

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 18493/2021

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED.

11th April 22

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Date

.....
ML TWALA

In the matter between:

**SILVANA
APPLICANT**

IDA

BARBAGLIA

And

**MICHAEL ANTINIO VINCENZO BARBAGLIA
RESPONDENT**

FIRST

**PABAR (PROPRIETARY) LIMITED
RESPONDENT** **SECOND**

**CHARL EDWARD ANDERSON N.O.
RESPONDENT** **THIRD**

**GREGORY MASSIMO BARBAGLIA
RESPONDENT** **FOURTH**

**LEONARD PULE N.O.
(In his capacity as the Master of the High
Court, Johannesburg as defined by the
Administration of the Estate Act, 66 of 1965)
RESPONDENT** **FIFTH**

Case No: 21928/2021

**SILVANA
APPLICANT** **IDA** **BARBAGLIA**

And

**MICHAEL ANTINIO VINCENZO BARBAGLIA
RESPONDENT** **FIRST**

**PABAR (PROPRIETARY) LIMITED
RESPONDENT** **SECOND**

**CHARL EDWARD ANDERSON N.O.
RESPONDENT** **THIRD**

**GREGORY MASSIMO BARBAGLIA
RESPONDENT**

FOURTH

JUDGMENT

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the judgment is deemed to be the 11th of April 2022

TWALA J

- [1] For the sake of convenience, in this judgment I shall refer to the parties as in convention. Furthermore, this Court directed that this matter be determined on the papers without an oral hearing, as provided for in the Gauteng Division Consolidated Directives; re Court Operations during the National State of Disaster issued by the Judge President of this Division on the 18th of September 2020.
- [2] The first and second respondents launched this application for leave to appeal against the whole of the judgment and order of this Court in both the case numbers as reflected above handed down electronically on the 22nd of March 2022 granting the applicant the interim relief and the relief as prayed for in terms of section 163 of the Companies Act, 71 of 2008.

[3] It is now settled law that leave to appeal may only be given where the Judge or Judges concerned are of the opinion that the appeal would have a reasonable prospect of success or where there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[4] See section 17 of the Superior Courts Act, 10 of 2013 provides the following:

“Leave to Appeal

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)

(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.”

[5] The grounds for the leave to appeal are succinctly stated in the notice of application for leave to appeal which encompasses the issues in both cases and I do not intend to restate them in this judgment. Furthermore, I would

like to extend my gratitude and appreciation to counsel for the parties for the submissions made in their concise heads of argument.

[6] It is trite law that the spoliation relief is an interim remedy since it does not deal with the issues with regards to the rights of the parties. To put it differently, the spoliation relief is interim since it does not dispose of all or substantial issues in the case. It is my view therefore that since the spoliation order is interim in nature, it is not appealable and the application for leave to appeal falls to be dismissed on this point. (*See Economic Freedom Fighters v Gordhan and Others; Public Protector and Another v Gordhan and Others 2020 (8) SA 325*)

[7] In as far as the judgment and order with regard to the section 163 application, I am satisfied that I considered and dealt with all the issues raised in the application for leave to appeal in my judgment. I am of the respectful view that there are no prospects of success in the appeal of this judgment. To put it in other words, there are no prospects that another court may come to a different decision in this case. It follows therefore that the application for leave to appeal falls to be dismissed.

[8] In the circumstances, I make the following order:

1. The application for leave to appeal on both cases is dismissed;
2. The first respondent is liable for the costs of both applications including the costs of two counsel.

TWALA M L

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Filing of Heads of Argument: 6th April 2022

Date of Judgment: 11th April 2022

**For the Applicant: Advocate AE Franklin SC
Advocate FR McAdam**

**Instructed by: Bove Attorneys Incorporated
Tel: 011 485 0424
vickyb@boveattorneys.co.za**

**For the First and Second Respondent: Advocate J Peter SC
Advocate C Dittberner**

**Instructed by: Werkmans Attorneys
Tel: 011 535 8000
ivonwildenrath@werkmans.com**

**For the Third Respondent: Lawtons Africa
Tel: 011 775 6373
Arnold.shapiro@lawtonsafrica.com
charland@pabar.co.za**

**For the Fifth Respondent: Bowmans Attorneys
Tel: 011 669 9555**

Tim.gordon-grant@bowmans.com