

SOUTH AFRICA / JUDGMENT

Zwelethu Enviroment Services v Cumming and Others (Pty) [2010] ZANWHC 11 (28 September 2010)

[2010] ZANWHC 11

COURT

North West High Court, Mafikeng

BEFORE

L G Nkosi-Thomas

CASE / FILE NUMBER

162/10

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Source record**IN THE****NORTH WEST HIGH COURT, MAFIKENG**

CASE NO:

162/10

In

the matter between:

ZWELETHU

ENVIRONMENT SERVICES

(PTY)

LTD

.....Applicant

and

DAVID

EDMUND ALISTAIR CUMMING

.....1ST

Respondent

GREEN

SPRINGS INVESTMENTS 101 (PTY) LTD2ND

RESPONDENT

VENTER

DE JAGER (BRITS) INC3rd

RESPONDENT

WOEST

MALAN WENHOLD INC4TH

RESPONDENT

COUNSEL

FOR THE APPLICANT: J H DREYER SC; SJ MYBURGH

COUNSEL

FOR THE FIRST AND SECOND RESPONDENTS: A B ROSSOUW SC

JUDGMENT

(APPLICATION FOR LEAVE TO APPEAL)

NKOSI-THOMAS AJ

A.

INTRODUCTION

This is an application for leave to appeal against the whole of the judgment and order made on 18 March 2010, on the grounds set out in the first and second respondents' notice delivered in terms of Rule 49(1)(b) of the rules of this Court.

The applicants for leave to appeal were the first and second respondents respectively in the main application and the respondent herein was the applicant in the said main application.

For purposes of convenience, I will employ herein their appellations as were employed in the main application.

On 18 March 2010 I granted an order, on an urgent basis, that the share register of the second respondent be rectified by striking out the name of the first respondent therein and inserting into it the name of the applicant as 100% shareholder of the second respondent and that such rectification be effected by the second respondent's auditors.

The aforesaid relief was granted in accordance with the provisions of section 115 of the Companies Act 61 of 1973 (hereinafter referred to as "the Act").

It is indeed so that in order for this Court to grant leave to appeal it should first be satisfied *inter alia* that there exists a reasonable prospect of success on appeal¹.

The main basis upon which this appeal is based² is that the Court erred in not finding that there is a genuine dispute of fact between the parties relating to the terms of the oral agreement, and in not resolving the said dispute on the papers in favour of the respondents.

I have carefully considered the competing contentions of the parties herein and am unable to agree that there exists a reasonable possibility of another Court coming to a different conclusion from the one arrived at.

As stated the English letter dated 11 November 2009 contain the following:

"... The shares of Zwelethu Environment Services Rustenburg will be held by Zwelethu Environment Services until such a date and time as the purchase price of the business, referred to above, have (sic) been paid in full on which date same will be transferred to Dave Cumming."

The Afrikaans letter dated 6 November 2009 contains a similar term.

It common cause that Zwelethu Environment Services Rustenburg referred to in the correspondence is the second respondent.

A written agreement was subsequently executed by the parties at Rustenburg 25 November 2009.

As stated in the judgment, there is no suggestion that the first respondent has, prior to the institution of the proceedings, disputed the content of the above correspondence and sought to correct same on the basis that it did not contain the accurate recordal of what was agreed at the applicant's attorneys offices. Indeed, the first respondent when forwarding the English version of the correspondence to RCF referred thereto as the formal agreement and contract between the parties.

In the circumstances I arrive at the conclusion that there exists no possibility of another Court coming to a different conclusion.

The above finding obviates the need to consider the Rule 49(11) application which was brought conditionally upon this Court granting leave to appeal.

In the result, the application for leave to appeal is refused.

L G NKOSI-THOMAS

ACTING JUDGE OF THE HIGH COURT

1Van den Heerden v Cronwright 1985(2)SA 342 (T)

2In this regard it is noteworthy that this is the only basis addressed dealt with in the respondents' heads of argument

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