

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

Case No: 773/2021

Reportable: NO

Of Interest to other Judges: NO

Circulate to Magistrates: NO

In the matter between:

SHAUN SMITH

Applicant

and

PARKER BEUSEKOM PARTNERSHIP

Respondent

JUDGMENT BY: MHLAMBI, J

DELIVERED ON: 06 OCTOBER 2023

APPLICATION FOR LEAVE TO APPEAL

[1] The application for leave to appeal is based on various grounds. It is, in the main, directed towards paragraph 8 of the judgment where I found, amongst others, that the applicant had not made out a case against the respondent for the furnishing of security for costs.

[2] On 14 June 2022 the respondent, as the plaintiff in the action, amended his particulars of claim by substituting his South African address with an address at 4[...] Ha'Dolev, section 3, Caesarea 3[...] Israel. On 29 September 2022, the applicant filed

its notice of demand for security for costs in terms of Rule 47. The first notice in terms of this Rule was delivered on 23 February 2022.

[3] The applicant's contention in the grounds of appeal is that the court formed the view that the applicant failed to meaningfully deal with the first notice, instead of finding that the respondent's situation changed at /or about the issuing of the first notice with the applicant being brought under the impression that the respondent resided in Plettenberg bay. The court failed to find that the situation of both the applicant and the respondent, with regard to the second notice for security, was different from that underlying the first notice.

[4] The court therefore failed to consider that the respondent's status changed from that of an *incola* to *peregrinus* when he emigrated to Israel and that the change took place during the litigation. The second notice demanding security for costs was issued as soon as the plaintiff amended his particulars of claim recording the fact of his residence in Israel. Having considered the case law, it is obvious that the courts are amenable to granting relief for more extended periods than *in casu*. Consequently, I am of the view that in these circumstances, another court would come to a different conclusion.

[5] I therefore make the following order:

Order:

1. The application for leave to appeal to the full bench of this court is granted.
2. Costs will be costs in the appeal.

MHLAMBI, J

On behalf of the applicant:	Adv. J Els
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	12 Barnes Street

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On behalf of the respondent: Adv. CD Pienaar
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