



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

9/9/16

**Case No: 92006/2015**

In the matter between:

**LOURENS JOHANNES HUMPHRIES**

1<sup>st</sup> Applicant

**ZACHARIA GERTRUIDA MAGDALENA HUMPHRIES**

2<sup>nd</sup> Applicant

and

**IMPORT EXPORT 2020 (PTY) LTD**

Respondent

(1)	REPORTABLE: YES <input checked="" type="radio"/> NO
(2)	OF INTEREST TO OTHER JUDGES: YES <input checked="" type="radio"/> NO
(3)	REVISED.
9/9/2016.	
DATE	SIGNATURE

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**JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL**

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**HF JACOBS, AJ:**

[1] The respondent applies for leave to appeal in terms of section 17(1)(a)(i) of the Superior Courts Act 10 of 2013. The respondent submits that an appeal would have a reasonable prospect of success for an order dismissing the application with costs.

[2] The outstanding contractual obligation the respondent was by its own admission bound to perform was registration of transfer. The appointed conveyancer and the seller of land could, objectively viewed, not have

interpreted the letter of 15 May to mean anything but to demand registration of transfer or presentation of the documents to be submitted to the Deeds Registry for that purpose within 7 days. I am of the opinion that there exists no reasonable prospects of success that a Court of Appeal would find otherwise.

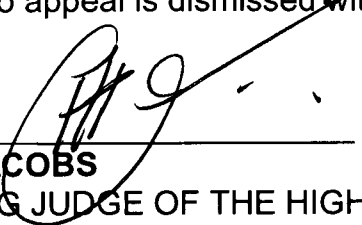
[3] Paragraphs 1-3 of the notice of appeal suggests that the finding was arrived at by placing an onus on the respondent to prove that the letter of demand did not provide for a reasonable time to the respondent to perform its obligation. It is not correct as appears from paragraph [7] of the judgment. The letter of demand and cancellation has not been considered in isolation. The letter of demand must be considered in context by having regard to the facts set out in the affidavits which are mostly common cause.

[4] When the applicants demanded performance from the respondent on 15 May 2015 the tender to perform later recorded in paragraph 11 of the letter of cancellation of 12 October 2015 did not oblige the applicants to accept the tender and did not cause them to abandon their right of cancellation. The respondent was at that stage *in mora* and remained *in mora*. Mr Van Heerden on behalf of the respondent insisted that 2 months would be required to effect transfer of the property. Two months passed and the transfer was still not registered. The respondent remained *in mora* for a further 5 months until cancellation of the contract on 12 October 2015. The conduct of the respondent did not purge its default. On its own account of the

events it fell *in mora* and remained *in mora* for 2 months and beyond until the contract was, again, cancelled.

[5] When the respondent sought 2 months from the applicants to register transfer of the property and still failed to do so, it fell *in mora ex lege*.<sup>1</sup> On the respondent's own account it could and did not perform its obligation within two months (or 60 days). The applicants showed that they afforded the respondent the time it requested to register transfer. That self-imposed period must have been reasonable and, when the respondent failed to perform its obligation, the applicants became entitled to cancel the contract as they did on 12 October 2015. The conduct of the respondent seeking the 2 month extension or its belated letter of the transfer attorney did not alter the position and, in my view, did not preclude the applicants from cancelling the contract.

[6] I am not of the opinion that there exists a reasonable prospect of success that a Court of Appeal might find otherwise. Under the circumstances the application for leave to appeal is dismissed with costs.



**H F JACOBS**  
ACTING JUDGE OF THE HIGH COURT  
PRETORIA

Date: 9 September 2016

HUMPHRIES & HUMPHRIES V IMPORT EXPORT 2020-DISMISSAL OF LEAVE TO APPEAL

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<sup>1</sup> *Boland Bank Ltd v Pienaar & Another* 1988 (3) SA 618 AD; *Middelburg se Stadsraad v Trans-Natal Steenkoolkoöperasie* 1987 (2) SA 244 TPA at 248H.