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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2023/006391

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

NOT REVISED

22.09.23

In the matter between:

JC ADMINISTRATIVE SERVICES (PTY) LTD

1st APPLICANT

JESERI PROPERTIES

2nd APPLICANT

YU KENG HUANG

3rd APPLICANT

and

E.T. SEKHELELI

1st RESPONDENT

T.J. VALOYI

2nd RESPONDENT

G. NDLOVU

3rd RESPONDENT

J. CHIRAMBA

4th RESPONDENT

C. MONO

5th RESPONDENT

T. SHOTELI

6th RESPONDENT

T.L. NDLOVU

7th RESPONDENT

M. MOYO

8th RESPONDENT

S. NDLOVU

9th RESPONDENT

L. DUBE

10th RESPONDENT

N. KHUMALO

11th RESPONDENT

P.P. TSHABALALA

12th RESPONDENT

G. NDLOVU

13th RESPONDENT

S.P. MDLULI

14th RESPONDENT

A.V. NDLOVU

15th RESPONDENT

I.N. MLOTSHWA

16th RESPONDENT

ALL OTHER OCCUPANTS

17th RESPONDENT

LEAVE TO APPEAL JUDGMENT

MANOIM J:

- [1] This is an application for leave to appeal brought by the respondents in this matter against a judgment I granted on 14 February 2023.
- [2] In brief, the respondents (“who are the applicants in this leave to appeal but for convenience I will continue to refer to them as respondents”) occupy a building in Johannesburg. The registered owner of the building is a close corporation called Jeseri Properties CC (“Jeseri”). Its sole member is a Ms Hu- Keng Huang.
- [3] In the case before me, heard as an urgent application, the applicant was not Jeseri or Huang, but JC Administrative Services whose sole director is John Constable. He has been appointed as the administrator of the building by Jeseri and sought access to the building to perform these administrative services. He described how he was denied access to the building and became the subject of threats made by certain unidentified occupants. Jeseri presently owes a large sum of money to the municipality for unpaid expenses exceeding, in January 2023, five million rand.
- [4] The applicant sought relief, inter alia, to be allowed access to the building. Mr. Constable appeared himself and was not legally represented. On the day the matter was set down one of the respondents, the sixth, appeared and said he had been mandated by the others as their spokesperson and asked to be given an opportunity to get legal representation. I postponed the matter till Friday, in order for him to procure these services. He duly appeared again on the Friday

but still without legal representation, but he had filed an opposing affidavit which raised certain technical defences. I considered them to be of no merit and I gave the following relief:

1. The 01st to 17th RESPONDENTS are interdicted from preventing the 1st Applicant, its office bearers, employees, and contractors, access to the properties identified as ERVENS 3367 & 3368, commonly known as VH/VRODOLJAK HEIGHTS, situated at CNR. STIEMENS AND DE BEER STREETS, JOHANNESBURG, GAUTENG PROVINCE.

2. 01st to 17th RESPONDENTS are interdicted from obstructing the 1st Applicant, its office bearers and employees in the execution of their duties, functions, and obligations in administering the properties identified as ERVENS 3367 & 3368, commonly known as VH/VRODOLJAK HEIGHTS, situated at CNR. STIEMENS AND DE BEER STREET, JOHANNESBURG, GAUTENG PROVINCE.

3. The 01st to 17th RESPONDENTS are interdicted from intimidating, harassing, and threatening the 1st Applicant, its office bearers, employees, and contractors.

4. The SOUTH AFRICAN POLICE SERVICES to serve this order on the RESPONDENTS, and ensure the RESPONDENTS give effect to paragraph 2 of this order.

[6] Now more than six months later, the respondents, who are now represented by an attorney, seek leave to appeal. There was no attempt to seek condonation for the delay in seeking leave to appeal, but Mr. Seloane, who appeared for the

respondents, said it was a problem caused by access to the records on court online and CaseLines. I do not know if this explanation satisfactorily accounts for the full period of the delay, but as the applicant, now represented by an attorney and counsel, did not take this point, I will only consider the merits of the appeal.

[7] The first point to note is that the order I gave contains a limited form of relief. It deals with access to a building by the owner's agent. It is not a PIE application, although it may well be preparatory for one that will follow. It is thus difficult to appreciate why leave is still even sought given the time that has elapsed since the judgment and the limited relief it confers on the applicant.

[8] The respondents have raised only technical points as points of appeal premised on alleged deficiencies or inconsistencies in the applicant's documentation. These points suggest, without going as far as stating so, that cumulatively there is something irregular in the entire application. But if the respondents have such facts, then the appropriate remedy would have been for them to bring an application for rescission, not an application for leave to appeal where I am confined to a record that does not make out such a case. The most the respondents are able to rely on in the record to found their appeal, is a want of formality by the applicant in some respects, but beyond that nothing more.

[9] The first point taken is that the owner of the building is not Jeseri, the Close corporation, but Jeseri Properties Pty Limited, a private company of the same name. But this point is not correct. The Title deed contains an endorsement by a conveyancer showing that in 1996 the private company of the same name had

been converted to a close corporation of the same name, which was now the owner. At the time this was done a private company could still convert to become a close corporation. This window only closed on 1 May 2011.¹ Hence there is nothing irregular in the conversion nor the title deed. Jeseri the close corporation, *ex facie* the title deed, owns the building in *casu*.

