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: 641/2021

In the between:

EUGENE PRINSLOO Applicant

and

DONOVAN THEODORE MAJIEDT N.O. First Respondent

REINETTE STEYNSBURG N.O. Second Respondent

In Re:

DONOVAN THEODORE MAJIEDT N.O. First Plaintiff

REINETTE STEYNSBURG N.O. Second Plaintiff

and

EUGENE PRINSLOO Defendant

CORAM: VAN ZYL, J

HEARD ON: 28 AUGUST 2023

DELIVERED ON: 20 FEBRUARY 2024

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[1] This is an application for leave to appeal which deals with the interpretation of Section 63 of the Long-Term Insurance Act, 52 of 1998 ("*the LTIA*").

[2] The applicant was the defendant in the court *a quo* and the respondents were the plaintiffs. I will refer to the parties as in the present application.

[3] This matter was initially enrolled as a civil trial. At the commencement of the trial I was requested, by agreement between the parties, to order a separation of issues in terms of Rule 33(4). In this regard they provided me with a draft order and I made the following order in terms thereof:

> "1. Issues are separated in terms of Rule 33(4) as set out in the bundle entitled 'Separation of Issues – Rule 33(4)';
>
> 2. The separated issue to be determined is whether the proceeds of a long-term life insurance policy received by Nelly Arlene Prinsloo are protected (or not) in terms of the provisions of Section 63 of the Long-Term Insurance Act, No. 52 of 1998;
>
> 3. Until determination of the separated issue in 2 supra (whether by appeal or otherwise), all further proceedings in the action under case no. 641/2021 are stayed."

[4] The aforesaid "Separation of Issues - Rule 33(4)" bundle ("*the bundle*") contained a document also titled "Separation of Issues – Rule 33(4)" ("*the Rule 33(4)-document*"), together with annexures

thereto. In paragraph 1.2 of the Rule 33(4)-document the parties agreed that I was to determine the separated issue "*on the common cause facts and assumed facts*" set out in the document.

[5] I concluded with the following order, which is the order which is being appealed against:

> "1. The benefits of the long-term life insurance policy received by Nelly Arlene Prinsloo are not protected in terms of the provisions of section 63 of the Long-Term Insurance Act, 52 of 1998.
>
> 2. The costs in respect of the determination of the aforesaid separated issue stand over for later adjudication."

Applicable legal principles pertaining to applications for leave to appeal:

[6] Section 17(1)(a) of the Superior Courts Act, 10 of 2013 ("*the Act*") determines as follows:

> "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) …"

[7] In the judgment of **Acting National Director of Public Prosecutions v Democratic Alliance *In Re* Democratic Alliance**

v Acting National Director of Public Prosecutions (19577/09) [2016] ZAGPPHZ 489 (24 June 2016) the court held at para [25] of the judgment that the Act has raised the bar for granting leave to appeal and in this regard it referred to the judgment of **The Mont Chevaux Trust (IT 2012/28) v Tina Goosen and 18 Others** 2014 JDR 2325 (LCC), in which judgment the court held as follows at para [6]:

> "It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see **Van Heerden v Cronwright & Others** 1985 (2) SA 342 (T) at 343H. The use of the word 'would' in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against."

See also **Rohde v S** 2020 (1) SACR 329 (SCA) at para [8] and **Fair-Trade Independent Tobacco Association v President of the Republic of South Africa and Another** (21688/2020) [2020] ZAGPPHC 311 (24 July 2020) at para [4].

[8] In considering whether there is some other compelling reason why the proposed appeal should be heard, an important question of law may constitute such a compelling reason. However, the merits thereof still need to be considered in deciding whether to grant leave to appeal or not. In **Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd** 2020 (5) SA 35 (SCA) at para [2] the court determined as follows in this regard:

[2] In order to be granted leave to appeal in terms of s 17(1)*(a)*(i) and s 17(1)*(a)*(ii) of the Superior Courts Act an applicant for leave must satisfy the court that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard. If the court is unpersuaded of the prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. A compelling reason includes an important question of law or a discrete issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive. Caratco must satisfy this court that it has met this threshold." (My emphasis)

[9] In **Talhado Fishing Enterprises (Pty) Ltd v Firstrand Bank Ltd t/a First National Bank** (1104/2022) [2023] ZAECQBHC 16 (14 March 2023) the aforesaid principles were duly followed and applied:

"4. Irrespective of the prospects of success, there may nevertheless exist a compelling reason for the appeal to be heard. The subsection does not contain an exhaustive list of criteria, and each application for leave to appeal must be decided on its own facts.

5. It is the applicant for leave to appeal must demonstrate that there is a compelling reason why the appeal should be heard.

6. …

7. Other compelling reasons include the fact that the decision sought to be appealed against involves an important question of law and that the administration of justice, either generally or in the particular case concerned, requires the appeal to be heard. …

8. As far as compelling reasons are concerned, the merits of the prospects of success remain vitally important and are often decisive."

[10] In terms of section 16(1)(a)(i) of the Act the proposed appeal lies either to the Supreme Court of Appeal or a full court of this Division, depending on the direction issued in terms of section 17(6). Section 17(6)(a) of the Act determines the following:

(6) *(a)* If leave is granted under subsection (2) *(a)* or *(b)* to appeal against a decision of a Division as a court of first instance consisting of a single judge, the judge or judges granting leave must direct that the appeal be heard by a full court of that Division, unless they consider-

(i) that the decision to be appealed involves a question of law of importance, whether because of its general application or otherwise, or in respect of which a decision of the Supreme Court of Appeal is required to resolve differences of opinion; or

(ii) that the administration of justice, either generally or in the particular case, requires consideration by the Supreme Court of Appeal of the decision,

in which case they must direct that the appeal be heard by the Supreme Court of Appeal."

