IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNEBSURG

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: YES

DATE: 8 DECEMBER 2021

SIGNATURE OF ACTING JUDGE:

Case number: 19/01548

In the matter between:

GROBLER, HENDRIK Applicant

and

MFC (A DIVISION OF NEDBANK LIMITED) Respondent

JUDGMENT
APPLICATION FOR LEAVE TO APPEAL

SLON AJ

1. On 2 November 2021 I handed down judgment (dated 31 October 2021) ('the former judgment') in this matter, in which the present applicant was the respondent and the

present respondent the applicant. I shall refer to the parties as they now appear in this application for leave to appeal as in the court heading above.

2. The former judgment comprised the reasons for my refusal of a postponement applied for by the applicant and for my order granted on 6 August 2021 in favour of the respondent in the main application. The latter was in effect a default order because the applicant's then counsel, Ms Neuland, advised me that she was briefed only to apply from the bar for the postponement of the main application. Once I had refused the postponement, she withdrew. I made reference to her role in this regard at paragraph 14 of the former judgment.

3. As noted in paragraph 2 of the former judgment, the applicant was given leave to supplement the grounds contained in his application for leave to appeal in the light of the contents of the former judgment of which, as there explained, he had not had sight at the time of the delivery of the application for leave to appeal. The applicant elected not to avail himself of that opportunity.

4. This application was, after several delays in the Registrar's office, finally set down for 09:00 on Wednesday 8 December 2021. The applicant was duly given notice thereof by way of an email from Ms Shertina Letlaka of the Registrar's office, sent to his personal email address (his application for leave to appeal was drafted in person) and the respondent's representatives at 09:56 on Monday 29 November 2021. There were also emails sent to the applicant prior to that date from both the respondent's attorneys and the Registrar concerning the proposed date for the application; and two emails to him on the evening of 7 December 2021 concerning, and then furnishing him with, the Microsoft Teams link to the hearing on 8 December

2021. There is no reason to believe that he did not receive any of those emails. I have checked the address by which they were sent to him, and it is correct.

5. When the matter was called at 09:05 on 8 December 2021, there was no appearance by or on behalf of the applicant. Mr Durandt again appeared for the respondent and Mr Georgiades, his instructing attorney, was present.

6. Mr Georgiades informed me, with my leave under the circumstances, that he had already attempted without success that morning to contact the applicant. It appeared that the applicant was avoiding his calls, having answered the first one, but then disconnected it, and having ignored his subsequent calls. I then adjourned until 09:20 and requested the Registrar's representative assisting me, Mr Reddy, to telephone the applicant again and require his presence at the hearing within ten minutes.

7. When court resumed at 09:20, I was informed by Mr Reddy that he had attempted to call the applicant five times between 09:10 and 09:18 at the number given to him by Mr Georgiades (which, I note, is the same number given by the applicant himself in his application for leave to appeal) but to no avail: the applicant did not answer his telephone.

8. All efforts proving futile to contact the applicant, I then proceeded to hear the application in his absence. I granted an order that the application be dismissed with costs payable by the applicant on the scale as between attorney and client. My reasons follow.

9. The application is one directed against the refusal of the postponement. As Mr Durandt correctly pointed out, no such application lay against the granting of the order on the merits since, as I have said, that was one granted in default of any appearance. Any remedy in that regard might in theory have been in the nature of a rescission of judgment. I enquire no further into that question.

10. The order refusing the postponement was not, in my view, appealable.

11. Firstly, it did not dispose of any substantial portion of the merits, determine the rights of the parties or bear any of the other commonly apprehended hallmarks of finality of which interlocutory orders are ordinarily required to be possessed in order to qualify for appealability. See: ***Friday t/a Pride Paving v Rubin***[1] and ***China Construction Bank Corporation Johannesburg Branch v Gobel Agentskappe CC & Others***.[2] It was always open to the applicant to appear and to argue the merits of the application on the papers after the refusal of the postponement. He declined to do so; and did so without any explanation – despite my attempts, detailed in the former judgment, to accommodate and cater for his alleged predicaments.

