

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU NATAL, PIETERMARITZBURG

CASE NO. 5895/08

In the matter between:

JAN ANTONIE LOMBAARD

PLAINTIFF

and

DROPROP CC

FIRST RESPONDENT

DROPATHY PREETHEPAUL

SECOND RESPONDENT

DHARUMDAW PREETHEPAUL

THIRD RESPONDENT

OMESH PREETHEPAUL

FOURTH RESPONDENT

RULING ON APPLICATION FOR LEAVE TO APPEAL

NDLOVU J

This is an application for leave to appeal against my entire judgment in this matter handed down on 23 February 2009.

There were primarily two issues which I had to decide, namely:

1. Whether the inclusion of the prefixed word “certain” in the description of immovable property in a lease agreement made any difference as to render the description as such non-compliant with section 2(1) of the Alienation of Land Act 68 of 1981, in the context where such word did not appear in the official description of the same property in the title deed.

2. Whether a member of a close corporation who acts as agent of the corporation in terms of section 54 of the Close Corporation Act 69 of 1984 requires written authority as envisaged in section 2(1) of the Alienation of Land Act to conclude a transaction involving the sale of land on behalf of the corporation.

On the first issue I held, in part, as follows:

“[41] In my view, the use of the word “certain” in the description of the property in the head lease did create confusion and ambiguity as to the precise piece of land which was leased to the applicant.

[47] In my judgment, I am satisfied, on the papers, that the description of the property in the head lease did not clearly identify the land in dispute with reasonable certainty and, therefore, did not pass muster of the peremptory requirement prescribed by section 2(1) of the Act.”

On the second issue I held as follows:

“[57] Therefore, it seems to me that the careful reading of section 2(1) of the Act in conjunction with section 54 of the CC Act dictates the position to be that in every contractual transaction involving alienation of land, entered into by a member of a close corporation who signed the transaction as agent on behalf of the corporation in terms of section 54(1) of the CC Act, such contractual performance by the said member shall be null and void and of no legal force or effect unless the member concerned (1) had the “power to act for the corporation in the particular matter” in the manner and to the extent as provided for in section 54(2) of the CC Act; and (2) “written authority” was given to him or her by the corporation to act on its behalf in the particular matter, as required under section 2(1) of the Alienation of Land Act.”

Both decisions were in favour of the respondents. Hence, I dismissed the application with costs. The applicant now seeks leave to appeal to the Supreme Court of Appeal against the said judgment.

I do recognise, with regard to the second issue, in particular, that there was no decision thus far by any Court (including the Supreme Court of Appeal) which could be found dealing with the issue. There was no doubt that this

decision had far-reaching implications, and was of national importance as it affected property transactions concluded by close corporations nationwide.

Having considered the application and submissions made, it does appear to me that there is a reasonable prospect that a higher court might consider the matter differently on either or both issues and that leave to appeal should therefore be granted. Both counsel were *ad idem* that the appropriate appellate forum should be the Supreme Court of Appeal.

Accordingly the following order is granted:

1. Leave to appeal of the Supreme Court of Appeal is granted.
2. Costs of the application shall be costs in the course of the appeal.

18 June 2009

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Application heard on :	18 June 2009
Counsel for the applicant :	Mr RG Mossop
Instructed by :	J Leslie Smith & Company
Counsel for the respondent :	Mr L Pillay SC
Instructed by :	R Sham & Associates
Judgment handed down on :	18 June 2009