

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: 4174/2008

DATE: 27 FEBRUARY 2009

5 In the matter between:

HIDRO-TECH SYSTEMS (PTY) LTD APPLICANT

and

1. THE CITY OF CAPE TOWN 1st RESPONDENT

2. VIKING PONY AFRICA PUMPS
(PTY) LTD T/A TRICOM AFRICA 2nd RESPONDENT

10 3. BUNKER HILLS PUMPS (PTY)
LTD T/A TRICOM SYSTEMS 3rd RESPONDENT

JUDGMENT

15 (Application for Leave to Appeal)

IRISH, A J:

This is an application for leave to appeal against the judgment
 20 which was handed down on 24 December of last year and in
 respect of which I ordered certain relief against the 1st
 respondent in terms of paragraph 1 of the orders in the
 judgment, and also ordered the 1st and 2nd and 3rd respondents
 jointly to pay the costs of the application. I further ordered, in
 25 terms of paragraph 3 of the orders, that the striking out

application which had been brought by the 2nd and 3rd respondents be dismissed with costs. I also further ordered in terms of paragraph 4, that a counter application that had been brought by the 2nd and 3rd respondents against the applicant and its attorney of record, also be dismissed with costs.

This morning I have heard Mr Dickerson, who once again appears with Mr Smalberger, representing the 2nd and 3rd respondents in the matter as the applicants for leave to appeal, and Mr Joubert, who appears for the respondent in this application, being the applicant in the principal application. The 1st respondent, being the City of Cape Town, has not been represented before me today and I am given to understand that they abide the outcome of this application.

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Having heard Mr Dickerson's argument and having listened to Mr Joubert in reply, I am of the view that there is a reasonable prospect that another Court might come to a different conclusion on the interpretation of the regulations in question in this matter, which do give rise to some linguistic and legal difficulties, and I accordingly think it appropriate that leave be granted to appeal against the findings in the principal application.

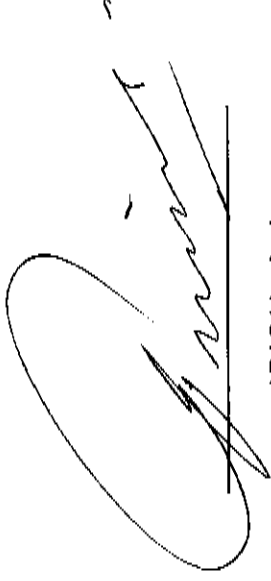
25 However, as regards both the application for striking out and

the counter application brought by the 2nd and 3rd respondents, I am of the view that there is no reasonable prospect that another Court will come to a different conclusion and leave to appeal against those orders, is accordingly refused.

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In the result, therefore, I make the following order: that leave to appeal against the orders made in paragraphs 1 and 2 of my judgment is granted. Counsel were agreed that if I were to grant leave, the appeal should be to the Supreme Court of Appeal. I am in agreement with that point of view and it is accordingly so ordered. I am indebted to counsel for their arguments.

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A handwritten signature in black ink, appearing to read 'A. J. Irish', written over a horizontal line.

IRISH, A J