case No. 56232/2020

REPORTABLE: YES/NO

OF INTEREST TO OTHER

JUDGES: YES/NO

REVISED YES

DATE: 20 May 2022

In the matter between:

ENYUKA
PROPERTY HOLDINGS (PTY) LTD
PLAINTIFF
And
DELPOR
VAN DEN BERG INC.
FIRST DEFENDANT
GEDEELTE
1 VAN ERF [....] BARBERTON (PTY) LTD
SECOND DEFENDANT
JUDGMENT- LEAVE TO
APPEAL
MILLAR
J

1.

This is an application for leave to appeal against the judgement and order handed down in this matter on 3 April 2022.

2.

The order was as follows:

“It

is ordered:

31.1 It is declared that the purchase price set out in the sale of business agreement concluded between the Plaintiff and the Second Defendant on 26 August 2016 is reduced from R62 250 000.00 to R59 127 648.00.

31.2 The First

Defendant is ordered to immediately pay to the Plaintiff the sums of R2 500 000.00 and R622 352.00 respectively being presently held by it in its Attorneys Trust Account;

31.3 The First

Defendant is ordered to pay to the Plaintiff such interest as may have accrued on the sums of R2 500 000,00 and R 622 352,00 respectively from 14 May 2017 to date of payment;

31.5

The Second Defendant's counterclaim is dismissed.

31.5 The Second

Defendant is ordered to pay the Plaintiff's costs of the action on the scale as between party and party.”

3.

The test for the granting of leave to appeal is set out in S 17(1) of the Superior Courts Act [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.

4.

This application sets out 5 different
grounds upon which it is alleged the court erred. In essence, it is
brought on the basis that
the court erred in finding that the correct
interpretation of the clause of the agreement that formed the subject
matter of the
action, properly construed, contained 2 separate
conditions, each of which and not both of which had to be fulfilled.
This was
argued fully during the trial and my reasons for finding as
I did are set out in the judgment of 3 April 2022.

5.

I have considered the grounds upon which
this application for leave to appeal has been brought, the reasons
for granting the orders
of 3 April 2022 and the arguments advanced
and am of the view that there is no reasonable prospect that another
court would come
to a different conclusion.

6.

In the circumstances, I make the following

order:

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

A

MILLAR

JUDGE

OF THE HIGH COURT

GAUTENG

DIVISION, PRETORIA

HEARD

ON:

20 MAY 2022

JUDGMENT

DELIVERED ON:

20 MAY 2022

COUNSEL FOR THE RESPONDENT/PLAINTIFF: ADV. J HOFFMAN

INSTRUCTED BY:

NMT ATTORNEYS

REFERENCE:

MR. S NOCHUMSON / MS M PRETORIUS

COUNSEL FOR THE APPLICANT/SECOND

DEFENDANT:

ADV. A ARNOLDI SC

INSTRUCTED BY:

DELPORT VAN DEN BERG INC.

REFERENCE:

MS. M PIENAAR

[1] Act 10 of 2013

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ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2022/322.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/unknown-plaintiff-v-unknown-defendant-leave-to-appeal-agpphc-2022-56232-2020>

Prepared on 10 October 2026 · Esheria