

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



Case number: 48149/2021

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

**24 October 2022**

DATE

SIGNATURE

In the matter between:

**PAUL JOHANNES VAN DER MERWE**

**FIRST APPLICANT**

**ESTELLE KATHLEEN VAN DER MERWE**

**SECOND APPLICANT**

**CORNELIS JANSEN VAN DER MERWE**

**THIRD APPLICANT**

**ESTELLE KATHLEEN VAN DER MERWE N.O.**

**FOURTH APPLICANT**

(In her capacity as trustee of PJS Family Trust)

**ESTELLE KATHLEEN VAN DER MERWE N.O.**

**FIFTH APPLICANT**

(In her capacity as trustee of Paul Jan Stoffel Family Trust)

**ESTELLE KATHLEEN VAN DER MERWE N.O.**

**SIXTH APPLICANT**

(In her capacity as trustee of SJP Family Trust)

**PAUL JOHANNES VAN DER MERWE N.O.**

**SEVENTH APPLICANT**

(In his capacity as trustee of Big Five Family Trust)

**STOFFEL VAN DER MERWE N.O.**

**EIGHTH APPLICANT**

(In his capacity as trustee of Big Five Family Trust)

**ESTELLE KATHLEEN VAN DER MERWE N.O.**

**NINTH APPLICANT**

(In her capacity as trustee of Geluksfontein Besigheids Trust)

**ESTELLE KATHLEEN VAN DER MERWE N.O.**

**TENTH APPLICANT**

(In her capacity as trustee of Ina Van Der Merwe  
Gesins Testamentere Trust)

**CORNELIS JANSEN VAN DER MERWE N.O.**

**ELEVENTH APPLICANT**

(In his capacity as trustee of Ina Van Der Merwe  
Gesins Testamentere Trust)

**PAUL JOHANNES VAN DER MERWE N.O.**

**TWELFTH APPLICANT**

(In his capacity as trustee of Ina Van Der Merwe  
Gesins Testamentere Trust)

**STOFFEL VAN DER MERWE N.O.**

**THIRTEENTH APPLICANT**

(In his capacity as trustee of Ina Van Der Merwe  
Gesins Testamentere Trust)

**JAN VAN DER MERWE N.O.**

**FOURTEENTH APPLICANT**

(In his capacity as trustee of Ina Van Der Merwe  
Gesins Testamentere Trust)

**ESTELLE KATHLEEN VAN DER MERWE N.O.**

**FIFTEENTH APPLICANT**

(In her capacity as trustee of  
Ina Van Der Merwe Familie Trust)

**CORNELIS JANSEN VAN DER MERWE N.O.**

**SIXTEENTH APPLICANT**

(In his capacity as trustee of  
Ina Van Der Merwe Familie Trust)

**PAUL JOHANNES VAN DER MERWE N.O.**

**SEVENTEENTH APPLICANT**

(In his capacity as trustee of

Ina Van Der Merwe Familie Trust)

**STOFFEL VAN DER MERWE N.O.**

**EIGHTEENTH APPLICANT**

(In his capacity as trustee of

Ina Van Der Merwe Familie Trust)

**JAN VAN DER MERWE N.O.**

**NINETEENTH APPLICANT**

(In his capacity as trustee of

Ina Van Der Merwe Familie Trust)

**LIMPOPO WEST FARMING AND BUSINESS**

**TWENTIETH APPLICANT**

**ENTERPRISES (PTY) LTD**

**ELLETSE ONDERNEMINGS (PTY) LTD**

**TWENTY FIRST APPLICANT**

And

**VAN WYK AUDITORS**

**FIRST RESPONDENT**

**JUSTUS VAN WYK**

**SECOND RESPONDENT**

**VAN WYK BESTUURSDIENSTE (PTY) LTD**

**THIRD RESPONDENT**

(Registration Number: 2013/041672/07)

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**JUDGMENT – APPLICATION FOR LEAVE TO APPEAL**

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**NEUKIRCHER J**

[1] This is an application for leave to appeal the judgment and order handed down on 18 July 2022.

[2] The applicants in the leave to appeal have, amongst several grounds, argued that the application of the principles set out in *Dabelstein and others v Hildebrandt and others* (1996 (3) SA 42 (C)) in the context of Anton Piller applications, was incorrect in the present matter and that therefore there are prospects of success on appeal.

[3] Section 17 of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be given where the judge is of the opinion that there are prospects of success on appeal.

[4] Whilst the applicants have founded their application on several other grounds, it takes only one to grant leave and I am of the view that given the argument *supra*, there are prospects of success on appeal.

[5] In the application, the applicant asks for leave to the Full Court of this division. The respondent however argues that, should I be inclined to grant leave, it should be to the Supreme Court of Appeal. I agree

**THEREFORE THE ORDER IS AS FOLLOWS:**

1. Leave to appeal is granted to the Supreme Court of Appeal
2. Costs shall be costs in the appeal.

Delivered: This judgment was prepared and authored by the Judges whose names are reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 24 October 2022.

Appearances:

For the Applicants : Adv I Joubert SC

Instructed by : Lacante Inc

For the Respondents : Adv J Vorster SC, with Adv van der Merwe

Instructed by : Jarvis Jacobs Raubenheimer Inc

Heard on : 24 October 2022