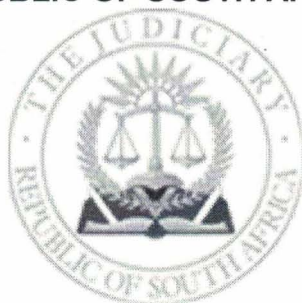


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 44559/2020

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED.
<u>11/4/2022</u> DATE	
<u>[Signature]</u> SIGNATURE	

In the matter between:

WEIGHPOINT INVESTMENT HOLDINGS (PTY) LTD

1ST Applicant

DUVENHAGE, JACOBS

2ND Applicant

CARSLEY, PAUL

3RD Applicant

and

MAGGERMAN JEROME

1ST Respondent

TOWNSEND LUKE

2ND Respondent

BETRIDGE, ELLEN

3RD Respondent

K2020254498 (PROPRIETARY) LIMITED

4TH Respondent

LOCOMOTION TECHNOLOGIES CC

5TH Respondent

EDU A PLUS (PROPRIETARY) LIMITED

6TH Respondent

JUDGMENT

MAKUME J:

- [1] On the 19th July 2021 I handed down a judgment in which I dismissed with costs the Respondents application in terms of Rule 47(1) (Application for Security for costs).
- [2] The Respondents now seek leave to appeal that judgment to the full bench of this division.
- [3] In this application the Respondents did not refer to all the grounds set out in their notice of appeal though not abandoning same. They rely mainly on the following grounds:
- 3.1 Firstly that the Court should have granted costs against the Applicants because they decided to file security late after the Respondents had filed notice to compel.
- 3.2 Secondly that Rule 47 empowers the Registrar not the Court to determine the form and quantum of security.
- 3.3 Lastly that the amount of R175 000.00 held in the Trust Account of Ulrich Roux Attorneys belongs to the Applicants and in the event of a Liquidation the attorneys will have to pay the money over to the Liquidator. The Respondent rely heavily on the decision of **Morgan Abattoir (Pty) Ltd vs The Master of the High Court [2013] ZAGPPHC (3 July 2013)** as well as on the decision of the SCA in the matter of **EDS South Africa (Pty) Ltd & Others vs Nationwide Airlines (Pty) Ltd & Others 2011 (5) SA 158 SCA**.
4. In opposing the application for leave to appeal the Applicants maintain that:
- 4.1 Firstly the judgment is not appealable on a proper construction of Section 17(1) (c) of the Superior Courts Act. The Applicants rely in this regard on the decision of the SCA in the matter of

Shepstone & Wylie & Others v Geyser NO 1998 (3) SA 1036 SCA.

4.2 Secondly that in terms of Section 16(2) (a) (ii) unless there are exceptional, circumstances the question whether the decision would have no practical effect or results is to be determined without reference to any consideration of costs.

4.3 Lastly that there are no reasonable prospects of success of the appeal on a proper reading of Section 17(1) (a) (i) read with the provisions of Rule 47(5) of the Uniform Rules of Court.

5. I do not intend dealing with all the submissions made by the parties as I am of the view that the issue of appealability is central and dispositive of this application.

[6] Section 17(1) (c) of the Superior Courts Act reads as follows:

“Leave to appeal may only be given where the judge or judges concerned are of the opinion that:

(c) where the decision sought to be appealed against 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.

[7] The application for security for costs in terms of Rule 47 came about when the Applicants brought an application against the Respondents for contempt of a Court order. That application is still alive and was stayed pending the outcome of the application for security for costs. It is therefore clear that the appeal on this matter will not dispose of the real issues. In **Swartzberg vs Barclays National Bank Ltd 1975 (3) SA 515 (W) at 518 B** it was held that the test was whether the appeal if leave were given would lead to a just and reasonably prompt resolution of the real issues between the parties.

- [8] The decision in Morgan Abattoir (supra) does not support the Respondents contention that the money paid into the Trust Account of Ulrich Roux Attorneys as security will not be available to the Respondents in the event the Applicant is liquidated.
- [9] The money paid to Vorster Attorneys in Morgan Abattoir was not paid as security in terms of Rule 47. It was money paid as a debt due to FNB. The two are distinguishable. In any event it is speculative that Applicants may face liquidation there are no facts placed before me.
- [10] During February 2021 prior to the contempt of Court application the same Respondents asked for security in the same form as the present one they accepted it as valid. I find it disingenuous that when it comes to the contempt of Court application they now want to create further hurdles in stopping the contempt application to be heard. This is an abuse of the rules and is not the type of matter that must go on appeal.
- [11] In the result I make the following order:

ORDER:

1. The Application for leave to appeal is dismissed.
2. The Respondents are ordered to pay the Applicants costs to be taxed on a party and party scale.

DATED at JOHANNESBURG this the ^{14th} day of ~~MARCH~~ ^{APRIL} 2022.



M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

DATE OF HEARING : 24 FEBRUARY 2022
DATE OF JUDGMENT : 11th APRIL 2022
FOR APPLICANTS : ADV VAN EETVELD
INSTRUCTED BY : MESSRS ULRICH ROUX ATTORNEYS
FOR RESPONDENTS : ADV DYASON
INSTRUCTED BY : NORMAN BARLING ATTORNEYS