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



CASE NO.: 88335/2019

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHERS JUDGES: NO
- (3) REVISED

.....
DATE

.....
SIGNATURE

In the matter between: -

CRAIG JOHN MAC GILLIVRAY

FIRST APPLICANT

(ID.NO.: [.....])

CORNELIA LOUISE DANEEL

SECOND APPLICANT

(ID.NO.: [.....])

and

THE STANDARD BANK OF SOUTH AFRICA LIMITED

RESPONDENT

(REG.NO.: 1962/000738/06)

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

BASSON, J

[1] In this matter, the second applicant is applying for leave to appeal the whole of the judgment and court order granted by this court on 3 December 2020 pursuant to a summary judgment application brought by the respondent.

[2] Curiously the application for leave to appeal is initiated by the second applicant only and it can therefore be accepted that same is not supported by the first applicant: There is no form of resolution or document attached to the application for leave to appeal authorizing the second applicant to act on behalf of the first applicant. It can therefore be accepted that the first applicant is not before court and hence the judgment and order obtained against him stands. The second application also filed no heads of argument in support of the application for leave to appeal.

[3] The application for summary judgment was initially set down to be heard on 7 October 2020 but could not proceed because the second applicant's affidavit resisting summary judgment was not filed and served timeously. The application was postponed to 3 December 2020 with the applicants (in this application) to pay the wasted costs of the postponement on a party and party scale.

[4] On 3 December 2020 the second applicant was represented by an attorney with right of appearance. After the matter was argued, summary judgment was granted in ~~favour of the respondent~~. In an *ex tempore judgment*, this court held that no substantive/*bona fide* defense has been raised resisting summary judgment and the draft order praying for summary judgment was granted. It is this order against which leave to appeal is now sought by the second applicant.

[5] The application for leave to appeal is instituted by the second applicant in person and was served on the respondent's attorneys of record by way of e-mail on 29 December 2020. Notice of intention to oppose the application for leave to appeal was duly served and filed by the attorneys of record acting on behalf of the Respondent, on 5 January 2021. Despite the lapse of a considerable period of time, the second applicant made no attempt to file heads of argument, nor to enroll the application for consideration.

[6] I am in agreement with the submission on behalf of the respondent that it is fair to say that, in light of the second applicant's failure to take any steps whatsoever to have this application prosecuted and to file written submissions despite having been directed to do so, that it would appear that this application was launched merely in an attempt to delay the execution of the order.

[7] Regarding the merits of this application, I do not intend repeating the submissions paced before court. They are recorded in the heads of argument that served before the court. Suffice to point out that I am not persuaded that this application has any merit. Section 17 of the Superior Courts Act 10 of 2013, deals *inter alia* with applications for leave to appeal, and section 17(1) states as follows:

“(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;”*

[8] The criterion of “*a reasonable prospect of success*” as is stated in section 17(1)(a)(i) of the Superior Courts Act, have been interpreted as requiring that a court considering an application for leave to appeal must consider whether another court “*would*” (not “*might*”) come to a different conclusion. In the matter of the *Mont Chevaux*

*Trust v Goosen and 18 Others*¹, Bertelsman J, explained what the threshold is for granting leave to appeal as follows:

“[6] It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion: see Van Heerden v Cronwright and Others 1985 (2) SA 342 (T) at 343H. The use of the word ‘would’ in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”

[9] I am not persuaded, having reconsidered the matter, that there is a reasonable prospect of success that another Court *would* come to a different finding. In addition, taking into account the conduct of the second applicant in launching this application, I am not persuaded that the application for leave to appeal in itself, was launched *bona fide*. The inescapable conclusion drawn from the manner in which the second applicant dealt with this application, is that it was merely brought to delay the execution of the judgment order granted as long ago as 3 December 2020 particularly taking into account that the order stands against the first applicant. A special costs order is therefore warranted in light of the above.

Order

[10] “The application for leave to appeal is dismissed with costs on an attorney and client scale.”

A.C. BASSON
JUDGE OF THE HIGH COURT

¹ 2014 JBR 2325 (LCC)

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 22 November 2021.

Case number : 88335/2019

Matter heard on : 19 November 2021

APPEARANCES:

FOR THE APPLICANT : NO APPEARANCE

INSTRUCTED BY : BRIAN CLAYTON

FOR THE STATE : ADV L PRETORIUS

INSTRUCTED BY : FINDLAY & NIEMEYER ATTORNEYS