



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

Case No A28/13

In the matter between:

SOUTH AFRICAN LAND ARRANGEMENTS CC First appellant

GUIDO LOUIS MARC MARIEN Second appellant

ANNE JOSEPHA LOUIS DELAET Third appellant

and

NEDBANK LIMITED Respondent

**JUDGMENT – LEAVE TO APPEAL
DELIVERED 29 OCTOBER 2013**

GRIESEL J:

[1] On 19 September 2013 we dismissed the appellants' appeal against the magistrate's order granting summary judgment in favour of the respondent herein. The appellants now seek leave to appeal against our order.

[2] The first question that arises, is whether this court has the necessary jurisdiction to deal with the application for leave to appeal in the light of the provisions of s 16(1)(b) of the new Superior Courts Act, 10 of 2013 ('the Act'), which provides that (subject to certain irrelevant exceptions) 'an appeal against any decision of a Division on appeal to it, lies to the Supreme Court of Appeal *upon special leave having been granted by the Supreme Court of Appeal*' (emphasis added).

[3] Section 52(1) of the Act provides (again, subject to an exception which is irrelevant for present purposes) that 'proceedings pending in any court at the commencement of this Act, must be continued and concluded as if this Act had not been passed'. Section 52(2), in turn, provides:

'Proceedings must, for the purposes of this section, be deemed to be pending if, at the commencement of this Act, a summons had been issued but judgment had not been passed.'

[4] The Act came into operation on 23 August 2013. The appeal which forms the subject of the present application was concluded when judgment was passed on 19 September 2013. The subsequent proceedings, i.e. the application for leave to appeal against our judgment, were only launched on 3 October 2013 – well after the Act commenced. On a plain reading of s 52, therefore, we are satisfied that the present proceedings were not pending at the commencement of the Act, with the result that they are governed by the provisions of s 16(1)(b). It follows that this court does not have jurisdiction to hear the present application.

[5] This conclusion is also supported by the rule of interpretation that statutes which deal with matters of procedure (as does s 16(1)(b)) are of necessity both prospective *and* retrospective in operation.¹

[6] Even if we were to err in coming to this conclusion, and in the event of the matter going further, we wish to state that we would in any event have dismissed the application for leave to appeal for the reasons stated in the main judgment.

Order:

[7] For the reasons set out above, it is ordered that the present application for leave to appeal is struck from the roll with costs.

B M GRIESEL
Judge of the High Court

SAMELA J: I agree.

M I SAMELA
Judge of the High Court

¹ GE Devenish *Interpretation of Statutes* p 192 and the authorities cited therein. See also 25 *Lawsa* (2 ed) para 341.