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

CASE NUMBER: 2020/28966
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED. YES
B.C. WANLESS
08 JUNE 2023

In the matter between:

THE LAND AND AGRICULTURAL DEVELOPMENT BANK Applicant

and

PHOSFERT TRADING (PTY) LIMITED Respondent

Neutral Citation: *The Land and Agricultural Development Bank v Phosfert Trading (Pty) Limited* (Case No: 2020/28966) [2023] ZAGPJHC 672 (08 June 2023).

JUDGMENT
(LEAVE TO APPEAL)

WANLESS AJ

Introduction

[1] On the 15th of September 2022, Mudau J delivered a comprehensive judgment in terms of which it was ordered that the Respondent in this matter be provisionally

wound-up. Pursuant thereto and on the 17th of October 2022 the matter came before this Court, on the same application papers, for the return date of the provisional winding-up order. The matter was fully argued before this Court on the Opposed Motion court roll. Thereafter, judgment was delivered on the 3rd of February 2023.

[2] In terms of the judgment of this Court the Respondent was finally wound-up on the basis that it was unable to pay its debts and the costs of the winding-up application were ordered to be costs in the winding-up process. The order made by this Court on the 3rd of February 2023, reads as follows:

> 1. *The Respondent is finally wound-up pursuant to the provisions of subsection 344(f) read with subsection 345(1)(c) of the Companies Act, 61 of 1973 (as amended) and read with the Companies Act, 71 of 2008 (as amended).*
>
> 2. *This order shall be served forthwith on the Respondent at its registered address and a copy of this order shall be published once in the Government Gazette and once in the Citizen newspaper.*
>
> 3. *The costs of this application are to be costs in the winding-up of the Respondent's estate.*

[3] In this application the Respondent seeks leave to appeal against the judgment and order of this Court to the Full Bench of this Division. The grounds for the leave to appeal are as set out in the Respondent's Notice of Leave to Appeal. Due to the nature of this application these will not be repeated herein (in order not to burden this short judgment unnecessarily).

[4] Suffice it to say, other than adding some interesting points, the argument of the Respondent put forward at the present application did not differ in any material respect to that placed before this Court at the hearing of the application for the final winding-up of the Respondent (or for that matter the points raised before Mudau J at the stage when the court granted an order provisionally winding-up the Respondent).

[5] What is of relevance to note is that the Respondent did not rely on any compelling reasons as to why this Court should grant it leave to appeal. In the premises, the test to be applied as to whether this Court should grant the Respondent leave to appeal to the Full Bench of this Division falls squarely within the provisions of subsection 17(1)(a)(i) of the Superior Courts Act 10 of 2013. In that regard, it is trite that leave to appeal will only be granted where this Court is satisfied that there is a reasonable possibility that another court would come to a different finding.

Merits

[6] As indicated earlier in this judgment, it is not the practice of this Court when dealing with applications of this nature to write lengthy judgments setting out, *inter alia*, each and every ground upon which an applicant for leave to appeal relies and the reasons as why that applicant avers the court *a quo* erred in reaching the decision that it did. To do so would only be to repeat the arguments already presented before the Court and the reasons provided by the Court in its judgment for reaching the finding that it did. In this particular instance, it appears to this Court that the fundamental error on behalf of the Respondent is the manner in which the entire application has been approached. This, in turn, must have a profound effect on the finding of this Court as to whether or not leave to appeal should be granted.

Conclusion

[7] This is so, because, despite Counsel for the Respondent's valiant attempts to persuade this Court to the contrary, the Respondent has misconstrued (or misunderstood) both the central facts and legal principles applicable to this matter and to winding-up applications in general. Having done so, these misconceptions not only have the unfortunate effect of tainting the Respondent's arguments as to why both Mudau J (by implication) and this Court have erred but also why another court would come to a different conclusion.

[8] In this regard, one only has to consider, *inter alia*, the correct rules of interpretation; the question of commercial insolvency and the onus in respect thereof; the fact that a creditor only has to prove a valid claim of R100.00, together with the correct legal

principles pertaining to cession and disputes of fact in motion proceedings (particularly in insolvency proceedings) to realize that there is no reasonable prospect that another court would come to a different finding.

[9] In the premises, this application for leave to appeal must be dismissed, with costs *(Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd 2013 (6) SA 520 (SCA) at paragraph [24]).*

Order

[10] This Court makes the following order:

1. The application for leave to appeal is dismissed.

2. The Respondent (Phosfert Trading (Pty) Limited) is to pay the costs of the application.

B.C. WANLESS
Acting Judge of the High Court
Gauteng Division, Johannesburg

Heard: 01 June 2023
Judgment: 08 June 2023

Appearances:

For Applicant: L van Gass
Instructed by: Van Greunen and Associates

For Respondent: W Strobl
Instructed by: KVN Inc.