

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

CASE NUMBER: 11132/2009, 22736/2009, 10336/2010

5 **DATE:** 15 OCTOBER 2010

In the matter between:

BRYAN NEVILLE SHAW N.O. 1st Applicant

DUDLEY BERNARD DAVIDS N.O. 2nd Applicant

10 **CHRISTOPHER PETER VAN ZYL N.O.** 3rd Applicant

BRIAN NEVILLE SHAW N.O. 4th Applicant

HASSEN KAJIE N.O. 5th Applicant

and

PATRICK KERRY O'SHEA N.O. 1st Respondent

15 **SIOBHAN LEE O'SHEA N.O.** 2nd Respondent

J U D G M E N T

Application for Leave to Appeal

20

JACOBS, AJ:

This is an application for leave to appeal against the judgment handed down on 20 August 2010 in terms whereof an order was granted in the following terms:

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/...

1. The provisional order for sequestration granted on 11 November 2009 was made final.
2. The third intervening applicant, was granted leave to
5 intervene as an applicant in the sequestration application under case number 11132/2009.
3. The application costs and the costs of the third
10 intervening applicant are ordered to be costs in the sequestration.

Mr Sholto-Douglas SC, who appeared on behalf of the respondent, the applicant in the present application for leave to appeal, raised various arguments in addition to the grounds
15 raised in the application for leave to appeal. The application for leave to appeal was opposed by Mr Manca SC and Mr Sievers, acting on behalf of the applicants and the third intervening applicant respectively.

20 I am of the view, having had the benefit of argument from counsel, that the present matter involves, on the crucial issues which underpin the matter, matters of interpretation and that another Court might come to a different conclusion on those issues. In this regard the *maxim tot homines tot sententiae* is
25 apposite and one should certainly not be dogmatic about
/bw

/...

matters which involve issues of interpretation.

In the application for leave to appeal dated 9 September 2010 and filed on 10 September 2010, reference was also made to
5 grounds of appeal in paragraph (b)(i) and (b)(ii) relating to the first and second applications to intervene. At the hearing of this matter and during argument relating to the application for leave to appeal, Mr Sholto-Douglas SC indicated that as he was not involved in the matter previously and was simply
10 briefed to argue the application for leave to appeal, that he was not aware that the first and second application for leave to intervene, was neither argued nor was any relief sought at the previous hearing and that his client no longer relies on the grounds of appeal set forth in paragraph (b)(i) and (b)(ii) of the
15 application for leave to appeal.

In the circumstances, I am of the view that leave to appeal should be granted to the Supreme Court of Appeal in view of the legal issues raised in the matter and that the costs should
20 be costs in the appeal. Accordingly the following order is granted:

1. That leave to appeal is granted to the Supreme Court of Appeal.


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2. That costs should be costs in the appeal.

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A handwritten signature in black ink, appearing to read 'AJ Jacobs', is written over a horizontal dashed line.

JACOBS, AJ

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11132/2009

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JUDGMENT

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b

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JACOBS, AJ

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