

SOUTH AFRICA / JUDGMENT

Africor Auctioneers (Pty) Ltd v Blue Dot Properties 1875 CC and Another (6436/2022) [2024] ZAGPPHC 996 (8 October 2024)

[2024] ZAGPPHC 996**COURT**

North Gauteng High Court, Pretoria

BEFORE

Mbongwe

CASE / FILE NUMBER

6436/2022

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG DIVISION,****PRETORIA****CASE NO: 6436/2022****(1)****REPORTABLE: No****(2)****OF INTEREST TO OTHER JUDGES: No****(3)****REVISED.****DATE: 8/10/2024****SIGNATURE****In****the matter between:**

AFRICOR
AUCTIONEERS (PTY) LTD
Applicant
And
BLUE
DOT PROPERTIES 1875 CC
Respondent
and
ALLSCHWANG,
ALLAN LOUIS N.O.
Intervening
party

JUDGMENT

MBONGWE, J:

INTRODUCTION

[1] This is an application for leave to appeal the judgment handed down by this court on 15 February 2024 in terms of which the Applicant's application for the final winding up of the Respondent was dismissed

with costs pursuant to the intervention of and opposition by the appointed executor of the estate of the deceased which holds a 50% interest in the entity sought to be wound up and the findings that:- the opposition was premised on bona fide grounds; and that the service of the demand for payment in the circumstances of this case, could not be considered properly intended to fulfil the purpose for which the provisions of section 69 of the Close Corporation Act 69 of 1984 (the 'CCA') were enacted, namely, to notify the debtor of the debt and demand payment and to alert the debtor of the steps that will be taken on failure to pay.

REQUIREMENTS FOR GRANTING LEAVE TO APPEAL

[2] The criteria for granting leave to appeal are contained in the provisions of sections 17(1) and 16(2)(a)(i) of the Superior Courts Act 10 of 2013, ('the Act'). In terms of section 17(1) the court may only grant leave to appeal where it is convinced that:

- (a) the appeal would have a reasonable prospect of success; or
- (b) there is some other compelling reason why the appeal should be heard, including the existence of conflicting decision on the matter under consideration; or
- (c) the decision on appeal will still have practical effect (section 16(2)(a)(i), and where the decision appealed against does not dispose of all the issues in the case, and the appeal would lead to a just and prompt resolution of all the issues between the parties.

[3] In *Zuma v Democratic Alliance*[1] the court held that the success of an application for leave to appeal depends on the prospect of the eventual success of the appeal itself. In *The Mont Chevaux Trust v Tina Goosen and Others*[2] the court held that section 17(1)(a)(i) requires that there be a measure of certainty that another court will differ from the court

whose judgment is sought to be appealed against before leave to appeal is granted.

[4] "An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be sound, rational basis to conclude that there is a reasonable prospect of success on appeal." [3]

GROUND FOR LEAVE TO APPEAL

[5] The Applicant's grounds for seeking leave to appeal and argument presented in court failed to address two crucial findings in the judgment, inter alia: Firstly, that there is a bona fide dispute raised by the executor of the estate of the deceased/ intervening party regarding the legitimacy and validity of the agreement that purportedly gave rise to the debt relied upon for the sought winding up of the Respondent CC. Secondly, there is the finding that the written notification of the debt and the demand for payment could in no way have come to the knowledge of the executor of the estate of

the deceased in the circumstances described in paras [26] to [30] of the judgment. The written demand in particular was effectively served on the Applicant not alleged debtor.

CONCLUSION

[6] The Applicant's case does not fall under any of the categories in section 17 referred to above and, consequently, there are no reasons to grant leave to appeal. Furthermore, the court is precluded from granting leave to appeal for the mere purpose of presenting argument.

ORDER

[7] The following order is made:

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

MPN MBONGWE

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

This judgment was prepared by Judge Mbongwe. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 08 October 2024.

Date of hearing:

16 May 2024

Date of Judgment:

22 August 2024

Revised:

08 October 2024

APPEARANCES

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[1]

[2021] ZASCA 39 (13 April 2021)

[2] 2014 JDR 2325 LCC

[3] See: MEC for Health, Eastern Cape v Mkhitha and Another [2016] ZASCA 176 (25 November 2016)

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Prepared on 10 October 2026 · Esheria