



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

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

Case number: 4707/2020

In the matter between:

**SPE PROJECT MANAGEMENT CC**

Applicant

and

**J.G. BLIGNAUT N.O.**

1<sup>st</sup> Respondent

**PETRUS ARNOLDUS ODENDAAL N.O.**

2<sup>nd</sup> Respondent

**SUSAN GERTRUIDA BLIGNAUT N.O.**

3<sup>rd</sup> Respondent

(In their capacities as trustees for the time being of the  
JG Bignaut Boerdery Trust, IT no. 883/2012)

**BELLA LANDGOED (PTY) LTD**

4<sup>th</sup> Respondent

**HENDRIK CHRISTOFFEL KRUGER**

5<sup>th</sup> Respondent

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**HEARD ON:**

This application was determined on the basis of written arguments instead of an oral hearing as provided for in Rule 16.5 of this court's practice directives.

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**JUDGMENT BY:**

DANISO, J

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**DELIVERED ON:**

This judgment was handed down electronically by circulation to the parties' representatives by way of email and by release to SAFLII. The date and time for hand-down is deemed to be 09h00 on 10 June 2022.

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- [1] The applicant seeks leave to appeal the judgment of this court and the order made on 21 December 2021 in terms of which the *rule nisi* obtained by the applicant on 10 December 2020 was discharged with costs.
- [2] In terms of the *rule nisi*, the applicant was granted an interim interdict *pendete lite* by Jordaan, J in terms of which a notarial bond was perfected in favour of the applicant and the applicant was authorized to take possession of the respondents' movable assets to the value of R5 625 000.00 pending the final adjudication of the action instituted by the applicant against the respondents for the repayment of loans totalling the amount of R4 115 533.15. Both the applications for the interim interdict and the confirmation thereof were opposed by the respondents.
- [3] The impugned order followed upon my finding that the applicant was not entitled to the order sought due to the significant discrepancies in the underlying causa upon which the applicant relied for the relief it sought.
- [4] The applicant's grounds for appeal can essentially be summarized as follows, in dismissing the application this court failed to apply the test for interim interdicts, it erred in its finding that the applicant did not make a proper disclosure in its quest to obtain the *rule nisi* on an ex parte basis and that if the true facts were disclosed, Jordaan J would not have granted the *rule nisi* whereas, as regards the identity of the parties to the consolidation agreement Jordaan J was well aware of existence of the entity Orange Kwagga (Pty) Ltd and the role it played in the said agreement. Any discrepancies in the amounts claimed in the affidavit and the summons do not justify the dismissal of the application as this court was not called upon to determine the extent of the respondent's indebtedness and, the conclusion that the applicant sought to perfect a debt owed to another entity and that only the fifth respondent was a party to the consolidation agreement is also erroneous. It is in that regard that the applicant submits that that the appeal would have reasonable prospects of success therefore, leave to appeal should be granted to the Full Court of this Division.

- [5] The respondents abide by the decision of this court and as per the applicant's consent, the application is determined on the basis of the applicant's written heads of argument.
- [6] In paragraphs 6 to 8 of my main judgment, I have adequately dealt with the aspect relating to the discrepancies in the applicant's main claim. I deem it unnecessary to repeat my reasons for my findings in this judgment.
- [7] It is for the applicant to set out the facts which establishes that it has a clear or *prima facie* right entitling it to the interim interdict pending the final determination of the action. The assessment of the merits of the claim upon which the applicant relies for the interim relief is a factor that a court must consider in its determination of whether the applicant has established this requirement for the reason that, where the applicant's prospects of ultimate success are nil, the court would be entitled to refuse an interdict. It has also been held that where an applicant's prospects are non-existent the interdict may be granted on the basis that the balance of convenience favours the applicant. These principles were illustrated in *Olympic Passenger Service Olympic Passenger Service (Pty) Ltd v Ramlagan* **1957 (2) SA 382** (D) at 383 C.
- [8] I'm of the view that another court may find that despite the absence of good prospects in the action the balance of convenience favour the applicant in the sense that the applicant would be prejudiced if the interdict is refused, the court should therefore apply its discretion in the applicant's favour and grant the interim order.
- [9] In the result the following order is made:
1. The applicant is granted leave to appeal to the Full Bench of this division.
  2. The costs of this application shall be costs in the appeal.

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**N S DANISO, J**

## APPEARANCES:

Counsel on behalf of Applicant:

Instructed by:

Adv. N. Snellenburg, SC

Symington &amp; De Kok

**BLOEMFONTEIN**

Counsel on behalf of Respondents:

Instructed by:

Adv. R. van der Merwe

GD Hoffman, Maree &amp; Partners

**BLOEMFONTEIN**