

SOUTH AFRICA / JUDGMENT

Willers v Wonderhoek Farms (Pty) Ltd (5049/2014) [2021] ZAFSHC 182 (22 July 2021) [2021] ZAFSHC 182

COURT

Free State High Court, Bloemfontein

BEFORE

Chesiwe

CASE / FILE NUMBER

5049/2014

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IN THE HIGH COURT OF SOUTH
AFRICA. FREE
STATE DIVISION,
BLOEMFONTEIN
Case
number: 5049/2014
In the

matter between:

PIETER
CORNELIUS JOHANNES WILLERS
Applicant
And
WONDERHOEK
FARMS (PTY)
LTD Respondent

JUDGMENT

BY: CHESIWE, J

HEARD ON: THE PAPERS AS PER THE HEADS OF ARGUMENT FILED ON 16 APRIL 2021 & 22
APRIL 2021 RESPECTIVELY

DELIVERED ON: 22 JULY 2021

LEAVE TO APPEAL

- [1] This is an application for leave to appeal to the full bench of this division against the cost order judgment granted (de bonis propriis) on 25 February 2021.
- [2] The applicant, Mr. Williers who is the legal representative of the respondents in the main action, was grieved by the cost order de bonis propriis and launched the leave to appeal in his personal capacity.
- [3] The grounds of appeal are clearly set out in the notice of appeal and will not be repeated herein.
- [4] The respondents, (applicants in in main action) simultaneously lodged a counter-application for leave to cross-appeal, based conditionally on if the applicants leave to appeal succeeds.
- [5] The application for leave to appeal is presumably made in terms of the provisions of section 17(1)(a) of the Superior Courts Act 10 of 2013, although the applicant failed to indicate in terms of which legislation they relied on.
- [6] It is important to be mindful of the fact that the advent of the Superior Courts Act, has caused the threshold for the granting of leave to appeal to be changed. The position prior to the Act, was set out by the SCA in S v Smith 2012

(1) SACR 567 (SCA) at paragraph 7 as follows:

"What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal."

[7] Section 17(1)(a) of the Act requires that leave to appeal may only be given where the judge or judges concerned are of the opinion that:

"(i) The appeal would have reasonable prospects of success;

(ii) There is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration."

[8] In an application for leave to appeal, the court is called upon to consider whether another court would, considering all the facts of the applicable case, come to a different

conclusion.

[9] This calls upon me to consider my own judgment and adjudicate it from the perspective of the court of appeal. The position one finds themselves in, is whether to grant or not to grant the application.

[10] The applicant in the written heads of argument, paragraph 3.10 concedes that the ruling made in the judgment is not susceptible to an appeal as it was not a final ruling. However, it maybe that the applicant is grieved by the personal costs order that I may have to consider my judgment.

[11] In R v Muller 1957 (1) SA 642 AD at 645, Thompson AJA said the following:

"From the nature of things it is always invidious for a Judge to have to determine whether a judgment which he has himself given be considered by a higher court to be wrong, but that is a duty imposed by the legislature upon Judges in civil and criminal matters."

[12] As the main issues in the application for leave to appeal is against the cost order de bonis propriis against the applicant as well as cross- appeal application by the respondent for the costs on a party and party. De bonis propriis cost order does affect a person's personal pocket. In my view another court may come to a different conclusion.

[13]

I am therefore inclined to grant the application for leave to appeal as well as the cross-appeal.

[14] I am further mindful of the fact that the threshold for granting an application for leave to appeal against a judgment of a high court has been raised.

[15] However, based on the submissions of the applicant and having considered the written heads of argument of both parties, as well as the grounds of appeal, I am of the view that another court would come to a different

conclusion.

[16] The applicant's grounds for leave to appeal and written heads of argument are revisiting the notice of motion application. The applicant's

argument that the matter be referred back to me for further argument, cannot stand as I have already made a ruling and therefore ex officio in this matter.

[17] I therefore order as follows:

1. Leave to appeal is granted to the full bench of this division.
2. Leave on the cross-appeal is granted.
3. All costs will be costs in the appeal.

S. CHESIWE, J

On behalf of Applicant: Mr. PJ WILLERS Instructed by:

WILLERS ATTORNEYS

BLOEMFONTEIN

On behalf of the Respondent: ADV. JW KLOEK Instructed by:

MOP ATTORNEYS

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Prepared on 23 October 2026 · Esheria