

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)



Case number: 21336/2014

Date:

14/12/2016

DELETE WHICHEVER IS NOT APPLICABLE

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

14/12/2016

DATE

SIGNATURE

[Handwritten signature]

In the matter between:

BEAUTY NKOSI obo NHLANHLA SIMPHIWE NKOSI

PLAINTIFF
(RESPONDENT)

And

THE MEC FOR THE DEPARTMENT OF HEALTH, GAUTENG

DEFENDANT
(APPLICANT)

JUDGMENT
(APPLICATION FOR LEAVE TO APPEAL)

PRETORIUS J.

- (1) The applicant applies for leave to appeal against the whole of the judgment dated 31 October 2016. The leave to appeal is against the application for recusal of the court and the granting of an inspection *in loco*.
- (2) The respondent raised a point *in limine* that the application for leave to appeal should be struck off the roll with costs. The basis for raising this point *in limine* is that the applicant did not deal with the balance of convenience or allege special circumstances as to why the appeal should be heard before the trial has been completed.
- (3) Once more Mr Ströh, for the respondent, referred the court to **Health Professions Council v Emergency Medical Supplies**¹ where Lewis JA dealt with this:

"...a piecemeal determination of issues is undesirable. In Guardian National Insurance Co Ltd v Searle NO Howie JA said that the 'piecemeal appellate disposal of the issues in litigation' was not only expensive, but that generally all issues in a matter should be disposed of by the same court at the same time. Thus even if, technically, an order is final in effect, it may be inappropriate to allow an appeal against it when the entire

¹ 2010(6) SA 469 (SCA) at paragraphs 16 and 17

dispute between the parties has yet to be resolved by the court of first instance.

It should not be forgotten that Harms AJA in Zweni also said that -

'if the judgment or order sought to be appealed against does not dispose of all the issues between the parties the balance of convenience must, in addition, favour a piecemeal consideration of the case. In other words, the test is then -

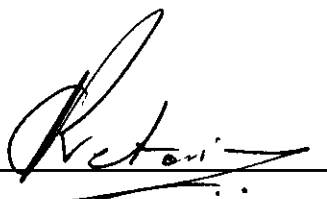
"whether the appeal - if leave were given - would lead to a just and reasonably prompt resolution of the real issue between the parties". . . ."

- (4) I have considered the point *in limine*, but am of the opinion that I should deal with the merits of the appeal.
- (5) I have carefully listened to both counsels' arguments and once more perused the relevant authorities to which I was referred by both counsel. I have also carefully read the application for leave to appeal and the respondent's heads of argument.
- (6) I have come to the conclusion that I have dealt extensively with all the grounds set out by the applicant for leave to appeal in my judgment giving reasons for not recusing myself and for granting an inspection *in loco*.

(7) I once more confirm those reasons. I find that there is no reasonable prospect of success of this application on appeal and that leave to appeal in terms of section 17(1)(a)(i) of the **Superior Court Act**² should not be granted.

(8) In the result I make the following order:

1. The application for leave to appeal is dismissed;
2. The applicant is ordered to pay the costs of the respondent, including the costs of two counsel.



Judge C Pretorius

² Act 10 of 2013