REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 5842/2018

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

DATE 08/03/2019

In the matter between:

MONIQUE BOWELS **APPLICANT**

And
IAN GARY TAYLOR **FIRST RESPONDENT**

MOIDRAG DOMAZET **SECOND REPONDENT**

J U D G M E N T

MOSOPA AJ

INTRODUCTION:

1. This an application for leave to appeal judgment and order I made on the 24 August 2018, to either the Full Bench of this Division or to the Supreme Court of Appeal.

2. This matter served before me initially as an application for summary judgment, brought by the Respondent against the Applicant in which the Respondent sought relief in the following.

    2.1 That the First and Second Defendants (Applicant) be ordered jointly and severely, the one to pay the other to be absolved pro tantoto pay the amount of R 2,570,000,00 to the Plaintiff (Respondent).

    2.2 Interest a temporae morae at rate of 15, 5 % per annum on the amount of R 2,570,000,00 and costs.

3. The summary judgment application was only opposed by the Second Defendant the current Applicant, and the First Defendant elected not to oppose the application, but made a request that if the Second Defendant is granted leave, such be extended him. I ruled in favor of the Respondent in that summary judgment application.

4. Section 17 of the Superior Courts Act 10 of 2013 ("Act") govern the procedure for leave to appeal and provides;

    "17. (1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

(a) (i) 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;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties".

5. Dr Ebersohn on behalf of the Applicant contended that another court can come to a different decision from what I arrived at and further that the matter is of national interest and on that basis leave to appeal ought to be granted. From the above, even though Dr Ebersohn did not mention that,it can be safely assumed that he is relying on the provisions of section 17 (1) (a) of the Act in bringing this application.

6. In Mont Chevaux Trust (IT 2012/28) v Tina Goosen (unreported,LCC Case No (LCC 14/R/2014 dated 3 November 2014) the Land Claims Court held (in an obiter dictum) that the wording of this subsection raised the bar that now has to be applied to the merits of the proposed appeal before leave should be granted. In Notshokovu v S (unreported, SCA case no 157/15,dated 7 September 2016) at par 2 it was held that an Appellant faces a higher and stringent threshold, in terms of the Act(i.e. this subsection),compared to the provisions of the repealed Supreme Courts Act 59 of 1959,(see also Erasmus, Superior Court Practice,2nd ed,Van Loggenberg at A2-55).

7. In my judgment which is under consideration, I came to a conclusion that, agreement concluded by the Applicant and the Respondent is not a credit transaction as envisaged by section 8 (4) (f) of the National Credit Act no 34 of 2005("NCA") as a result the NCA is not applicable in this matter. Meaning that it was not incumbent upon the Respondent to first issue the section 129 notice before enforcing its debt against the Defendants. Secondly, there was no need for the Respondent to register as a service provider in terms of the Act.. I also relied on the dicta provided in Shaw and Another v Mackintosh and Another (267/7) (2018) ZACA 53 (dated 29 March 2018) by Mathopo JA.

8. Dr Ebersohn contended that the matter of Shaw (supra) has been overruled by the matter of Du Bryn No and Others v Karsten (929/2017) (2018) ZASCA 143 (dated 28 September 2018). In the Du Bryn N.O (supra) the court at par 24 held that, "insofar as it is contended that this court has decided that once-off transaction do not fall within the ambit of NCA in Shaw and Another v Mackintosh and Another (2018) ZASCA 53 (Shaw) this proposition, too, is incorrect".

9. The contention of Dr Ebersohn cannot be supported as the Judge said in the De Bryn matter; "There was an interpretation of section 40 (1) and no reference Friend. In my view Shaw cannot be said to be authority on the requirements of registration of a credit provider. "What the presiding Judge intended to mean in the De Bryn matter, was that it was wrong for counsel to contend that the court in the De Bryn matter, pronounced that once-off transaction do not fall within the ambit of NCA.

10. In all fairness to Dr Ebersohn the circumstance in the De Bryn's matter is distinguishable from the Shaw's matter.

11. Mr. Nel on behalf of the Respondent contended that the Applicant doesn't not fall under the definition of a consumer as envisaged by the NCA, and further that one can only enter into a credit agreement if you are a consumer. I have dealt with that aspect thoroughly in my judgment and referred to the relevant provisions in the NCA and as such the aspect need no further mention.

12. I see no other court coming to a different conclusion from what I arrived at and the Applicant has no prospects of success.

ORDER

13. I therefore make the following order;

    1. Application for leave to Appeal is dismissed
    2. Applicant is ordered to pay costs of the application.

M.J MOSOPA

ACTING JUDGE OF THE HIGH COURT

PRETORIA HIGH COURT

APPERANCES

For Applicant : Dr G. Ebersohn

Instructed by : Gerrie Ebersohn Attorneys

For the Respondent: Adv E. J. J Nel

Instructed by: Davie de Beer Attorneys

Date of Hearing: 26 October 2018.

Date of Judgment: