

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2014/24159

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

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DATE

.....
SIGNATURE

In the matter between:

DREYER AND NIEUWOUDT

Applicant

And

MARTIN, STEPHANUS

Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

MAKUME, J:

[1] This is an application in which the applicant seeks leave from me to appeal my judgment of the 12th March 2015. The applicant wishes to pursue the appeal to the Supreme Court of Appeal or to the Full Court of this Division.

[2] Besides the lengthy grounds of appeal filed on the 27th March 2015 the applicant on the 4th May 2015 filed and served an affidavit in which affidavit applicant indicates that in the event that leave to appeal is granted that the applicant will in terms of section 19(b) of the Supreme Court Act 10 of 2013 request the court designated to hear the appeal to receive further evidence. As set out in the affidavit.

[3] The grounds and reasons on which I found against the applicant are set out in my judgment. The test to be applied in an application for leave to appeal is not whether my reasons for such judgment are wrong or correct the test has always been whether on the facts another court would come to a different conclusion.

[4] The case law to which I have been directed by both counsel in this matter interpret section 12(1)(b) and (c) as well as section 8(g) according to the facts of each case. It is fair to conclude that each case must be adjudicated on its own facts and surrounding circumstances and having said so it is perhaps wise to repeat the words of Van den Heever J in *Borchers v Kaehne* 1933 SWA 105 at 108 when the following was stated:

“Sequestration is an extraordinary process in execution – if it can at all be appropriately regarded as such – and each creditor is presumed to be the best judge of what is to his benefit.”

[5] Although I am not persuaded that my findings in this matter were in any respect a product of faulty reasoning I am alive to the novel issues raised by

the applicant of seeking leave to tender new evidence at the appeal stage. I accordingly take the view that it is in the interest of justice to grant the application for leave to appeal.

ORDER

[6]

6.1 Leave to appeal to be Full Bench of the Gauteng Local Division of the High Court is hereby granted.

6.2 Costs of this application shall be costs in the appeal.

DATED at JOHANNESBURG on this 28th day of MAY 2015.

M A MAKUME
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

DATE OF HEARING	7 th MAY 2015
DATE OF JUDGMENT	28 th MAY 2015
FOR APPLICANT	ADV A M VAN WYK
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FOR RESPONDENT	ADV C HUMPHRIES
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