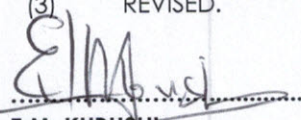


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 71862/2016

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
	
E.M. KUBUSHI	DATE 27/6/2019

In the matter between:

C L STANDER NO

G L S DE WET NO

S T KEKANA NO

L M MALATSE-TEFFO NO

and

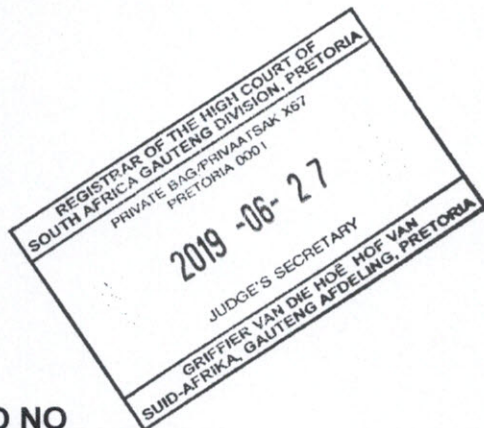
AGRIDELIGHT HOLDINGS (PTY) LTD

FIRST APPLICANT

SECOND APPLICANT

THIRD APPLICANT

FOURTH APPLICANT



RESPONDENT

JUDGMENT

KUBUSHI J,

INTRODUCTION

[1] This is an opposed application for leave to appeal, to the Full Court of this Division, against the orders and judgment I handed down on 27 November 2018. However, in oral argument in court, the applicants' counsel moved for an order that leave to appeal be granted directly to the Supreme Court of Appeal, which is opposed. For convenience I shall refer herein to the parties as they were referred to in the court *a quo*.

[2] The application for leave to appeal is in terms of section 17 (1) (a) (i) of the Superior Courts Act 10 of 2013 ("the Act") which provides that leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success.

[3] From case law dealing with the interpretation of the section as regards the test employed for determining whether leave to appeal should be granted, it is evident that the threshold has been raised. The use of the word "would" in the section has been held to denote a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.

[4] In terms of the section, that there are reasonable prospect of success, should be in the opinion of the judge(s) whose judgment is sought to be appealed. The applicant in the application for leave to appeal must, as a result, convince the judge(s) involved that there is a measure of certainty that another court will differ from the court whose judgment is sought to be appealed.

[5] My judgment (including my findings and reasons therefor), which the plaintiffs seek to appeal, is comprehensive, and, I do not think it is necessary to delve into it again. As it is, application for leave to appeal is not rehearse of the trial.

[6] In the judgment, I found, in the main, that the agreement which was the subject matter of the dispute between the parties was null and void for want of compliance with section 2 (1) of the Alienation of Land Act 68 of 1981, which required a written agreement signed by the parties thereto or their agents acting on

written authority. Such finding was on the basis that the agreement on which the plaintiffs' sought to rely for their claim was not signed by the parties thereto as joint liquidators or by their agents with written authorisation, in that, the agreement was signed only by two of the four liquidators (the first and second plaintiffs) and there was no written authority from the other two liquidators (the third and fourth plaintiffs).

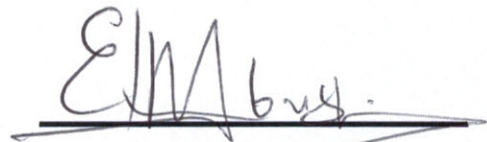
[7] The plaintiffs in their application for leave to appeal are challenging my findings on the ground that I erred in finding that there was no joint action on the part of the liquidators when the first and second plaintiffs signed the acceptance of the offer made by the defendant without written authorisation from the third and fourth plaintiffs. According to the plaintiffs, the first and second plaintiffs signed the offer on behalf of all the joint liquidators as at the time of signature the first and second plaintiffs were properly authorised to accept the offer by the third and fourth plaintiffs. There was no need for a written authorisation as the plaintiffs acted as the natural persons representing a corporate entity, namely, GS Poultry, and that GS Poultry was not able to act other than through natural persons, so they argued.

[8] Having considered the grounds of appeal raised by the plaintiffs in this application for leave to appeal and the arguments for and against such application by all the parties I am of the opinion that there are reasonable prospects of success on appeal, particularly on the issue of whether the first and second plaintiffs had to be authorised in writing by the third and fourth respondent.

[9] I do not think that this matter qualifies for direct referral to the Supreme Court of Appeal. Section 17 (6) (a) of the Act provides for referral to the Supreme Court of Appeal in circumstances where: (i) the decision to be appealed involves a question of law of importance, whether because of its general application or otherwise, or in respect of which a decision of the Supreme Court of Appeal is required to resolve differences of opinion; (ii) the administration of justice either generally or in the particular case, requires consideration by the Supreme Court of Appeal of the decision. There are no such circumstances in the present matter. There are no novel or complex issues of law that requires such referral. The facts of the matter are mostly common cause and require application of well-known principles of the law. Leave to appeal should be granted to the Full Court of this Division.

[10] I make the following order.

1. The application for leave to appeal is granted.
2. Leave to appeal to the Full Court of this Division is granted against the orders and judgment handed down in this matter on 27 November 2018.
3. Costs are costs in the appeal.



E. M. KUBUSHI

JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for Applicants
Instructed by

: ADV. M.P Van Der Merwe
: Leahy Attorneys Inc.

Counsel for Respondent
Instructed by

: ADV. J.P Voster
: Weavind & Weavind Inc.

Date of Heard
Date of Judgment

: 14 June 2019
: 27 June 2019