



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

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED:

Date: 25/11/2022

Signa:

CASE NO: 2018/16100

In the matter between:

EMMANUEL CHOLA MWABA

Applicant

and

JACQUES ANDRIES FISCHER N.O.

First Respondent

MARYKE LANDMAN N.O.

Second Respondent

STANDARD BANK OF SOUTH AFRICA LTD

Third Respondent

MASTER OF THE HIGH COURT, JOHANNESBURG

Fourth Respondent

JUDGMENT LEAVE TO APPEAL

MAHOMED AJ

1. This is an application for leave to appeal against the whole of my judgment¹ when I refused an application for rescission of a final liquidation of the applicant's company African Management Consultants Pty Ltd (AMC).
2. Both parties filed heads of argument.
3. The applicant raised several grounds for leave to appeal, only to reargue his matter. The main attack is to paragraphs 63 and 64 of my judgment. The paragraphs state as follows:

“In my view the applicant is incorrect when it contends that the fact of its diversion of money to another account, was the basis of the order for liquidation. It was a point the court relied on for an urgent order. I do not read it to mean that that diversion of funds and the existence of the account is the substantive basis for the liquidation order.”

4. The applicant persisted in his argument that the third respondent misled the court that it learnt of the AMC's account at Nedbank only in April 2018, and it diverted book debts which it ceded to the third respondent, to that account and this is the basis on which the final order for liquidation was granted.

¹ Caselines 048

5. In terms of s17 (1) of the Superior Courts Act 10 of 2013 (“the Act”)

“leave to appeal would 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.”

6. In **MONT CHEVAUX TRUST**², the court held,

“.. the use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought leave to appeal against.”

7. I set out in the judgment that the court considered the viability of the AMC, and other factors when it granted the order. It did not grant the order on a single fact. Furthermore, I stated in my judgment, the applicant chooses to focus on certain aspects of the judgment for the order of liquidation only and failed to read the order against the whole judgment.

8. The applicant failed to persuade that court of the company’s viability. The AMC’s financial position was so dire that no even a provisional order could be made. The business rescue practitioner resigned because he did not see the

² 2014 JDR 2325 LCC

company as being viable in business rescue.

9. The objective evidence is that the applicant purchased assets of liquidated estate, he voluntarily handed over certain assets to the liquidators, he offered to purchase the main asset, the house in that estate. He therefore accepted the liquidation.
10. I am of the view that the applicant has not demonstrated that another court would arrive at a different finding. He has not demonstrated that he has a realistic chance of succeeding on appeal. The applicant advanced the same argument as it did at the hearing of the application for rescission.
11. In **S v SMITH**³, Plasket AJA, explained “reasonable prospects of success,”

“... There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”
12. Advocate De Oliviera appeared for the third respondent and informed the court that since my judgment the main asset, the home the applicant occupied, has since been vacated.
13. In terms s16(2)(a) of the Act, the leave sought will have no practical effect or

³ 2012 (1) SACR 567 (SCA) at para 7

result, in that he has been evicted off the property, and has acquiesced in such eviction. The asset must now be in the hands of the first and second respondents for the final winding up.

14. I am of the view that the application must fail.

Accordingly, I make the following order:

1. Leave to appeal is refused.
2. The applicant is to pay the costs of this application on an attorney client scale.

A handwritten signature in black ink, appearing to be 'MAHOMED AJ', written in a cursive style.

MAHOMED AJ

This judgment was prepared and authored by Acting Judge Mahomed. It is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 28 November 2022.

Heard on: 21 November 2022

Judgment delivered: 25 November 2022

APPEARANCES

For Applicant: Mr C Mwabe, in person

For Third Respondent: Advocate XXX

Instructed by: Jason Michael Smith Inc