



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

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 3489/2021

In the matter between:

PLEXIPHON 115 CC

Applicant

and

PARYS- AAN- VAAL WOONSTELLE (PTY) LTD

1st Respondent

ROBFAIR INVESTMENTS No. 162 CC

2nd Respondent

HEARD ON:

This application was determined on the basis of written arguments instead of an oral hearing. WRITTEN HEADS OF ARGUMENT DELIVERED ON 18 & 22 FEBRUARY 2022

JUDGMENT BY:

DANISO, J

DELIVERED ON:

This judgment was handed down electronically by circulation to the parties' representatives by email and by release to SAFLII. The date and time for hand-down is deemed to be 09H00 on 08 March 2022.

- [1] The applicant seeks leave to appeal the judgment and the orders made on 20 January 2022 in the eviction application (“main application”) in terms of which the respondents’ *in limine* challenge against the validity of the applicant’s answering affidavit was upheld with the result that an order upholding the cancellation of the parties’ lease agreement was confirmed and the applicant was ordered to vacate the leased premises by 28 February 2022.
- [2] In the main application the applicant was cited as the respondent and the respondents herein were the applicants. For the purpose of convenience, I shall refer to the parties as they are referred to in the main application.
- [3] The respondent’s notice of application for leave to appeal was filed with the Registrar on 10 February 2022. On 15 February 2022 the parties were directed to submit written heads of arguments for the matter to be determined on the basis of written heads. The respondent’s written heads of argument were due on or before 17 February 2022 but only filed a day later on 18 February 2022. In the respondent’s heads of argument an order condoning the late filing of the written heads is sought. The condonation application is unopposed by the applicants.
- [4] The period of delay in delivering the written heads is not excessive, the explanation for the delay has been fully and sufficiently given and no prejudice has been indicated by the applicants therefore I hold that there is sufficient cause warranting the court applying its discretion in the respondent’s favour. It is also in the interests of the applicants as well that this matter is progressed. Condonation for the late filing of the respondent’s written heads of argument is hereby granted.
- [5] The background facts of this matter are illustrated in the main judgment, paragraph 1 to 3 thereof. I therefore deem it unnecessary to repeat them in this judgment.

[6] In the grounds of appeal including the heads of argument the respondent has regurgitated the arguments presented in the main application. The reasons for my conclusions in this regard are illustrated in my written judgment and having regard to what is deliberated in the judgment, I'm not persuaded that the issues raised by the respondent in its grounds of appeal would have reasonable prospects of success. There is also no compelling reason why the appeal should be heard. The respondent's application for leave to appeal stands to be dismissed.

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

1. The application for leave to appeal to the full bench of this division against my judgment granted on 20 January 2022 is dismissed with costs.

NS DANISO, J

APPEARANCES:

Counsel on behalf of Applicant:

Adv. J. Ferreira

Instructed by:

Bezuidenhouts Inc

BLOEMFONTEIN

Counsel on behalf of Respondents:

Adv. GSJ van Rensburg

Instructed by:

Symington & De Kok Attorneys

BLOEMFONTEIN