



**IN THE HIGH COURT OF SOUTH AFRICA  
(FREE STATE DIVISION, BLOEMFONTEIN)**

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|------------------------------|--------|
| Reportable:                  | YES/NO |
| Of Interest to other Judges: | YES/NO |
| Circulate to Magistrates:    | YES/NO |

Case no. **5900/2008**

In the application between:

**BERNADETTE MARION HESKETH**

Applicant

and

**HANRÉ KOEKEMOER  
JOHAN GEORGE LOCHNER VAN DER SCHYFF  
KOEKEMOER VAN DER SCHYFF CC**

First Respondent  
Second Respondent  
Third Respondent

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**APPLICATION FOR LEAVE TO APPEAL**

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**ORDER BY: DE KOCK, AJ**

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**HEARD IN TERMS OF RULE 16.5 OF THE FREE STATE PRACTICE RULES**

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**DELIVERED: This Order was handed down electronically and by circulation to the parties' representatives by e-mail and released to SAFLII. The date and time for handing down is deemed to be 13h00 on 14 December 2022.**

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[1] This is an application for leave to appeal to the Supreme Court of Appeal against the whole of the order granted by myself on the 28<sup>th</sup> April 2022.

[2] On 20 April 2022 I dismissed the Applicant's application with costs.

- [3] On 18 July 2022 I provided full reasons for the order granted on the 28<sup>th</sup> April 2022.
- [4] On 20 September 2022 the Applicant filed a Notice of application for leave to appeal.
- [5] Notification was given in terms of Rule 16.5 of the Free State Practice Rules directing the parties to file Heads of Argument and for the application for leave to appeal to be considered in Chambers.
- [6] The Applicant filed a Notice of Motion seeking condonation for the late filing of the Applicant's opposing affidavit. From the founding affidavit to the Notice of Motion it is, however, apparent that the Applicant seeks condonation for the late filing of her Heads of Argument in the application for leave to appeal. This application is not opposed. The Applicant's Heads of Argument was filed late a mere four (4) days and I am satisfied that none of the parties were prejudiced by such late filing of the Applicant's Heads of Argument. Thus in the interest of justice, I condone the late filing of the Applicant's Heads of Argument.
- [7] The Applicant's grounds for leave to appeal are set out in detail in her Notice of application for leave to appeal and need not be restated here.
- [8] In the Applicant's Heads of Argument is alleged that I have a close relationship with Me Rochelle Brink and that I should have, when reading the papers become aware thereof that it would not be in the best interest of justice for me to hear the application. It is submitted that there should have been a recusal and the matter should not have been adjudicated by me.
- [9] I have considered all the grounds for leave to appeal as well as the submissions in support thereof. I have once again considered my reasons for the order granted on the 28<sup>th</sup> April 2022.
- [10] I do not propose to repeat that which is set out in my reasons in as much as

that which was relevant was dealt with in my reasons for the order dated the 28<sup>th</sup> April 2022.

[11] I am of the considered view that the application for leave to appeal is without merits, the Applicant does not have reasonable prospects of success on appeal and there does not exist some other compelling reason why the appeal should be heard.

[12] In the result I grant the following orders:

1. Condonation is granted to the Applicant for the late filing of her Heads of Argument pertaining to the application for leave to appeal brought under case number 5900/2008.
2. The Applicant is ordered to pay the costs occasioned by the application for condonation.
3. The application for leave to appeal is dismissed with costs.

  
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DE KOCK, AJ

**Appearance on behalf of the Applicant:**

Attorney: - RW Africa Attorneys, c/o Bezuidenhouts Inc, 104 Kellner Street, Westdene, Bloemfontein.

Counsel: - Advocate S Joubert SC and Advocate H Bothma.

**Appearance on behalf of the Respondents:**

Attorney: - Symington & De Kok Attorneys, 169B Nelson Mandela Drive, Westdene, Bloemfontein.

Counsel for First to Third Respondents:

- Advocate H J Benade.