IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO: 11635/2010

DATE: 14 MARCH 2012

In the matter between:

MARIO ORIANI-AMBROSINI Applicant

and

MAXWELL VUYISILE SISULU Respondent

J U D G M E N T

(Application for leave to appeal)

ALLIE, J:

In this matter, having considered the heads of argument presented by both sides, having heard oral submissions today, having relooked at the papers as well as the judgment delivered on 8 December 2011, I am still of the view that, of course the applicant's case must stand or fall on its papers and that is really a trite proposition and that in his arguments during the course of the matter being argued before me prior to me delivering judgment, it was clear that the applicant has substantially departed from his founding papers.

Dealing with the aspects of the majoritarian principle and the

protection of minorities, which applicant has argued once again before me today, I am still of the view that what the applicant did was in fact challenge the provisions in the rules and not the practice, because the applicant, and it is clear, failed to actually subject his bill to the prevailing practice and in the judgment which I have relooked at, I cannot see on the papers that was presented to me at the time, that form the basis of the judgment, how a different court will come to a different conclusion given the case made out by the applicant on his papers. I am not persuaded that another court will come to a different conclusion.

Turning to the issue of the costs, it is indeed so that where a matter can be resolved on a basis other than a constitutional basis, the applicant or a party may not try to bring the matter within the confines of the Constitution merely to claim a constitutional challenge. Clearly, what was required, was really a plain reading of the rules, which I believe I have undertaken and have dealt with in my judgment specifically with reference to paragraph 96 of my judgment and the plain reading of the meaning of Rule 235(4)(b). It was not a constitutional challenge in the proper sense of a constitutional challenge that I was faced with, but merely an attempt to claim that the rules in fact offend the Constitution when in effect a plain reading of the rules showed that it did not and so I am of

the view that a different court will not come to a different conclusion concerning the costs order made and so the application for leave to appeal is dismissed with costs.

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ALLIE, J

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