IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

2/11/16

Case Number: 57206/10

DELETE WHICHEVER IS NOT APPLICABLE

REPORTABLE: YES / NO.

OF INTEREST TO OTHER JUDGES: YES / NO.

REVISED.

1 November 2016

DATE SIGNATURE

In the matter between:

MJEJANE TRUST AND OTHERS APPLICANTS

and

DAVID ZOMA MAKHUBELA AND 4 OTHERS RESPONDENTS

Coram: HUGHES J

JUDGMENT

HUGHES J

[1] This is an application for leave to appeal my order made on 9 September 2016 by the applicants. The order made arose from an interlocutory application by the respondent's to amend their notice of

motion to their counter-application. The main application concerns the verification of beneficiaries to the Mjejane Trust.

[2] Both Adv. Matebese for the applicants and Adv. Donaldson for the respondent's conceded that the first issue was for me to determine whether my order made in the interlocutory application to amend was in fact appealable.

[3] Adv. Matebese insisted that the applicable legislation in this instance was section 17(1) (c) of the Superior Courts Act 10 of 2013. Whilst Adv. Donaldson argued that it could also fall within the realm of section 17(1) (a) (i) and (ii) and the provisions of the Supreme Court Act 59 of 1959.

[4] Adv. Donaldson further argued that whether it is the Superior Courts Act or the Supreme Court Act the applicable test would result in the order made in this interlocutory application being unappeasable.

[5] I am mindful of what Moseneke DCJ stated in *International Trade Administration Commission v SCAW SA 2012 (4) SA 618 CC at para [49]* :

> "[49] In this sense, the jurisprudence of the Supreme Court of Appeal on whether a "judgment or order" is appealable remains an important consideration in assessing where the interests of justice lie. An authoritative restatement of the jurisprudence is to be found in *Zweni v Minister of Law and Order*51 which has laid down that the decision must be final in effect and not open to alteration by the court of first instance; it must be definitive of the rights of the parties; and lastly, it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings. On these general principles the Supreme Court of Appeal has often held that the grant of an interim interdict is not susceptible to an appeal.52" [Without footnotes]

[6] It is trite that the test to determine whether an order or judgment is appealable was set out in *Zweni v Minister of Law and Order 1993 (1) SA 523 (A)* at 532J-533A. This being that the decision should be final in effect and not be susceptible of alteration by the Court of first instance; it must be definitive of the rights of the parties; and it must have the effect of disposing of at least a substantial portion of the relief sought in the main proceedings. In addition, the interest of justice is of paramount importance when deciding if a judgment is appealable. See *Nova Group v Cobbett 2016 (4) SA 317 at 323C-D.*

[7] Firstly, the grant of the amendment in my view is in the interest of justice. We have a situation where the respondent's in this application for leave to appeal admitted the 1038 households as the

process to verify these households was correct. However, this court does not have any source documents to confirm these households as being the correct parties to receive the benefit. Who would be prejudiced if this exercise is conducted in line with two previous orders that the applicant's in this application for leave to appeal sought to ignore?

8] In my view, none of the parties would be prejudice or would experience irreparable harm if leave to appeal is granted or refused. It would not be in the interest of justice in this instance to entertain an appeal against the interlocutory order I have made. In fact, in my view, the order granted benefits both parties as the correct households would receive the benefit from the trust. As stated in paragraph [21] of my judgment in terms of s14 (4) of the Restitution of Land Rights Act 22 of 1994 the lack of the source documents to for the court to verify places the parties and the court at a disadvantage.

9] Secondly, the decision I made in the interlocutory application is not a final decision as the court hearing the main application could still alter it after the process of verification is conducted as was anticipated in the two previous orders ignored by the applicants. It is clearly not an order that is definitive of the rights of the parties and does not in my view dispose of a substantial portion of the relief sought in the main proceedings. The applicants in opposing the interlocutory application for the amendment argued that there were in fact no beneficiaries to the trust but in the same breath they oppose the amendment and persist to have the admission of the 1038 households. This in itself does not dispose of a substantial portion of the main relief sought and it is clearly not definitive of the parties' rights.

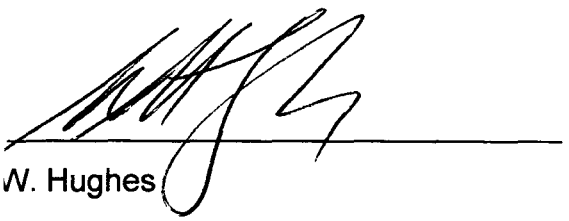
10] Having assessed where the interest of justice lies in terms of s17 (1) of Superior Courts Act of the rom the aforesaid it is clear that there are no reasonable prospects of success and further no compelling easons to grant leave to appeal. I have already stated above that the amendment granted goes to the eart of the verification process. The grant of leave to appeal for the matter to be dealt with in a manner hat would lead to the just and prompt resolution of the real issues cannot come about, in my view, vithout this process. In the circumstances section 17 of the Superior Courts Act has not been satisfied.

11] For the reasons I have set out above I find that the interlocutory order granted to amend the espondents notice of motion in their counter-application dated the 9 September 2016 is not appealable.

12] Consequently the following order is made:

[1] The order of 9 September 2016 is not appealable.

[2] The application for leave to appeal is dismissed with costs. Such costs to include the employment of two counsels for the respondents in this application.



W. Hughes
Judge of the High Court Gauteng
PRETORIA