



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

CASE NO: 95141/2015

- (1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

.....
DATE

.....
SIGNATURE

In the matter between:

**GIYANI ENGINEERING AND CONSULTING
CC**

First Applicant

GIYANI GLORIA MHLANGA

Second Applicant

CALVIN MUTIZE

Third Applicant

and

MAPS CIVIL AND LANDSCAPING CC

First Respondent

BRIDGET THANDEKA DUMA

Second Respondent

MOSES MAPOLISA

Third Respondent

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is 9 February 2021.

JUDGMENT

AVVAKOUMIDES AJ

1. This is an application for leave to appeal against a judgment of this Court handed down on 5 December 2019. Despite the application having been filed on 25 February 2020, the application for leave to appeal only came to my knowledge during December 2020 on, when an application in terms of rule 47(3), between the same parties, came before me by virtual hearing. On that occasion I was made aware of an order made by Roux AJ dated 3 December 2019 in terms of which the Respondents (Applicants in this application) were ordered to secure legal representation for the First Applicant, which is a legal entity.
2. It is common cause that the Applicants have not yet secured legal representation for and on behalf of the First Applicant. During the initial debate with counsel for the Applicants in the rule 47(3) application and Mr Mutize for the Respondents in December 2020, both agreed that there had not been compliance with the order of Roux AJ and consequently the application in terms of rule 47 was removed from the roll before me.
3. At the commencement of this application, I explained in detail to Mr Mutize, seeking leave to appeal against the judgment of 5 December

2019, that I must be persuaded, in accordance with section 17 of the Superior Court Act 10 of 2013, that the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard. I reiterated to Mr Mutize that he must point out, with reference to the notice of the application for leave to appeal, where I had erred, and what I should have held instead of the orders granted.

4. Notwithstanding having made it pertinently clear to Mr Mutize, he proceeded to raise issues pertaining to the merits of the main litigation between the Applicants and the Respondents and failed to move the application for leave to appeal in compliance with section 17 aforesaid.
5. During the debate with Mr Mutize I, now knowing of the order of Roux AJ, canvassed with Mr Mutize whether he was capable of representing the First Applicant and he insisted that the order of Roux AJ was in respect to the rule 47 application under a separate case number to the one at hand. There are 10 cases pending between the same parties. In the exercise of discretion, I ruled that it would be more convenient to dispose of the litigation before me without embarking on a technical exercise as to whether the order of Roux AJ under a separate case number applied to some ten other pending cases between the Applicants and the Respondents.
6. Consequently, Mr Mutize was permitted to continue addressing me and

notwithstanding reminders that he must move the application for leave to appeal to show where the court had erred, he persisted addressing me on the merits of the main litigation.

7. The attorney appearing for the Respondents in the application for leave to appeal likewise, and despite admonishment to curtail his submissions to the application for leave to appeal, also delved into the merits of the main litigation between the parties. Both he and Mr Mutize accused each other of underhanded tactics in the litigation.
8. Having perused and considered the application for leave to appeal before me and having heard the attorney for the Respondents and Mr Mutize on behalf of the Applicants, I am not persuaded that another court would come to a different conclusion.
9. Consequently, the application is dismissed with costs.

G.T. AVVAKOUMIDES
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Representation for parties:

On behalf of Applicants: Mr C (Mutize in person)

On behalf of Respondents: Mr Gwangagara

Instructed by: Gwangagwara Attorneys