



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

Case No: 17339/2020

In the matter between:

CJ NAUDE N.O

First Applicant

ESTELLE COETZEE N.O.

Second Applicant

**(First and Second Applicants, acting in their
Capacities as the duly appointed trustees of
CJ NAUDE FAMILIE TRUST IT NO. 3884/2014**

CHRISTIAAN JOHANNES NAUDE

Third Applicant

and

ESKOM HOLDINGS SOC LIMITED

Respondent

(Registration Number: 2002/015527/31)

**APPLICATION FOR LEAVE TO APPEAL
REASONS
DELIVERED ELECTRONICALLY: TUESDAY, 28 SEPTEMBER 2021**

NZIWENI AJ

Introduction

[1] A rule nisi was issued on 20 November 2020, directing the respondent to restore the supply of electricity to the farm Vrymansfontein. A hearing thereafter followed as to whether the rule nisi would be confirmed or dismissed. On 27 July 2021, judgment was delivered electronically, dismissing the rule nisi with costs.

[2] The applicant now seeks leave to appeal to the full bench, against both the judgment and the cost order. On 15 September 2021, the applicants, in an oral hearing moved their application for leave to appeal of that decision. After listening to the submissions, I dismissed the application for leave to appeal with costs, including costs of counsel. I then undertook to furnish reasons for my decision later. Those reasons follow.

[3] In the notice for leave to appeal, the applicants sets out the seven grounds upon which the application is based.

[4] The grounds raised for appeal are as follows; this court in its findings, erred by finding:

- "1. that the written acceptance by Respondent on 11 February 2020, to Applicants' offer which is contained in the letter by the Applicants' attorney dated 10 February 2020, did not constitute a legal and binding agreement between the parties, or at the very least between the Third Applicant and the Respondent.
2. that a later Settlement Agreement was a prerequisite before any legal effect can be given to the prior agreement that was reached on 11 February 2020;
3. that a Settlement Agreement is required to be made an Order of court as a prerequisite before any legal effect can be given to the prior agreement that was reached on 11 February 2020.
4. that the 30-day period stated in the agreement would only commence on the date that the parties appended their signature to the Settlement Agreement.

5. that the 30-day period stated in the agreement did not commence on the date that the Respondent accepted the proposals of the Applicants, or of the Third Applicant on 11 February 2020.
- 6 that the Respondent, on a balance of probabilities, succeeded with its defence against the operation of the *Rule Nisi*.
7. that the Respondent had the right to terminate the supply of electricity to the Applicants in terms of Section 21 (5) (a) and or (b) and or (c) of the Electricity Regulation Act 4 of 2006. "

[5] The leading authority as far as Rule 49 (1) (b) of the Uniform Rules of Court (the Rule) applies, is the case of *Songono v Minister of Law and Order* 1996 (4) SA 384.

It is trite that the grounds of appeal must be set out clearly, succinctly and in unambiguous terms, in a notice of application for leave to appeal. As stated in *Songono* supra, that the requirement, requiring the notice of appeal to set out the grounds clearly, succinctly, and unambiguously is imposed primarily to enable the court and respondent to be fully and properly informed of the case which the appellant seeks to make out and which the respondent is to meet in opposing application.

[6] Obviously, a party should also avoid unnecessary elaboration.

[7] So far as leave to appeal is concerned, Section 17 of the Superior Courts Act 10 of 2013 ("the Act) provides:

"17. (1) *Leave to appeal may only be given where the judge or judges concerned are of the opinion that—*

(a) (i) the appeal would have a reasonable prospect of success ; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration ;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."

[8] The issue before this court is whether, the court is going to grant the relief sought by the applicants. Put differently, whether the application satisfies the requirements of section 17 and the Rule.

[9] Essentially, the grounds to appeal are predicated on an assertion that the judgment of this court was erroneous with reference to the bulk of the findings made by it. Plainly, the applicants seek to challenge the factual findings made by this court.

[10] Mr. Titus, on behalf of the respondent contended that the grounds stated in the notice for leave to appeal fall dismally short of what is required in the Rule. It is the respondent's contention that on this ground alone the application may be dismissed.

