


**REPUBLIC OF SOUTH AFRICA****IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG LOCAL DIVISION, JOHANNESBURG)****Case Number: 28609/2016**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
 MODIBA J	
13 SEPTEMBER 2016	

In the matter between:

**LESSING, THOMAS SAREL****APPLICANT**

and

**SERENGETI GOLF AND WILDLIFE ESTATE****RESPONDENT**

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**JUDGMENT ON APPEAL**

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[1] This is an application for leave to appeal the order that I granted in this matter in the urgent court on 30 August 2016, interdicting the respondent and its employees and security personnel from harassing and discriminating the applicant, his mother and visitors and ordering the respondent to restore the applicant and his mother's

access to his residential property at Serengeti Estate as well as card and biometric access to the estate and to certain communal facilities at the estate.

[2] I furnished my reasons for the said order to the parties on 13 September 2016.

[3] In seeking leave to appeal, the respondent relies on several grounds. Some of the grounds relate to issues fully dealt with in my reasons. I stand by my reasons in respect of those issues. No purpose would be served by regurgitating the reasons in this judgement. One issue however, merits attention; that is, the respondent's contention that I erred in law by finding that possession of electronic access to the estate and access to the estate's communal facilities amounts to possession. Counsel for the respondent relied in this regard on two judgments; namely, *De Beer v Zimbali Estate Management Association (Pty) Ltd and Another*<sup>1</sup> and *Microsure (Pty) Ltd and others v Net 1 Applied Technologies South Africa Ltd*<sup>2</sup>. In *De Beer*, the applicant enjoyed access to Zimbali Estate as an Estate Agent selling property on the estate. She did not do so in exercise of property rights. In *Microsure*, the court dealt with the deactivation of an electronic merchant card used to access a computer system. It found that such deprivation amounted to the deprivation of an electronically accessed contractual right. Therefore, the right in dispute did not relate to the exercise of property rights.

[4] The contention by counsel for the respondent that when applying the above cases to the present matter, the appeal court may come to a different finding stands to be dismissed for two reasons. The *lis* between the parties has been resolved and the applicant's status *quo ante* restored. Therefore as between the parties, the appeal will be of no practical effect.<sup>3</sup> The judgment handed down in this matter does not conflict with the authorities relied on by the respondents, cited above. This locates this application outside the scope of section 17(1) (a) (ii) of the Superior Courts Act.<sup>4</sup> As to whether the *ratio* in the above authorities ought to be extended to

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<sup>1</sup> 2007 (3) SA 254.

<sup>2</sup> 2010 (2) SA 59.

<sup>3</sup> Superior Courts Act 10 of 2013, section 16 (2) (a) (i).

<sup>4</sup> **Leave to appeal**

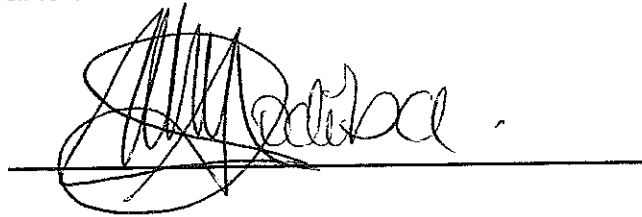
(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

the facts of the present matter, which relate to the exercise of property rights, is yet to be determined. With the *lis* between the parties having been resolved, this case is not an appropriate one for such a determination.

[4] Therefore the application for leave to appeal stands to be dismissed with costs.

## ORDER

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

A handwritten signature in black ink, appearing to read 'L T Modiba', is written over a horizontal line.

**L T MODIBA  
JUDGE OF THE HIGH COURT**

## APPEARANCES

Counsel for the Plaintiff: R Booysens

Instructed by: Dewey Hertzberg Levy INC

Counsel for the Defendant: B Heystak

Instructed by: Van Rensburg Schoon  
INC

Date of judgment: 21 September 2017