

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER:

17318/2009

5 **DATE:**

18 OCTOBER 2010

In the matter between:

HEINZ GUNTHER PONELAT

Applicant

10 and

ERICA SCHREPFER

Respondent

J U D G M E N T

(Application for Leave to Appeal)

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MOOSA, J:

This is an application for leave to appeal against the judgment of this Court delivered in this matter on 28 Augustus 2010 in terms of which the Court found: firstly, that an universal
20 partnership came into assistance between the parties on the basis of a tacit agreement; secondly, that the partnership was deemed to have commenced on 4 March 1998 and terminated on 1 April 2005; and thirdly, that the respondent had a 35% share in such partnership and the applicant had a 65% share
25 in such partnership.

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The applicant appealed on the grounds that the evidence established nothing more than a co-habitation agreement between the parties and no universal partnership can be
5 inferred from the evidence.

In addition to the claim for an universal partnership, the respondent claimed damages for breach of promise. I dismissed such claim. No counter-appeal was lodged by the
10 respondent against my finding in respect of the claim of universal partnership and/or the ratio and in respect of the breach of promise to marry.

The test which I have to apply is whether another court would
15 come to a different conclusion to which this court had come to. To put it in another manner, whether there are reasonable prospects of success on appeal.

Adv Jooste, who appeared on behalf of the applicant,
20 submitted that the decision in Mühlmann V Mühlmann 1984(3) SA 102 (AD) may have been superceded by the constitutional imperative and the present day *mores* of society. The Supreme Court of Appeal may come to a different finding on the law and fact on the issues decided by me.

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Adv Nigrini on behalf of the respondent, on the other hand, submitted there were no prospects of success on appeal both on the facts and the law.

- 5 After careful consideration, I am not convinced that another court may not come to a different conclusion on the facts and the law than the ones I came to in this matter. I therefore conclude that there are reasonable prospects of success on appeal.

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The further matter I am required to decide is whether the matter should be heard by the full bench of this division or the Supreme Court of Appeal. Adv Jooste contended that the Supreme Court of Appeal would be the appropriate forum to
15 settle the issues for the following reasons:

- “(a) It is desirable that the Supreme Court of Appeal decisively and in view of the Constitutional imperative and the lapse of time since the reporting
20 of the judgment in Mühlmann (supra) against the background of present day *bone mores* and coming into operation of the Constitution, revisit and decisively consider the cause of action premised on a tacit universal partnership;

- 25 (b) The Supreme Court of Appeal, subject to those

5 matters for which jurisdiction has been reserved for the Constitutional Court is the final Court of Appeal and can decisively adjudicate upon the issues raised in this appeal, given the importance of this cause of action, taking into account that this particular cause of action is also a cause of action that would be available in same gender relationships."

10 Adv Nigrini had no objection to such referral. In the circumstances, the applicant IS GRANTED LEAVE TO APPEAL TO THE SUPREME COURT OF APPEAL in this matter and costs of this application shall be costs in the cause.

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MOOSA, J

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