

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

CASE NUMBER:

18083/10

5 DATE:

24 AUGUST 2011

In the matter between:

PIERRE ANDRE NEL

Applicant

10 and

OUDTSHOORN MUNICIPALITY

1st Respondent

NOEL MARTIN PIETERSEN

2nd Respondent

J U D G M E N T

15

(Application for leave to Appeal)

ERASMUS, J

20 This is an application for Leave to Appeal against a judgment
that I delivered on 7 June 2011.

The Notice for the application was dated 7 June and it relates
only to the question of the decision whether, this court's
decision, whether the decision made by the First Respondent
25 was administrative action or an executive decision.

I have dealt with all the issues that have now been re-argued in this application in the written judgment and I am of the view that there are no prospects of success as the law is settled
5 and this particular issue have been dealt with by both the Constitutional Court and the Labour Court.

Furthermore there is no indication that I have erred on the facts upon which the law has been applied and that the
10 consequence of that decision, that is now under attack, only under the provisions of PAJA as the effect of an order by the Labour Court and the consequences that followed therefrom.

It is not under attack in this Application for Leave to Appeal,
15 that my findings in that regard was in any event wrong that would support my finding that there are no prospects of success.

However, in the matter itself I made an order for costs on an
20 attorney and client scale. There were numerous correspondences especially from the Applicant's attorney, some of the^m inappropriately, made to me personally. We have
A dealt with that in correspondence, that I shall place on the file.

25 There were serious allegations made on the face of it in which

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the attorney was quoted about certain issues that he perceived as misconduct on my part. In that it was quoted to have referred *inter alia* to the fact that I have entertained a discussion in open court with the Second Respondent as to the urgency of the resolution of the matter and that led to the conclusion that I have pre-judged the matter. He is quoted to say this to the media and that he will take steps. That I regret the decision I made and that I should retract some of the comments made in the judgment.

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In the correspondence it also indicated that a suggestion was made that I would change certain issues in the judgment and that the written judgment would not reflect what was said in the open court. It was dealt with extensively in correspondence by the attorney to my Registrar and some of the letters addressed to me personally. These correspondence were forwarded to all the parties in the matter and clearly they had to apply their mind to it, but from 8 June no steps were taken by the Applicant in this Application to have this matter heard. I have stated on record, after giving judgment and may I add I had that transcribed too – which will be on the file, that the parties could proceed on the basis of the unsigned judgment which would only become available after 12 July as we were going into recess. 12 July was in the middle of the recess.

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The signed copy of the judgment of what was said in court, was delivered to all the parties on 15 July. I personally had intervened to have this matter heard, knowing that there was
5 an Application pending and counsel was engaged to provide the Court with a copy of the Application for Leave to Appeal.

More than a month after the final written judgment was delivered and the parties have been in receipt of the full
10 reasons of the Court already on 7 June, on 19 August only a copy of the Application for Leave to Appeal was delivered by Mr Oliver for which I am indebted to him and then the matter was set down by the Court and not the Applicant.

15 This type of conduct, that clearly wastes resources, is unacceptable and I am inclined to be of the view that the Court should show its displeasure with this type of litigation in the instant matter for an Application for Leave to Appeal therefore I will make an order of costs as well in dismissing the
20 Application for Leave to Appeal that reflects that displeasure and to at least not put the public purse as the First Respondent is a municipality out of pocket.

I, therefore, **DISMISS** the Application for Leave to Appeal with
25 costs, which costs should be on an attorney and client scale.



ERASMUS, J