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

Case Number: A58/2021

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE: 2023-08-10

In the matter between:

DIRK CORNELIUS UYS N.O.

**(in his capacity as trustee of the Cornelis
Family Trust with IT number 1[....]4)**

First Applicant

CARL ALEXANDER GREATOREX N.O.

**(in his capacity as trustee of the Cornelis
Family Trust with IT number 1[....]4)**

Second Applicant

HESTER SOPHIA UYS N.O.

**(in his capacity as trustee of the Cornelis
Family Trust with IT number 1[....]4)**

Third Applicant

and

THE NATIONAL CREDIT REGULATOR

First Respondent

THE NATIONAL CONSUMER TRIBUNAL

Second Respondent

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

POTTERILL J

Background

[1] A Tribunal decision under section 148(2)(b) of the National Credit Act 34 of 2005 was appealed to the Full Court. We dismissed the appeal with costs and the appellants are seeking leaving to appeal that order. The appellants are also seeking condonation for the late filing of the application for leave to appeal. The respondent filed an answering affidavit opposing the condonation application. The appellants filed an application to strike out irrelevant paragraphs in this answering affidavit and annexures attached to the affidavit of the respondent.

Application for condonation

[2] The degree of lateness is six days. The reason for the delay was due to confusion as to which court leave to appeal against a decision of a Full Court, sitting as a court of first instance, lay. Counsel within the prescribed time limit, appealed to the Supreme Court of Appeal, but later came across the matter of *National Credit Regulator v Lewis Stores (Pty) Ltd and Another* 2020 (2) SA 390 (SCA) that determined the appeal lay to the Full Court. On behalf of the appellant it was submitted the lateness was caused by a *bona fide* error in law and the respondent would suffer no prejudice with a six-day delay.

[3] The respondent filed a 400 page answering affidavit including annexures opposing the application for condonation. It was submitted that counsel for the appellants could not rely on ignorance of the law. The new evidence was attached to display how the appellants undermine the regulatory role of the Regulator. The prejudice for the respondent lay in the consumer market with the consumers being exploited those six days.

Application to strike out

[4] The appellants seek to strike out paragraphs 13-35, 41.6 and 41.18 as well as Annexures AA1-AA7. This evidence introduced allegations against a new entity, Solveprop (Pty) Ltd and new allegations against the appellants that were not before the Tribunal or the Full Court. The respondent submits it has a duty to inform this Court as to how rife these practices are and how the Tribunal is undermined.

Leave to appeal

[5] In a nutshell the appellants submit that this Court took a wrong approach; review versus appeal, that there was no proof of the intention of both parties to simulate without resort to oral evidence and the transactions do not fall under the definitions of a credit transaction. Furthermore, it was submitted that the sanctions pertaining to the other 4 contracts could not have been imposed. Alternatively leave should be granted for a compelling reason; the issue and relief is novel and of public importance.

[6] The respondent submitted the sale and rental agreements were simulated, in fact constituting loans falling within the definition of a credit transaction. It was clear that the consumers needed cash and did not want to sell their homes. The process provided by the appellants constituted reckless credit. The Court was empowered to impose the sanctions as it did.

Decisions

Condonation

[7] A court considers the reason for, and extent of the delay. A six-day delay is trivial. The reason for the delay is set out fully. The confusion as to which court to appeal to is reasonable; this Court would also have grappled with this question, but the question has now been answered by the Supreme Court of Appeal. The six-day delay caused no prejudice to the respondent. The reason proffered by the respondent as to the credit market and consumers being prejudiced for another six days is untenable. Condonation is granted.

Striking out

[8] There was no application to submit new evidence on appeal. The paragraphs and annexures sought to be struck out is new evidence that was not before the Tribunal or before the Full Court. The matter sought to be struck out are allegations that do not apply to the matter at hand and cannot contribute to the appeal on the facts before the Full Court and are thus irrelevant. The striking out of the numbered paragraphs and Annexures as requested is to be granted.

Leave to appeal

[9] Leave to appeal is granted. It is granted on the basis that the issue and relief is novel. It is also of public importance to determine whether an agreement of sale of immovable property coupled with a lease agreement can constitute a credit agreement and thus attract the Tribunal's jurisdiction.

[10] The following order is granted:

10.1 Condonation is granted. Each party to pay their own costs.

10.2 The application to strike out is granted with costs

10.3 Leave to appeal is granted to the Supreme Court of Appeal with costs in the appeal.

S. POTTERILL
JUDGE OF THE HIGH COURT

I agree

M.P.N. MBONGWE
JUDGE OF THE HIGH COURT

I agree

M.P. KUMALO
JUDGE OF THE HIGH COURT

CASE NO: A58/2021

HEARD ON: 3 August 2023

FOR THE APPLICANTS: ADV. N. REDMAN SC
ADV. Y. PEER

INSTRUCTED BY: B Karolia Inc.

FOR THE FIRST RESPONDENT: ADV. M. MAKGATO

INSTRUCTED BY: Lebethe Attorneys & Associates Inc.

DATE OF JUDGMENT: 10 August 2023