



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

Case No.: 19791/2020

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

05/02/24

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Date

.....
ML TWALA

In the matter between:

**MERCANTILE BANK LIMITED
A DIVISION OF CAPITEC BANK LIMITED**

APPLICANT

And

**MICHAEL MAURICE ROSS
MICHELLE BEVERLEY ROSS**

**FIRST RESPONDENT
SECOND RESPONDENT**

JUDGMENT

Delivered: This judgment and order 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 order is deemed to be 5 February 2024.

TWALA J

- [1] For the sake of convenience I propose to refer to the parties in this judgment as they were referred to in the main application and judgment.
- [2] The first and second respondents launched this application for leave to appeal against the whole of the judgment and order of this Court, delivered electronically on 8 May 2023, granting the applicant the relief as prayed for in the notice of motion.
- [3] Before I proceed with the application for leave to appeal in this judgment, I propose to deal with a patent error in relation to paragraph 3 of the order in the main judgment. It has been brought to my attention that I ordered the second respondent to pay the costs of the intervention application whereas my intention was to order the second respondent to pay the costs of the main application. There was no reason for me to order the second respondent to pay the costs of the intervention application since the intervention application was not before me for determination, but it was the intervening party against whom the order for costs was intended.
- [4] Rule 42 of the Uniform Rules of Court provides the following:
- “Variation and Rescission of Orders*
- (1) ***The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary:***
- (a)
- (b) ***An order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;***
- (c)

[5] In correcting the error in paragraph 3 of the order of the main judgment in terms of Rule 42, the whole of paragraph 3 is deleted and replaced with the following:

“Paragraph 3

3. The second respondent is liable to pay costs of the application.”

[6] 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.

[7] 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.”

[8] The grounds for the leave to appeal are succinctly stated in the notices of application for leave to appeal which encompasses the issues in both cases for the first and second respondents, 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 heads of argument and the submissions made at the hearing of this case.

[9] I am satisfied that I have covered and considered all the issues raised in the application for leave to appeal in my judgment. I am therefore not persuaded by the respondents that

there are reasonable prospects of success in this appeal. Put in another way, I am of the considered view that there is no prospect that another Court would come to a different conclusion in this case. Therefore, the application for leave to appeal the judgment falls to be dismissed with costs.

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

1. **The application for leave to appeal is dismissed with costs.**

TWALA M L
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION

Date of Hearing: 1st of February 2024

Date of Judgment: 5th of February 2024

APPEARANCES

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