




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

CASE NO.: 11/22832

(1)REPORTABLE: Yes /No
(2)OF INTEREST TO OTHERS JUDGES: Yes /NO
(3)REVISED
17 January 2020
DATE
 SIGNATURE

In the matter between:

VHAZWIMI PROPERTIES (Pty) Limited

Applicant

and

BISE ENGINEERING PROJECTS CC

Respondent

JUDGMENT: LEAVE TO APPEAL

MOLAHLEHI, J

- [1] This is an application for leave to appeal against the judgment of this court made on 16 May 2019 in terms of which the defendant's application for leave to amend its plea was dismissed with costs.
- [2] The applicant contends in its notice of application for leave to appeal that the court erred in quoting paragraphs 8 and 9 of its founding affidavit in the

application for leave to amend dated 9 November 2017. The application from which the court ought to have quoted from is the one dated 22 October 2018. The applicant had filed two applications for leave to appeal. It did not proceed with the first application but with the second.

[3] It was, for the above reason, submitted that the court had regard to a wrong application for leave to amend and thus erred in finding that applicant wished to allege in its amendment that there was a partnership between it and HO HUP UBUNYE Construction (Pty) Ltd. There is no such allegation made in the application for leave to amend dated 22 October 2018.

[4] Paragraphs 8 and 9 of the first application dated 9 November 2017 read as follows:

"7 The defendant has at all material times operated as a joint venture partnership . . .

8 It has always been the defendant's case that the plaintiff has instituted proceedings against the wrong party and that the plaintiff should have issued the summons against the joint venture partnership. . .

9 All that the amendment seeks to do is to elaborate this defence by including a plea of non-joinder of HHU. This follows from what has already been pleaded by the defendant."

[5] And paragraphs 8 and 9 of the second application dated 22 October 2018 read as follows:

“8 It has always been the defendant's case that the plaintiff has instituted proceedings against the wrong party and that the plaintiff should have issued the summons against the joint venture partnership. . .

9 All the amendment seeks to do on its defence by including the details the details of the joint venture. This flows from what has already been pleaded by the defendant.”


[6] It is trite that appeal lies against the order and not reasoning in the judgment. International Trade Administration Commission v SCAW South Africa (Pty) Ltd (ITAC) [2010] ZACC 6; 2012 (4) SA 618 (CC). The test to be applied in considering an application for leave to appeal is set out in s 17(1) of the Superior Courts Act of 2013. The test is whether the application would have reasonable prospects of success on appeal or whether there is some other compelling reason why an appeal should be heard.

[7] The applicant argued that the first application for leave to amend was (which it never proceeded with) about the details of the joint venture and not the plea of non-joinder as was the case with new application. The intended amendment makes no reference to a partnership, but it merely makes reference to the joint venture, the applicant further argued.

[8] It appears to me, having regard to the above and the submissions made by the parties, that there are prospects of success on appeal that the court may grant the amendment of the plea as requested by the defendant for this reason the application for leave to amend the plea by the defendant stands to succeed.

Order

[9] In the premises the application for leave to appeal to the full court is granted with costs in the appeal.



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JUDGE OF THE HIGH
COURT; JOHANNESBURG

Representation:

For the Applicant: Adv G Bloch

Instructed by: Fluxmans Inc

For the Respondent: Adv S Van Aswegen

Instructed by: Smit & Grove Attorneys

Date of hearing: 02 December 2019

Date of judgment: 17 January 2020