

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

**CASE NUMBER:** 13512/2007

**DATE:** 26 JULY 2011

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In the matter between:

**G M NIEMAND** Applicant

and

**VERA MULLER** Respondent

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**J U D G M E N T**

**Application for Leave to Appeal**

**HENNEY, AJ:**

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The application for leave to appeal in this matter of Niemand, the applicant, and Vera Muller, the respondent, had been argued by counsel for Mr Niemand. I must also add that Mr Niemand, to a certain extent, very ably had conducted his own  
20 defence and I am indebted to Mr Swanepoel for his assistance throughout the trial. The crucial question in this matter was whether the applicant had indeed misrepresented the respondent when the sale for this business was concluded.

I do not want to go back and regurgitate my reasons which I  
25 had given in my judgment and which were with full reasons, I  
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relied on some authority in those matters. As I said in my judgment, this business was bad from the very start, there was nothing in it, and I have asked counsel for Mr Niemand to show me, like we requested in the trial, what the state of the  
5 business was at the time the sale was concluded.

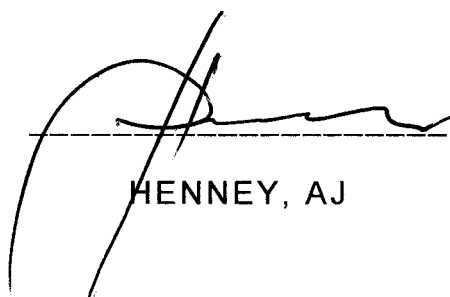
The applicant could not during the trial, and even now show it. No evidence could be presented as to what the state of this business was and the only person that knew about the state of  
10 the business was the applicant. He had misled the respondent in that respect and I am of the view that no other court will come to a different conclusion with regards to that, on this critical aspect as whether there was a misrepresentation, and the evidence, on the probabilities, overwhelming showed that.

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Therefore, I am of the view that no other court will come to a different conclusion on the evidence that was led and also on the law. Therefore, the application for leave to appeal is then dismissed. It goes without saying that the application for  
20 condonation for the late filing for the appeal is granted.

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HENNEY, AJ

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