

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION,
PRETORIA**

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

CASE NO: 26737/17

DATE

SIGNATURE

IN THE MATTER BETWEEN

THE BODY CORPORATE OF KINGFISHER CLOSE

APPLICANT

AND

RAMMUTLANA BOELIE SEKGALA

RESPONDENT

JUDGMENT

SENYATSI AJ

- [1] The issue for determination in this leave to appeal which came before me on 13 December 2018 is whether the test required to be paned by the Applicant in terms of section 17 (1) of the Superior Courts Act, 10 of 2013 has been met.
- [2] Section 17 (1) of the Superior Courts Act, no 10 of 2013 provides as follows:
“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*
 (b) (ii) *there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;”*
- [3] The test to be applied for in terms of section 17(1) of the Act is that another court would come to a different conclusion.
- [4] The Applicant has raised a number of grounds including rules 31 (2) (b), rule 42 (1) (a) and common law. The Applicant contends that the rescission order ought not to have been granted.
- [5] In *Zweni v Minister of Law and Order 1993 (1) SA 523 (A) at 532I-533A* the Appellate Division, as it then was, ruled against the appealability of an interim order. The court held that the test for the interim order is:-
 (a) the finality of the order:-
 (b) the definitive rights of the parties;

(c) the effect of disposing of a substantial position of the relief claimed.

[6] In *Moch v Nedtravel (Pty) Ltd t/a American Express Travel Service* 1996 (3) SA 1(A), the court held that the test parameters applied in *Zweni* were not exhaustive.

[7] The Supreme Court of Appeal in *Philani-Ma-Africa v Mailula* 2010 (2) SA 573 (SCA), held that the interest of justice were paramount in deciding whether or not interim orders were appealable with such case being considered in the light of own facts.

[8] The main consideration in deciding whether the interest of justice would be served is whether the refusal of appeal would lead to irreparable harm to the Applicant.

[9] In *De Vos v Cooper of Ferreira* 1999 (4) SA 1 290 (SCA) at 1297 A-D in confirming that a rescission order does not have a final and definitive effect, the court expressed itself as follows:

“So in bevel het immers nie enige finale of beslissende uitwerking op die geskilpunte in die hoofgending nie”

[10] In the instant leave to appeal, the order sought to be appeal against has not made a final determination of the parties' dispute. The Applicant's claim remains intact and what has changed is simply that the judgment obtained by default against the Respondent has been rescinded.

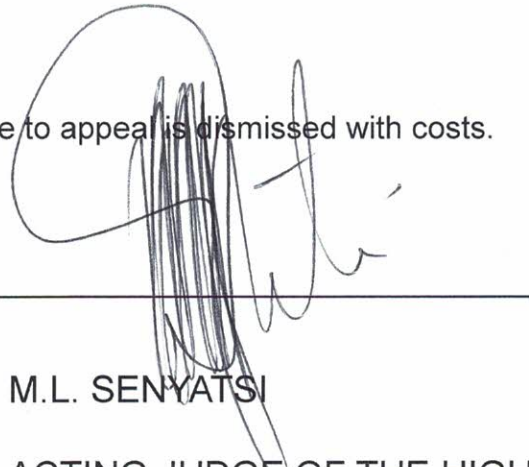
[11] The rights of the Applicant remains unaffected by the rescission and the trial court will make a determination once the parties have ventilated their disputes.

[12] Consequently, the applicant's has failed to discharge the onus that another court will come to a different conclusion.

ORDER

[13] The following order is made:

- (a) The application for leave to appeal is dismissed with costs.

A handwritten signature in dark ink, appearing to be 'M.L. Senyatsi', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

M.L. SENYATSI

ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA,
GAUTENG DIVISION,
PRETORIA

Appearances:

Date of hearing : 13 December 2018

Date of Judgment : 06 March 2019

For the Applicant : Rorich Wolmarans and Luderitz Inc, Pretoria

Instructed by : Adv N.G Louw

For first Respondent : Mr B Sekgala

Instructed by : In Person