

**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED. <i>Yes</i>
<i>23/6/2016</i>	
DATE	<i>C. Rabie</i>
	SIGNATURE

23/06/2016

CASE NO: 19269/2011

In the matter between:

D.J. SMYTH

1st Applicant

and 6 others

2nd-7th Applicant

and

INVESTEC BANK LTD

1st Respondent

RANDGOLD & EXPLORATION CO LTD

2nd Respondent

CASE NO: 19269/2011

In the intervention applications of:

STANDARD BANK NOMINEES (TVL) PTY LTD

SHAP-ARON NOMINEES (PTY)LTD

BNS NOMINEES (PTY)LTD

CASE NO: 19269/2011

In the intervention applications of:

W.J.S. BAILEY

and 39 others

JUDGMENT

RABIE, J

1. This is an application for leave to appeal the order handed down by me on 17 September 2015. Originally, in what can be referred to as the main application, seven applicants approached the court on motion for relief in terms of section 252(1) of the Companies Act, Act 61 of 1973. The first and second respondents objected to the *locus standi* of the seven applicants on the basis that they are not members of the second respondent. Subsequent thereto three nominee shareholders and forty beneficial owners of shares in the second respondent instituted separate applications to intervene in the main application. The *locus standi* of these applicants was also disputed by the respondents.
2. In an attempt to create some form of order in respect of the litigation between the respective parties, which had increased, the parties formally agreed as to how the matters should proceed. Generally the agreement was that the issue of *locus standi* of the applicants and certain ancillary questions should be separated and adjudicated by me before the main application would proceed on the merits thereof. That

was done and culminated in my aforesaid order. The present application is against that order.

3. The application for leave to appeal was brought by the seven main applicants as well as what became known during the hearing as the "27 intervening applicants" or the "27 beneficial owners" and also by what became known as the "7 own name applicants".
4. The specific orders appealed against are those in paragraphs 1 and 2 of the order (in respect of the 7 main applicants), paragraphs 3 and 4 of the order (in respect of the 27 intervening applicants) and paragraph 8 of the order (in respect of the 7 own name applicants).
5. The applicants based their present application on a number of grounds set out in a Notice for Application for Leave to Appeal. The grounds relate to many of the findings made by me.
6. In my view, and mainly as a result of the decision I have arrived at, it is not necessary or even proper for me to discuss each of these grounds and the merits thereof. The main issues, and grounds relied upon, relate to the interpretation of South African legislation as well as those in comparable jurisdictions as well as the interpretation of certain of the Uniform Rules of Court, all against the backdrop of certain constitutional provisions. The issues this court had to decide are involved and intricate issues of law and it would, in my view, generally be wrong to suggest that there is no reasonable prospect that another Court might find differently, especially since these issues have not authoritatively been dealt with by our courts - at least not to the extent to which they have been argued before me.

7. I have considered all the submissions made on behalf of the respective parties and in my view the appeal would have a reasonable prospect of success. I am also satisfied that the issues are such and the circumstances are such that they merit the attention of the Supreme Court of Appeal.

8. Consequently, the following order is made:

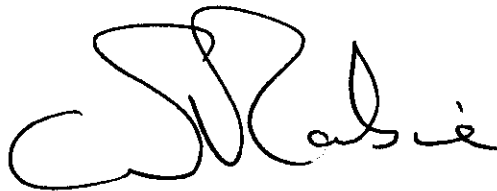
1. Leave to appeal to the Supreme Court of Appeal is granted:

1.1 to the seven main applicants in respect of paragraphs 1 and 2 of the order;

1.2 to the twenty-seven applicants in respect of paragraphs 3 and 4 of the order;

1.3 to the own name applicants in respect of paragraph 8 of the order.

2. The costs of this application for leave to appeal shall be costs in the appeal.

A handwritten signature in black ink, appearing to read 'C.P. Rabie', written over a horizontal line.

C.P. RABIE

JUDGE OF THE HIGH COURT