

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION (GRAHAMSTOWN)**

Case No: 3412/2018

In the matter between:

SALIM CHOWDHURY

Applicant

and

DEBBIE NAUDE

First Respondent

**FIRSTRAND BANK LIMITED t/a
FIRST NATIONAL BANK (FNB)**

Second Respondent

JUDGMENT

NQUMSE AJ:

[1] This is an application for leave to appeal against the judgment I made on 22 January 2019. The application is opposed. The respondent opposed the application and argued that the court was correct on its ruling that the Plascon-Evans rule was not applicable as was argued by the applicant in the main application.

[2] The applicant argued that in view of the discrepancies that are in the founding affidavit and the replying affidavits of the respondent the court ought to have found that the respondent has not acted in utmost good faith and his evidence lacks reliability. In light thereof the Plascon-Evans rule ought to have found application.

[3] He further argued that the structure of the application was presented as seeking a final relief whereas the respondent failed to establish the requirements thereof and he has also failed the requirements to meet for an interim relief.

[4] The respondent argued that the Plascon-Evans rule was not applicable on the issues that could be resolved on the papers and those issues that could not be resolved were left for the trial court. Respondent further argued that the relief it sought was for an interim relief pending the subsequent action. In the interim relief sought there was no genuine and *bona fide* defence that could not to be resolved on the papers.

[5] On the issue whether the Plascon-Evans rule ought to have found application and whether the respondent has met or not the requirements of an anti-dissipatory order, it may be that another court may come to a different conclusion than to which this court arrived at. I will therefore grant leave to appeal on the points raised.

[6] In the result I make the following order:

1. Application for leave to appeal against my ruling is granted to the Full Bench of this Division.
1. Costs to be costs in the appeal.

VM NQUMSE

ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Applicant: **Adv Smuts SC** appearing with **Adv Miller**

For the Respondent: **Adv Van der Merwe**

Date heard: 2 April 2019

Date delivered: 30 April 2019