IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No. 56232/2020

REPORTABLE: ~~YES~~/**NO**

OF INTEREST TO OTHER JUDGES: ~~YES~~/**NO**

REVISED **YES**

DATE: 20 May 2022

In the matter between:

ENYUKA PROPERTY HOLDINGS (PTY) LTD	**PLAINTIFF**
And	
DELPORT VAN DEN BERG INC.	**FIRST DEFENDANT**
GEDEELTE 1 VAN ERF [....] BARBERTON (PTY) LTD	**SECOND DEFENDANT**

JUDGMENT- LEAVE TO APPEAL

MILLAR J

1. This is an application for leave to appeal against the judgement and order handed down in this matter on 3 April 2022.

2. The order was as follows:

"*It is ordered:*

31.1 It is declared that the purchase price set out in the sale of business agreement concluded between the Plaintiff and the Second Defendant on 26 August 2016 is reduced from R62 250 000.00 to R59 127 648.00.

31.2 The First Defendant is ordered to immediately pay to the Plaintiff the sums of R2 500 000.00 and R622 352.00 respectively being presently held by it in its Attorneys Trust Account;

31.3 The First Defendant is ordered to pay to the Plaintiff such interest as may have accrued on the sums of R2 500 000,00 and R 622 352,00 respectively from 14 May 2017 to date of payment;

31.5 The Second Defendant's counterclaim is dismissed.

31.5 The Second Defendant is ordered to pay the Plaintiff's costs of the action on the scale as between party and party."

3. The test for the granting of leave to appeal is set out in S 17(1) of the Superior Courts Act [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

[1] Act 10 of 2013

(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.

4. This application sets out 5 different grounds upon which it is alleged the court erred. In essence, it is brought on the basis that the court erred in finding that the correct interpretation of the clause of the agreement that formed the subject matter of the action, properly construed, contained 2 separate conditions, each of which and not both of which had to be fulfilled. This was argued fully during the trial and my reasons for finding as I did are set out in the judgment of 3 April 2022.

5. I have considered the grounds upon which this application for leave to appeal has been brought, the reasons for granting the orders of 3 April 2022 and the arguments advanced and am of the view that there is no reasonable prospect that another court would come to a different conclusion.

6. In the circumstances, I make the following order:

4.1 The application for leave to appeal is dismissed with costs.

A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:	20 MAY 2022
JUDGMENT DELIVERED ON:	20 MAY 2022
COUNSEL FOR THE RESPONDENT/PLAINTIFF:	ADV. J HOFFMAN
INSTRUCTED BY:	NMT ATTORNEYS
REFERENCE:	MR. S NOCHUMSON / MS M PRETORIUS
COUNSEL FOR THE APPLICANT/SECOND DEFENDANT:	ADV. A ARNOLDI SC
INSTRUCTED BY:	DELPORT VAN DEN BERG INC.
REFERENCE:	MS. M PIENAAR