

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case No. 400/2023

In the matter between:

FERREIRA EQUESTRIAN CENTRE (PTY) LTD APPLICANT

And

CHRISTO SPIES 1ST RESPONDENTHARRISMITH POLO CLUB 2ND RESPONDENT

CORAM: GUSHA, AJ

APPLICATION FOR LEAVE FOR APPEAL

DELIVERED ON: This judgment was delivered electronically by circulation to the parties' representatives by way of email. The date and time for delivery is deemed to be at 15h00 on MAY 2023.

JUDGMENT

[1] This is an opposed application for leave to appeal against the whole of the judgment and order granted by this Honourable Court on the 24th March 2023.

[2] On the aforesaid date I gave an order in favour of the applicant in the following terms;

1. The 1st and or the 2nd Respondents are ordered to restore forthwith to the Applicant full access to and undisturbed possession of the polo fields, Harrismith by removing the fence that was erected on the 24 and 25 January 2023.

2. The Respondents are ordered to pay the costs of this application, on a party and party scale, jointly and severally, the one paying, the other to be absolved.

[3] Their comprehensive grounds for leave to appeal are set out in the application for leave to appeal. For brevity's sake, the truncated grounds are that the court erred in finding that;

3.1. it was not the applicant's case that it had sole and exclusive use of the polo fields.

3.2. it is inexplicable why the respondents would wait almost a year before acting against the applicant's infringing actions.

3.3. no genuine or *bona fide* dispute of fact existed.

3.4. the applicant had *de facto* possession of the polo fields.

[4] They consequently contend that there are reasonable prospects of success that another court would find that :

4.1. the respondents raised genuine and *bona fide* disputes regarding the applicant's possession of the polo fields.

4.2. the applicant did not establish that it was in free and undisturbed possession of the polo fields.

4.3. the applicant has not made out a case for the granting of the spoliation order; and

4.4. the application ought to have been dismissed with costs.

[5] Pursuant to receiving the notice of the application for leave to appeal as well as the notice to oppose, I requested the parties to favour the Honourable Court with heads of argument. I am indebted to them for their comprehensive heads of argument. For that reason, I do not intend repeating their submissions herein.

[6] It is trite that leave to appeal may be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success¹.

[7] Having had regard to the grounds advanced in support of the application for leave to appeal, the submissions by the parties, as well as having reflected on the 24th March 2023 judgment, It is my considered view that the respondents do not have reasonable prospects of success.

[8] Consequently, I make the following order:

1. The application for leave to appeal must fail and is dismissed with costs.

NG GUSHA, AJ

On behalf of the applicant

Adv. J. Els

Instructed by:

EG Cooper Majiedt Inc.

BLOEMFONTEIN

On behalf of the respondent:

Adv. CD Pienaar

Instructed by:

Lovius Block

BLOEMFONTEIN

¹ Section 17 (1) (a) Superior Courts Act 10 of 2013.