



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/**NO**

(2) OF INTEREST TO OTHER JUDGES:

~~YES~~/**NO**

(3) REVISED: **YES**

DATE: **23 MAY 2022**

SIGNATURE:

Case No. 12194/2017

In the matter between:

COMMISSIONER FOR THE SOUTH AFRICAN

Applicant

REVENUE SERVICES

And

LOUIS PASTEUR INVESTMENTS (PTY) LTD

1ST Respondent

(IN PROVISIONAL LIQUIDATION)

PRAKKE, ADRIAAN EVERT N.O

2ND Respondent

THE AFFECTED PERSONS RELATING TO

3RD Respondent

LOUIS PASTEUR INVESTMENTS (PTY) LTD

NAUDE, ETIENNE JACQUES

4TH Respondent

LOUIS PASTEUR GROUP (PTY) LTD

Affected Person

MIA, ZUBEIDA ALLI

Intervening Party

JUDGMENT – LEAVE TO APPEAL

MILLAR J

1. On 11 April 2022 I granted an order placing the first respondent under final winding up in the hands of the Master of the High Court together with punitive costs orders against the second respondent and the intervening party.
2. The second respondent and the intervening party now apply for leave to appeal against the whole of the judgment and order. The application for leave to appeal set out some 49 different grounds upon which the court was said to have erred and upon which the application was premised.
3. It was argued that the court had erred in almost every factual and legal finding made – an effective re-argument of the main case.
4. The test for the granting of leave to appeal is set out in S 17(1) of the Superior Courts Act¹ :

¹ Act 10 of 2013

“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.”*

4. However, it was also argued that even if I were to find that there was no reasonable prospect that another court would come to a different conclusion, the legal issues raised were of such importance that these merited the granting of leave to appeal to the Supreme Court of Appeal.

5. It was held by the Supreme Court of Appeal in *Panamo Properties (Pty) Ltd and Another v Nel and Others* NNO² that:

“[1] Business rescue proceedings under the Companies Act 71 of 2008 (the Act) are intended to ‘provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all stakeholders.’ They contemplate the temporary supervision of the company and its business by a business rescue practitioner. During business rescue there is a temporary moratorium on the rights of claimants against the company and its affairs are restructured through the development of a business rescue plan aimed at it continuing in operation on a solvent

² 2015 (5) SA 63 (SCA) para 1

basis or, if that is unattainable, leading to a better result for the company's creditors and shareholders than would otherwise be the case. These commendable goals are unfortunately being hampered because the statutory provisions governing business rescue are not always clearly drafted. Consequently they have given rise to confusion as to their meaning and provided ample scope for litigious parties to exploit inconsistencies and advance technical arguments aimed at stultifying the business rescue process or securing advantages not contemplated by its broad purpose. This is such a case."

6. After consideration of this argument, it seems to me that simply because a legal argument which is advanced, whatever its merit, has not been litigated and pronounced upon through every level of the judiciary, does not militate in favour of the granting of leave to appeal on its own.
7. I have considered the grounds upon which this application for leave to appeal has been brought and the arguments advanced by the parties at the hearing and set out in the heads of argument they filed. I have also considered the reasons for granting the orders of 11 April 2022 and am of the view that there is neither a reasonable prospect that another court would come to a different conclusion nor an arguable point of law which merits the granting of leave to appeal.
8. I am of the view that the costs should follow the result and it is for this reason that I make the costs order that I do.

9. In the circumstances, I make the following order:

8.1 The application for leave to appeal is dismissed with costs.

A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 20 MAY 2022

JUDGMENT DELIVERED ON: 23 MAY 2022

RESPONDENT IN THE LEAVE TO APPEAL

COUNSEL FOR THE APPLICANT: ADV. B BERGENTHUIJN SC

INSTRUCTED BY: VZLR INC.

REFERENCE: MR. T FARI

APPLICANTS IN THE LEAVE TO APPEAL

COUNSEL FOR THE 1ST & 2ND
RESPONDENTS:

ADV. MA BADENHORST SC

INSTRUCTED BY:

EUGENE GEYSER ATTORNEYS

REFERENCE:

MR. L BOTHA

COUNSEL FOR THE INTERVENING
PARTY:

ADV. MA BADENHORST SC

INSTRUCTED BY:

GRUNDLINGH & ASSOCIATES

REFERENCE:

MR. GRUNDLINGH

NO APPEARANCES FOR ANY OF THE OTHER CITED PARTIES