

REPUBLIC OF SOUTH AFRICA


 IN THE HIGH COURT OF SOUTH AFRICA
 GAUTENG DIVISION, PRETORIA

DATE: 30/3/2016

CASE NO: 82258/15

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: ~~YES~~/NO
 (2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
 (3) REVISED ✓

30.3.2016

DATE

SIGNATURE

In the matter between:

VERULAM SAWMILLS (PTY) LTD

APPLICANT

And

SAMUEL DECEMBER MAGAGULA

 1ST to 158
 FURTHER
 RESPONDENTS

AMCU

2ND RESPONDENT

JUDGMENT ON LEAVE TO APPEAL

MSIMEKI, J

[1] This is an application for leave to appeal against the whole of the judgment that I handed down on 4 December 2015 'to the Supreme Court of Appeal, alternatively to the full bench of the North Gauteng Division'.

[2] The grounds of appeal are succinctly contained in the Notice of Application for leave to appeal.

[3] The application for leave to appeal was heard on 29 March 2016. Mr Van der Merwe represented applicant while Ms Malan represented first and second respondents.

[4] The application is based on section 17 of the Superior Court Act 10 of 2013 (the Superior Court Act). The section provides:

"17 Leave to appeal

(1) Leave to appeal may be given where the judge or judges concerned are of the opinion that –

(a) (1) 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;"

[5] Erasmus: Superior Court Practice at A2-56-57 discusses the provisions of section (a) (i)

and (ii). The word 'may' in subsection 1, according to Erasmus, denotes the power that a judge or judges 'shall have' which exists not upon the discretion of 'the judge or judges concerned' but upon proof of the particular circumstances in which the power may be used'. (See **Stroud Riley and Co Ltd v Secretary for Inland Revenue 1974 (4) SA 534 (E) at 539A-540D**) Once satisfied that the requirements set out on paragraphs (a) to (c) of the subsection are met, the judge or judges concerned are bound, 'as a matter of duty, to grant leave to appeal'.

- [6] It is important to mention that applicant, in a leave to appeal application, does not have to satisfy the judge or judges concerned that the appeal would have a reasonable prospect of success and that there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration

This is clearly denoted by the use of the word 'or'. Applicant need only satisfy the judge or judges concerned that the provisions of either section 17 (1) (a) (i) or, 17 (1) (a) (ii) are met in which case the judges must give leave to appeal.

- [7] Mr Van der Merwe submitted that it was unfortunate that the matter had started in the urgent court, an inappropriate forum, to deal with a matter such as this. However, the matter, according to him, is of substantial importance to the applicant and the respondents. His view, further, is that the matter involves an important question of law and that, as Erasmus puts it, 'the administration of justice, either generally or in the particular case concerned, requires the appeal to be heard'. As correctly conceded by Ms Malan, there

are indeed conflicting judgments on the issues under consideration. It is indeed true and clear that it is of public importance and in the public interest that legal certainty be obtained on the issues raised. This requires the Supreme Court to step in and resolve the differences of opinion. The decision to be appealed, in my view, involves the question of law. This is in line with the provisions of section 17 (6) (a) of the Superior Court Act. (**See Haine v Podlashuc and Nicolson 1933 AD 104 at 105; and African Guarantee Indemnity Co Ltd v Van Schalkwyk 1956 (1) SA 326 (A) at 329; Attorney-General Transvaal v Nokwe 1962 (3) SA 803 (T) at 807A and Westinghouse Brake and Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd 1986 (2) SA 555(A) at 560I**).

Mr Van der Merwe submitted that section 213 of the LRA needs to be properly interpreted for the benefit of the parties in this and other matters. This is indeed truism.

- [8] Ms Malan held the view that the court had properly dealt with all the issues in the matter and that the appeal was unnecessary. She, however, conceded as I have already alluded thereto, that there are indeed conflicting judgments on relevant issues. This is the reason, Mr Van der Merwe submitted, that the assistance of the Supreme Court of Appeal was required. I agree.

Leave to appeal, in my view, should be granted.

ORDER

- [9] The following order is made:

1. Leave to appeal against the whole of my judgment handed down on 4 December 2015, to the Supreme Court of Appeal is granted.
2. Costs will be costs in the appeal.


M W MSIMEKI
JUDGE OF THE GAUTENG DIVISION, PRETORIA

Heard on 29.3.2016

For the Applicant: Adv H A Van der Merwe

Instructed by: Larry Dave Inc

For the Respondent: Adv C J Malan

Instructed by: Fluxmans Inc