Compliance with the Rule

[11] It is convenient to deal first with the compliance of the Rule. Evidently, there is a reason behind why the applicant should set out the grounds. It is indeed so that the notice of appeal does not substantiate on what basis the court erred in various respects. Differently put, there is no explanation in the notice as to why the grounds of appeal have merit. The applicants simply makes sweeping and general statements that the court erred and then rehearse facts, which were findings of the court.

[12] The grounds of appeal do not contain details or evidence to elucidate or canvass fully as to; what the grounds are of claiming that I erred, are based upon. Moreover, when regard is had to the notice of leave to appeal, the court is still left with the question as to how could the impugned findings be a mistake.

[13] Palpably, there is no assertion in the notice for leave to appeal that; the court, for instance, committed any of the following:

- failed to properly consider the evidence or to apply relevant legal principles; or
- made a mistake about the facts or the law; or
- completely misunderstood the evidence; or
- did not understand the facts; or
- failed to consider evidence or fact critical to the outcome of the matter; or
- in the context of the evidence in the pleadings, the court reached a wrong conclusion.
- that court's findings cannot be justified in the light of the evidence presented because of specific reasons.

[14] I should not be interpreted as saying that a notice of leave to appeal should be unduly prolix. However, the court should be readily able to recognize from the material placed in the notice that the applicants have reasonable prospects of success with his appeal.

[15] In this matter, gleaning from the notice of leave to appeal, one merely recognizes the points which the applicants desire to appeal upon. With the risk of

repeating myself, however, there is a lack of information provided to be able to determine whether the applicants have any prospects of success.

[16] In light of the above, the assertions made on behalf of the respondent, regarding the procedural issues, is correct. After careful consideration, I deem the failure to explain in the notice of appeal, the errors committed by this court, to be a fatal one. This is so because, even though I can still discern the grounds upon which the applicant desires leave to appeal, the notice in question is so skeletal; as such, it does not clearly outline how the court came to a wrong factual finding. In case I err in this regard, I will continue and deal with reasonable prospects of success.

Reasonable Prospects to succeed

[17] Given the fact that the applicant cannot demonstrate in his notice for leave to appeal why this court's findings were plainly made in error; the question, which aptly begs is, does he have prospects of success in the appeal?

[18] The applicants' general assertions of error, in my view create an impression that this court made a discretionary determination in deciding the following: the email from the employee of the respondent was not an acceptance of the offer; it was the parties' intentions that there should be a written settlement agreement which should be made a court order; when does the clock start to tick as far as the 30 day period stated in the offer is concerned. Yet, the decision was based on evidence as evinced by this court's judgment. Numerous factors were weighed by this court in arriving at the different findings.

[19] From what is stated in the notice, there is nothing to demonstrate an arguable case. Hence, the court gets the distinct impression that; the applicant simply wants to appeal merely because he does not agree with the decision of this court and that they

are of the opinion that the court was wrong. Clearly, the applicants want to reargue or, a rehearing of the matter in a different forum.


[20] The heads of arguments drafted on behalf of the applicants eloquently illustrates that the applicants are looking for rehearing of the matter. For instance, the following are contended in the heads of argument:

"However, it was respectfully contended on behalf of the Applicants that an agreement was concluded when Applicant's attorneys received the response from Respondent; It is respectfully contended ... that the specific paragraph of the letter dated 10 February 2020, was never intended to be conditional for any agreement to come into effect; if the Respondent wanted the agreement to be reduced to writing, they should have said so, in their email dated 11 February 2020, to Applicants' attorneys; the Applicants consider it necessary for another court to consider whether or not such agreement was concluded."

[21] I am not the least surprised that the applicant could not define, or elaborate on what basis this court was wrong; evidently, the pleadings which were placed before the court do not support the assertion that my findings were made in error. Contrary to the applicants' claim, the pleadings support and evinces that, on the evidence, the court was entitled to make the findings it did.

[22] This application falls foul of the Rule, section 17 of the Act and what was laid down in *Songono* case supra. Thus this court cannot accept that the applicant has any prospects of success with the appeal.

[23] Consequently, it is for the above-mentioned reasons that I made the order dated 15 September 2021.


CN NZIWENI
Acting Judge of the High Court