



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

DELETE WHICH EVER IS NOT APPLICABLE

(1) REPORTABLE: W

(2) OF INTEREST TO OTHER JUDGES: W

(3) REVISED.

2010.07.26

DATE

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CASE NO: 12256/2010

26/7/2010

In the matter between:

MARK JULIAN ATKIN

FIRST APPLICANT

STUART VAN DER MERWE INC

SECOND APPLICANT

and

PETRUS JACOBUS BOTES

RESPONDENT

J U D G M E N T (LEAVE TO APPEAL)

MAKGOKA, J:

[1] This is an application for leave to appeal against the whole of my judgment and order ancillary thereto, in terms of I confirmed an anti-dissipation order granted by Van der Byl AJ.

[2] The test applicable at this stage is trite and established, namely whether another court, given the same set of facts, might arrive to a different conclusion. It is not about the correctness or otherwise of my judgment.

[3] I have had careful regard to my judgment, the notice of application and the grounds set out therein, as well as oral submissions by the respective counsel.

[4] Mr. *Van Coller*, for the respondent, submitted as a preliminary point, that the order is not appealable, such being an interim order. I do not agree. The order is, in my view, definitive of the issue between the parties.

[6] I am also of the view that another court might arrive to a different conclusion to mine. Leave to appeal should therefore be granted. Among the issues argued in this application is whether, for the purposes of an anti-dissipation order, legal proceedings should be pending at the time the application is launched, as opposed to anticipated legal proceedings. In that regard, both counsel were in agreement that should I be disposed to grant leave, such leave should be to the the Supreme Court of Appeal.

[7] Mr. *Muller*, for the first applicant, undertook on behalf of the first applicant, that should leave to appeal be granted, the proceeds from the sale of the immovable property shall remain in trust as per the confirmed order of Van de Byl AJ.

[8] I therefore make the following order:

1. The first applicant is granted leave to appeal to the Supreme Court of Appeal.
2. The costs of this application are to be costs in the appeal.
3. Pending the determination of the appeal, the proceeds from the sale of the immovable property shall remain in trust as more fully set out in the order of Van der Byl AJ and confirmed by this Court.



T.M. MAKGOKA
JUDGE OF THE HIGH COURT