

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2019/21148

DOH: 22 October 2021

**REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED.**

In the matter of:

FIRSTRAND BANK LIMITED

APPLICANT

And

DENISE BONITA SCHMIDT

FIRST RESPONDENT

In her capacity as executor in the Estate

Late Samuel Tshisimogo Motsumi

Estate number 015615/2015

DENISE BONITA SCHMIDT

SECOND RESPONDENT

Identity number [...]

Date of birth: 12 November 1963

Marital Status: Married in community

of property to Samuel Tshisimogo Motsumi

JUDGEMENT

THIS JUDGEMENT HAS BEEN HANDED DOWN REMOTELY AND SHALL BE CIRCULATED TO THE PARTIES BY WAY OF E- MAIL. ITS DATE OF HAND DOWN SHALL BE DEEMED TO BE 25 OCTOBER 2021

Bam AJ

1. This is an application for leave to appeal brought by the respondents against the order made by this court on 9 February 2021. The application is opposed by the applicants, First Rand Bank Limited.

2. Briefly, the order against which leave to appeal is sought confirmed the rule *nisi* that placed the respondents' estate under provisional sequestration. The rule was first issued in August 2020. For ease of reading, I refer to the parties as they were in the original proceedings.

2. From the onset, it behoves me to note that both the first and second respondents were unrepresented during the hearing of this application. They were unrepresented at the time of granting the order in February 2021.

3. The 36 pages filed by Ms Schmidt as the respondents' application for leave to appeal do not set out succinctly the grounds upon which the respondents rely. Notwithstanding, during the hearing and to the applicants' disadvantage, I afforded Ms Schmidt an opportunity to state the grounds upon which she relies. I record here below the points I could distill from Ms Schmidt's submissions. These points are somewhat confirmed in the respondents' notice of application for leave under the heading, Constitutional Issues. They are: (i) That the estate of the late Tshisimogo Mostumi is entitled to have the long standing dispute between it and the estate of the late Mr GM Negota decided by a court of law in terms of section 34 of the Constitution. (ii) That Ms

Schmidt will lose her right to housing, as enshrined in section 26 of the Constitution, should leave to appeal not be granted. (iii) Finally, that she will lose her right to work as a Property Practitioner (Estate Agent) should leave to appeal not be granted.

4. At the outset, the applicants implored me to dismiss the application citing, *inter alia*, the respondents' egregious affront to the rules of this court in the manner they had gone about preparing their papers for leave to appeal; the respondents' conduct, which the applicants argued amount's to abuse of the court's process; and the fact that the application, as it stands, had zero prospects of success. As to the first point, the applicants state that all that the respondents have done in their papers was revisit their arguments in relation to the merits and traversed irrelevant and extraneous matters to the question that must ultimately be decided by this court. To underscore the abuse of the court's processes, the applicants submitted that after the respondents had filed their application for leave, no further action was taken since February 2021. It took the applicants' to seek a date with the registrar and ensure that the matter was placed on today's roll. They added that the respondents had not even sought the reasons relating to the order they seek to appeal. As to the overall merits of the application for leave, the applicants argued that the respondents have failed to make a case upon which leave to appeal may be granted.

5. Section 17 (1) of the Superior Courts Act, which regulates applications for leave to appeal, provides that leave to appeal may 'only be given where the judge or judges concerned are of the opinion that—

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

C. DISCUSSION AND CONCLUSION

6. I note that none of the three issues set out in paragraph 3 of this judgement, including the large volume of information contained in the respondents' application for leave to appeal, deal with the question of where the court erred in confirming the rule *nisi*. There is also no information before this court from which I could deduce that any of the instances enumerated in section 17 (a) (i) and (ii) have been satisfied. Consequently, there is no basis upon which this court can grant leave to appeal.

D. ORDER

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

NN BAM
ACTING JUDGE OF THE HIGH COURT,
JOHANNESBURG

DATE OF HEARING: 21 October 2021

DATE OF JUDGEMENT: 25 October 2021

APPLICANTS

Instructed by:

Adv P Louw

Werksmans Incorporated

FIRST & SECOND RESPONDENTS:

Ms Schmidt (In person)/