



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

Case No: 031295/2022

Date of hearing :26/01/2023

Date judgment delivered: 26/01/2023

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

JOHNY JACQUES OLIVIER

APPLICANT

AND

XOLANI MBANGA N.O.

FIRST RESPONDENT

SUZETTE BOSMAN N.O.

SECOND RESPONDENT

LISA ANNE KROPMAN

THIRD RESPONDENT

COHEN N.O.

PALESA KADI N.O.

FOURTH RESPONDENT

URSICLOX (RF) (PTY) LTD

FIFTH RESPONDENT

PHATISANI NDEBELE

SIXTH RESPONDENT

SUZETTE SOETWATER

SEVENTH RESPONDENT

INDUSTRIAL DEVELOPMENT

EIGHTH RESPONDENT

CORPORATION OF SOUTH AFRICA LIMITED

JUDGEMENT – LEAVE TO APPEAL

Strijdom AJ

1. This is an application for leave to appeal my judgement handed down on 27 October 2022 wherein the application for leave to intervene was dismissed.
2. Leave is sought to the Full Court of the Gauteng Division JHB.
3. The applicant's grounds of appeal are summarily set out hereunder:

- 3.1 The application for leave to intervene was not moved before the learned Judge.
- 3.2 The first and fourth Respondents instituted the main application on an urgent basis. Accordingly, as the matter was before the urgent court in principle the question of urgency ought to have been argued and determined first, as opposed to the learned Judge entertaining the merits of the application for leave to intervene.
- 3.3 The learned Judge dismissed an application which had not been moved before him.
- 3.4 The First and Fourth Respondents, also being the Respondents in the application for leave to Intervene, prematurely and erroneously raised a point in limine in respect of the application for the leave to intervene which had not been placed by the applicant before the learned Judge for determination.
- 3.5 The main matter was struck from the roll for lack of urgency and therefore the application for leave to intervene should never have come to be required to be moved or any aspect in relation thereto being considered or argued.
- 3.6 It was erroneous of the learned Judge to dismiss the application for leave to intervene on the basis that there was no resolution authorising the applicant to proceed with the application for leave to intervene.
- 3.7 The learned Judge failed to have regard to the fact that a Trustee always holds the right to initiate proceedings to challenge conduct of other

Trustees and that such challenge does not require a resolution from the Trust itself.

3.8 The learned Judge erred in failing to have regard to the fact that the power of attorney that was produced on 25 October 2022 stated that the applicant for leave to intervene was acting in his personal capacity.

4. Section 17 (1)(a) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be granted where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success, or if there is some compelling reason why the appeal should be heard including conflicting judgements on the matter under consideration.
5. Each application for leave to appeal must be decided on its own facts. Some examples of what will be regarded as compelling reasons have been identified. It includes:
 - (a) The substantial importance of the case to the applicant or to both applicant and respondent.
 - (b) The decision sought to be appealed against involves an important question of law.
 - (c) The administration of justice either generally or in the particular case concerned requires the appeal to be heard.
 - (d) An issue of public importance which will have an effect on future matters.

6. The Superior Courts Act has raised the bar for granting leave to appeal in the Mont Chevaux Trust (IT 2012/28) v Tina Goosen and 18 others. The Court held as follows:

“It was 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. The use of the word “would” in the new statute indicated a measure of certainty that another court will differ from the court whose judgement is sought to be appealed against;

7. Having considered the grounds of appeal and submissions made by counsel for the parties I am of the view that there is a reasonable prospect of success that another could would come to a different conclusion.
8. In the result the application for leave to appeal is granted.
9. Costs will be costs in the appeal.

**STRIJDOM JJ
ACTING JUDGE OF THE
HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG**

Heard on: 26.01.2023

Judgement: 26.01.2023

Appearances:

For the applicant: K van Huyssteen
Instructed by: Fluxmans Incorporated

For the respondents: T Moloï

Instructed by: Rams Attorneys