IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.

(3) REVISED.

2010/02/12 DATE

SIGNATURE

12/02/2010.

CASE NO: 21461/05

In the matter between:

KAMPVUUR EINDOM BK **PLAINTIFF / RESPONDENT**

and

STEVEN PANOS **DEFENDANT/APPLICANT**

JUDGMENT

MAVUNDLA J,

[1] The applicant, who was the defendant in this matter, applied for leave to appeal against the judgment of this Court granted against him on 13 March 2009 for payment of an amount of R219 00 0, 00 (two hundred and nineteen thousand rand) together with interest of 15.5% per annum a *tempore morae* on the aforesaid amount from date of service of the summons to date of payment, and the dismissal of his counterclaim and for payment of costs of both the counterclaim and the main action.

[2] The aforesaid award against the applicant is in respect of the respondent's (plaintiff's) estate agent commission plus interest of a sale agreement in respect of defendant's immovable property referred to in the judgment which was sold for an amount of R3 650 000, 00 (three million six hundred and fifty thousand rand) which was found to have been sold by the respondent.

[3] In the notice for leave to appeal as one of the grounds, *inter alia*, for leave to appeal it is stated that this Court erred in law in finding that the applicable legal principle was as set out in *Joubert v Coster* 1982 (4) SA 540 (C) at 547A-B and in particular that the respondent (plaintiff) would succeed if it can show that it was the effective cause of the sale.

[4] It is further submitted that it should have been found that the plaintiff relied on a written agreement and that whether or not the plaintiff was entitled to its commission, had to be

determined by the terms of the written agreement, construed in accordance with the ordinary principles of construction, and that *ex facie* the terms of the written agreement, the respondent had to allege and prove that during the existence of the mandate, the respondent found a willing and able buyer for the property and that registration of the property took place into the name of such buyer.

[5] A further ground advanced is that the Court erred on the fact where it found that:

51. no distinction should be drawn between Micromatica 724 (Pty) Ltd and VV2 Eindomme (Pty) Ltd,

5.2 Applicant terminated the respondent's mandate because he was colluding with Rousouw;

5.3 the respondent found or introduced VV to the property.

[6] It is further stated in the notice for leave to appeal that the Court should have found on the facts before it that:

6.1 the respondent only introduced Micromatica to the property and ;

6.2 because VV2 purchased the property after the termination of the mandate, the transaction between VV2 and applicant fell outside the scope and ambit of the written mandate;

6.3 the respondent's claim should have been dismissed with costs.

[7] I do not intend to traverse my judgment, nor chronicle the submissions made. It is important to mention that the applicant did not testify during the trial. His version refuting the evidence of the respondent with regard to the facts and circumstances that lead to the sale of the property is not on record. The only version on record is that of the respondent. The Court accepted this version, *inter alia*, on credibility finding. In my view, another Court will not in such circumstances, interfere with credibility findings of a trial court.

[8] In the absence of the version of the respondent under oath, factual findings can only be made on the evidence of the respondent. In these circumstances, in my view, it is unlikely

that another Court will arrive at different factual findings as this Court did.

[9] In the result the application for leave to appeal is dismissed with costs.

N.M. MAVUNDLA

JUDGE OF THE HIGH COURT

DATE OF JUDGMENT : 12/02/2010

APPLICANT'S ATT : ROOTH & WESSELS INC

APPLICANT'S ADV : Mr. BC STOOP.

RESPONDENT'S ATT : VAN DER MERWE DU TOIT INC.

RESPONDENT'S ADV : Mr. J S GRIESSEL.