12. Secondly, a decision on an application for postponement is one in which the exercise of a discretion, properly so called, is entailed. It cannot therefore ordinarily be challenged on appeal merely because a higher Court would have exercised its discretion differently. One or more of the special grounds must be advanced and demonstrated: ***Myburgh Transport v Botha t/a SA Truck Bodies***.[3]

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[1] 1992 (3) SA 452 (C)

[2] Unreported GNP case number 52295/2015; www.saflii.org/za/cases/ZAGPPHC/2017/1003.pdf - 2 October 2017; *per* Basson J.

[3] 1991 (3) SA 310 (NmS). The special grounds were described 314G-315B as follows: 'An appeal Court is, however, entitled to, and will in an appropriate case, set aside the decision of a

13. Most significantly, the interests of justice, in my view, do not favour the applicant in any manner whatsoever. *Au contraire*: the interests of justice clearly favour the respondent. The various factors mentioned above and in the former judgment serve as the reasons for my conclusion in this regard.

14. The applicant's failure to appear at the hearing of his own application for leave to appeal, entirely without explanation, is the final nail of the coffin for him. He has, almost routinely, put all the parties involved (including the Court) to considerable trouble and effort to accommodate him, only to run away and disappear at the last moment. It is difficult to avoid the clear inference that he is playing a manipulative and improper game of cat and mouse.

15. The applicant's reasons for seeking leave to appeal illuminate this approach and fortify these conclusions yet further. Grounds 1 and 2 claim that he was precluded by personal circumstances from arguing, or was not in a position to argue, the main application. There is not a shred of evidence suggesting this. As set out in the former judgment, he was given every opportunity of dealing with the main application and was never precluded from doing so, even assuming that his various excuses had any truth to them. Point 4 of the application for leave to appeal states that he was not in a position to file a condonation application for his failure to obey the order of Killops AJ to deliver his heads of argument. That order (referred to in paragraph 6 of the former judgment) was handed down on 29 July 2020. The hearing of the main

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trial Court granting or refusing a postponement where it appears that the trial Court had not exercised its discretion judicially, or that it had been influenced by wrong principles or a misdirection on the facts, or that it has reached a decision which in the result could not reasonably have been made by a Court properly directing itself to all the relevant facts and principles.'

application was on 6 August 2021, more than a year later. When, one wonders, would the applicant have been rendered 'in a position' to deliver such an application?

16. There is not the slightest merit in any of these, or in the other, grounds advanced, even if I were to have been persuaded that the order was appealable.

17. The attitude and conduct of the applicant, in my view, comprises a species of contempt of Court. He professes to be a 'corporate legal advisor' and so cannot be genuinely ignorant of what it means to be before a Court in this country. He has been represented from time to time in this application by attorneys and counsel. He has already attempted with some success to exploit the Court's sympathy for an unrepresented litigant. His conduct in this regard has been almost uniformly repugnant.

18. These and the matters referred to in the former judgment impel me to the conclusion that the application for leave to appeal was, to the knowledge of the applicant, hopeless from the start, and was pursued with the sole purpose of obtaining a further illegitimate extension of time before the order could be executed, and to frustrate the respondent for as long possible in its right to obtain justice.

19. The conduct of the applicant is, in my view, therefore to be characterized as vexatious and abusive, and an end must be put to it. Where litigants conduct themselves in this manner, I see every reason for the award of a punitive order of costs.

20. For these reasons, I ordered that the application for leave to appeal is dismissed with costs payable by the applicant on the scale as between attorney and client.

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B M SLON
Acting Judge of the High Court
Gauteng Local Division, Johannesburg

This judgment was prepared and authored by Acting Judge Slon. It is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on Caselines.

HEARD ON:	8 December 2021
ORDER MADE ON:	8 December 2021
DATE OF JUDGMENT:	8 December 2021
DATE ON WHICH JUDGMENT HANDED DOWN:	8 December 2021

For the Applicant:	Mr J J Durandt
Instructed by:	N Georgiades Attorney
For the Respondent:	No appearance