

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO



IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY

Case No: 1603/2015
Heard on: 28/11/2016
Delivered on: 13/01/2017

In the matter between:

HENRY JOHANNES KNOETZE

APPLICANT

And

HENRY CASPARUS KNOETZE N.O.
HENRY CASPARUS KNOETZE
MAGDALENA ELIZABETH KNOETZE N.O.
MAGDALENA ELIZABETH KNOETZE
HENDRICK CORNELIUS LE ROUX N.O
HENDRICK CORNELIUS LE ROUX
ESTELLE ELIZABETH SWART
MARTHA MAGDALENA KNOETZE
MASTER OF THE HIGH COURT, KIMBERLEY

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT
7TH RESONDENT
8TH RESPONDENT
9TH RESPONDENT

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

MAMOSEBO J

- [1] The applicant, Henry Johannes Knoetze, seeks leave to appeal to the Full Bench of the Northern Cape Division alternatively to the Supreme Court of Appeal against the whole of my judgment and order granted on 24 June 2016 in which the following orders were made:
- 1.1 The exception relating to the plaintiff's first claim is upheld and the claim is dismissed;
 - 1.2 The exception in relation to the plaintiff's second claim (consisting of exception 2 and 3) is upheld;
 - 1.3 The plaintiff is afforded the opportunity to amend his Particulars of Claim (the second claim), if so advised, within 20 days of this order, failing which the defendant is granted leave to apply on the same papers, suitably supplemented, for dismissal of the action; and
 - 1.4 The plaintiff pay the costs of the exception application which includes the costs associated with the submission of the supplementary note.
- [2] The grounds upon which the applicant relies comprise about 12 pages. The applicant has also listed 14 findings I made which he alleges I erred and submitted that there are therefore reasonable prospects of success on appeal. Listing and dealing with all of them will render this judgment unnecessarily prolix. See *Songono v Minister of Law and Order* 1996 (4) SA 384 (E) at 385C – E.
- [3] The issues in the main case were really three exceptions raised by the first to sixth respondents. I found that the allocation ("toekenning") of the farm to the applicant fell under the Alienation of Land Act, 68 of 1981 and accordingly upheld the exception and dismissed the plaintiff's

(applicant's) claim. This finding is final and dispositive in effect. It is my view that there are nevertheless no reasonable prospects of success on appeal against the finding.

[4] In the second exception I found that the applicant lacked the necessary *locus standi in judicio* to act for and on behalf of the trust. Adv Van der Walt SC, appearing for the applicant, submitted that '*an amendment will serve no purpose as Mamosebo J has already determined the position*'. This submission is, in my view, without merit. It will assist the applicant to amend its pleadings before proceeding with the main action, if so advised. The applicant has been afforded an opportunity to amend its pleadings which renders the matter not final in effect and hence not appealable. See *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) at 532J and 536B-D.

[5] I therefore find that the applicant has no basis to seek the relief sought as there are no reasonable prospects of success on appeal. See s 17 of the Superior Courts Act, 10 of 2013.

[6] In the result the following order is made:

The application for leave to appeal is dismissed with costs.

o/b/o Mamosebo J

➤ **MAMOSEBO J**

NORTHERN CAPE HIGH COURT

For the applicant:

Adv D. J. Van der Walt SC

Instructed by:

Duncan & Rothman Inc

For the 1st – 5th respondents:

Adv S.C. Kirk-Cohen SC

Instructed by:

Haarhoffs Inc.

For the 6th respondent:

Adv S. Grobler

Instructed by:

Haarhoffs Inc