[10] The next point of attack was on Ms Heung herself. In the Companies and Intellectual Properties Commission (“CIPC”) registration papers Ms Heung identity number is reflected as 5306080818**186**. However, she has also in the course of this litigation submitted a copy her identity card which reflects her identity number as 5306080818**087**. As my emphasis in bold shows the discrepancy occurs in the last three digits. Mr. Seloane suggested that this was irregular and hence the relief should not have been granted because Home Affairs would never grant a person two identity numbers. But Mr. Mashava, who appeared for the applicant, makes the point that a change in the final three digits of an identity number is not unusual when someone converts from permanent residence to citizenship. Admittedly, I have no evidence whether this was indeed the case, but from the record it appears that Ms Heung is, *ex facie* the identity document, someone borne in China.

[11] But on the other hand, I have no evidence in the record beyond the earlier use of the one identity number and the later use of the other (“it varies by only the three

¹ See CIPC registration Guidance note on conversion of companies to close corporations, number 4 dated 10 June 2011.

last digits”) to suggest that there is anything irregular here.² Nor is the suggestion of the applicant that this is normal when the basis of citizenship changes implausible. But, even if Ms Heung has identity number issues (“which is not established”) what matters only for this appeal is that her company is the owner of the building (“its is *ex facie* the title deed”) and second that it authorised the applicant to act – which it did.

[12] The next point is that the applicant did not attach a resolution from Jeseri authorising him to act. It is correct that there is no such authorisation. But Jeseri is a close corporation with Heung as its sole member. She has given an affidavit to confirm what Constable stated in his affidavit, *inter alia* that he had authority. This point is purely formal and of no substance.

[13] Then, the follow up point related to this, was that the affidavit of Heung was deficient for want of conformity with the regulations for attesting to an affidavit. Although the affidavit is signed by a commissioner of oaths (“in this case a policeman”) it appears *ex facie* the document that he did not attest it, but instead authenticated it as a true copy of the original. However, case law makes it clear that compliance with the regulations is directory and not a prerequisite.³ This too is an entirely formal point and is not a basis for leave to appeal.

² The entry in the CIPC record, which has the prior identity number, reflects next to this number that she was appointed on 19 June 1996. The identity book extract shows the new number was issued a year later on 13 October 1997.

³ See *State v Munn* 1973(3) SA 734 (NC) at 737 D to E. See also following this approach in this division, *Knuttel N.O. and Others v Bhana and Others* GLD Case no. 38683/2020 (27 August 2021), paras 50 to 54.

[14] Then it was argued that no basis was made for granting a final interdict. But it is not clear from the heads of argument on what deficiency this contention is based. I cannot deal with this any further other than to state that the applicant had shown all the elements existed.

[15] Then a point was made that the applicant had relied on hearsay evidence in its application. Here the criticism was that Constable had alleged that he had found out that the person who had denied him access to the building on the one occasion, had purported to be an employee of a certain security company. Constable had stated that he had ascertained from the owner of the company that it had not employed anyone to provide security at the building. Mr. Seloane argued that because the version of the owner had not been deposed to in a confirmatory affidavit, this was hearsay. But this overlooks two aspects. Even without the affidavit from the security company owner, Constable gave direct evidence in his affidavit that he was denied access to the building. Next, the courts have made it clear that in urgent applications hearsay evidence may be submitted, to quote Erasmus this is subject to the proviso that:

“(...) the source of the information and the grounds for the belief in its truth are stated.”⁴

[16] Constable has done this, including attaching a WhatsApp conversation he had with the owner which confirms Constable's allegation, albeit not attested to.

⁴ See Erasmus, *Superior Court Practice*, D1 -86, 2016 edition.

[17] The respondents also argued that the order should have been granted in the form of a *rule nisi* because the respondents were not legally represented. I pointed out in my reasons that the hearing was postponed to 10 February, to allow them to get representation which, despite this, they did not obtain. But there seems to have been no difficulty in them obtaining legal advice later, since the attorney of record filed a notice of appointment on the 10th February – the same day I had heard the argument. There is no explanation given why the attorney could not have been approached on the day before. Nevertheless, as a matter of substance this point on lack of legal representation is without foundation. The relief was not invasive of the rights of the respondents nor was the matter of any complexity. Constable, not a lawyer either, represented the applicant. The sixth respondent was clearly alive to technicalities and must have got some advice to have raised them, albeit it unsuccessfully.

[18] Finally, there was a complaint that the order authorises the police to serve the order. But this service, as I was informed by counsel, has already taken place so the point is moot. But even so, given the history of threats against Constable, the use of the police for this task was justified.

Conclusion

[19] The test on leave to appeal is not controversial and best set out in the matter of *MEC for Health, Eastern Cape v Mkhitha*, where the Supreme Court of Appeal held:

“Once again it is necessary to say that leave to appeal, especially to this Court, must not be granted unless there is truly a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act, 10 of 2013 makes it clear that leave to appeal may only be given where the Judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard. ... A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.”⁵

[20] The plurality of points has not made the case for leave to appeal any stronger as none are of substance. I conclude that no other court would come to a different conclusion and the application for leave to appeal must be dismissed.

ORDER:-

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

1. The application for leave to appeal is dismissed.
2. The Respondents (“the applicants in the leave to appeal”) are to pay the applicant’s (“the respondent in the leave to appeal”) costs on a party and party scale, including the costs of one counsel.

⁵ 2016 JDR 2214 (SCA) paragraphs 16-17.

N. MANOIM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
JOHNANNESBURG

Date of hearing: 21 September 2023

Date of judgment: 22 September 2023

Appearances:

For the Applicants: Mr Mashava

Instructed by: Musingwini Mukondeleli Inc

For the Respondents: Mr Seloane

Instructed by: Seloane Vincent Attorneys