

2083/2009

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER:

2083/2009

DATE:

10 DECEMBER 2009

5 In the matter between:

ZANBUILD CONSTRUCTION (PTY) LTD

Applicant

and

ABSA BANK LIMITED1st RespondentMINISTER OF TRANSPORT AND PUBLIC10 WORKS PROVINCIAL GOVERNMENT OFTHE WESTERN CAPE2nd RespondentTHE HEAD OF THE DEPARTMENT OFTRANSPORT AND PUBLIC WORKS: PROVINCIALGOVERNMENT OF THE WESTERN CAPE3rd Respondent

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J U D G M E N T

Application for leave to Appeal

LOUW, J:

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This is an application for leave to appeal against the orders made by me in a judgment delivered on 9 June 2009. The applicants in this application were the second and third respondents in the main application. The successful applicant in the main application, opposes the application for leave to

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appeal.

There was a delay in bringing this application for leave to appeal. Although the notice of application for leave to appeal
5 was served on 8 July 2009, the matter was delayed until fairly recently when arrangements were made for the hearing of the application.

There is a reasonable prospect that another court may come to
10 a different conclusion in regard to the issues I decided. In the circumstances there should be condonation for the late prosecution of the application for leave to appeal.

The merits of the main application concerns the interpretation
15 of the so called Absa guarantee upon which the second and third respondent based their claim against the first respondent, the guarantor. I have given an interpretation of that guarantee. The interpretation of that document is, however, not a straightforward matter. It concerns difficulty questions of
20 interpretation. As I have said earlier, there is a reasonable prospect that another court may conclude that my conclusion and the interpretation of the guarantee is incorrect.

This is an important matter. It concerns similar guarantees
25 given, I understand, in matters of this kind to the second and

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third respondents. The proper interpretation of this kind of guarantee needs to be clarified. The legal effect needs to be clarified. Mr Scholtz, on behalf of the applicants for leave to appeal, has suggested that the matter go to the Supreme Court of Appeal. I agree that that court is the appropriate court to hear the appeal in this matter. I, therefore, make the following orders:

1. The delay in bringing the application is condoned.

2. Leave to appeal is granted to appeal to the Supreme Court of Appeal against the judgment delivered and the orders made by me on 9 June 2009, on the grounds set out in the application for leave to appeal.

3. The cost of this application shall stand over for determination by the Court of Appeal. That will include the issue as to whether or not the cost of two counsel in this application is justified.



LOUW, J