The merits of the application for leave to appeal:

[11] Both Mr Pretorius, who appeared on behalf of the applicant, and Mr Meintjies, who appeared on behalf of the respondents, submitted lengthy and well-reasoned heads of argument in support of their respective submissions.

[12] The Notice of Appeal filed on behalf of the applicant consists of 28 grounds of appeal. For the sake of brevity, I do not intend repeating same herein. The said Notice of Appeal concludes by stating that I erred in not having granted the following order:

"1. The benefits of the long term insurance policy received by Nelly Arlene Prinsloo are protected in terms of the provisions of section 63 of the Long-Term Insurance Act, 52 of 1998.

2. Plaintiff`s claims are dismissed.

3. Plaintiffs are ordered to pay the costs of defendant."

[13] In my view I gave a detailed judgment as to how I arrived at the order I made. It comprises, firstly, an interpretation of section 63 of the LTIA and, secondly, a consideration of the applicability of section 63 in particular circumstances. I thereupon came to the following conclusions at paragraphs [49] and [50] of my judgment:

"[49] …

1. The word '*person*' in section 63 of the LTIA is to be interpreted to be a reference to the policyholder and likewise the words '*his/her*' and '*he/she*' are linked to the word '*person*' and are consequently also to be interpreted to be references to the policyholder.

2. Section 63 is only applicable in instances where the policyholder, or his spouse, is the life insured and the said policyholder is also the beneficiary in terms of the policy.

3. In an instance where a third party, that is somebody else than the policyholder, is appointed as beneficiary and the beneficiary

accepts the appointment upon the death of the policyholder, section 63 is not applicable.

The separated issue:

[50] In the present matter, where the deceased as policyholder appointed Nelly as beneficiary, which appointment Nelly accepted upon the deceased`s death, section 63 is not applicable."

[14] It is important to specifically point out that my conclusion and order was not fully in accordance with any of the two parties' contentions and consequently it also did not fall within the ambit of the parties' agreement pertaining to costs. In this regard I stated as follows at paragraphs [53] to [55] of my judgment:

"**Costs:**

[53] As indicated earlier in the judgment, the parties agreed that should I find in favour of the plaintiffs' interpretation of section 63 of the LTIA, then costs should be awarded to the plaintiffs in respect of the separated issue.

[54] However, in my view, my findings do not fall within the ambit of the aforesaid agreement, in that:

1. Although I do find in favour of the plaintiffs' interpretation that the word '*person*' in section 63 of the LTIA is to be interpreted to be a reference to the policyholder and likewise that the words '*his/her*' and '*he/she'* are also to be interpreted to be references to the policyholder; and

2. Although I agree with the plaintiff`s contention that, in circumstances where section 63 is indeed applicable, upon the policyholder`s death the policy benefits are protected only against the debts of the policyholder;

3. I, however, substantively differ from the plaintiff`s interpretation of section 63 in so far as it was the plaintiff`s case that the said section is applicable in the circumstances of the present matter where a third party was appointed as beneficiary and accepted the appointment upon the policyholder`s death and received payment of the policy benefits directly and not via the estate of the deceased;

4. Since, according to my finding, section 63 of the LTIA is not applicable to the present matter.

[55] In the circumstances I deem it apposite that the costs in respect of the determination of the separated issue stand over for later adjudication."

[15] A repeat or reconsideration of all the arguments presented by the respective parties will result in a second judgment similar in length and detail than my current judgment. It suffices to state that, in my view, there is a reasonable prospect that a different court would come to a different conclusion, *inter alia,* based on the following:

1. My conclusion was not fully in accordance with the contention of either of the two parties.

2. The interpretation of section 63 of the LTIA is related to and/or linked to its applicability in the present circumstances and had I erred in respect of the interpretation, it most probably will have an impact upon its applicability.

3. I did not pronounce upon the impact of the marriage in community of property, since I found that I was not called upon to do so. If I had erred in this respect, it may impact upon the outcome.

4. I put a lot of effort, time and research into my consideration of the outcome of the judgment to the extent that I cannot exclude that there is a reasonable prospect that a different court would come to a different conclusion based on the same (and/or other) research.

[16] In the Notice of Appeal the applicant applied for leave to appeal to the Full Court of this Division. Mr Meintjies, however, submitted that should I grant leave to appeal (which he is still opposing), same should be granted to the Supreme Court of Appeal.

[17] In my view the issues in this proposed appeal involve questions of law of public importance because of their general application, It consequently constitutes a compelling reason as intended in section 17(1)(a)(ii) of the Act and which, in my view, carries reasonable prospects of success to the extent as required by the Act and the relevant case law. The many academic articles are, in

my view, further indicative of the importance of the legal questions raised by this appeal.

[18] In the circumstances I deem it apposite that leave be granted to appeal to the Supreme Court of Appeal.

[19] With regard to costs, there is no reason why the usual order that the costs of the application for leave to appeal should not be costs in the appeal.

Order:

[20] The following order is consequently made:

1. Leave to appeal is granted to the applicant to appeal to the Supreme Court of Appeal against the whole of the order granted and the judgment delivered by the court *a quo.*

2. The costs of the application for leave to appeal are to be costs in the appeal.

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C. VAN ZYL, J

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