

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO14886/ 16

CASE NO: 26156/2020

REPORTABLE:NO

OF INTEREST TO OTHER JUDGES:NO

REVISED

DATE:01 March 2021

In the matter between:

SONJA DU PREEZ (nee DE KLERK)

APPLICANT

And

PETRUS WILLEM VAN ROOYEN

RESPONDENT

In re:

STITCHED FLAGS AND BANNERS CC (Reg No: [...])

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the Parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or his/her Secretary. The date of this judgment is deemed to be 01 March 2021.

JUDGMENT APPLICATION FOR LEAVE TO APPEAL

COLLIS J

INTRODUCTION

[1] This is an application for leave to appeal against the judgment and order I made on 18 January 2021. The full order of the court reads as follows:

1.1 “In terms of section 36(1)(d) of the Close Corporation Act 15% membership interest of the respondent in the Close Corporation Stitched Flags and Banners CC (Reg No: [...]) be and is hereby terminated, against payment by the applicant to the respondent of the amount of R 975 000 in terms of section 36(2)(c) of the Act.

1.2 Upon receipt of such payment mentioned in paragraph 74.1 the respondent is directed to effect transfer of his 15% interest in the corporation to the applicant.

1.3 The applicant shall thereafter be the owner of 100% of the membership interest of and in the Close Corporation aforesaid.

1.4 The respondent’s counterclaim is upheld with costs.”

[2] The application is premised on the grounds as listed in the Application for Leave to Appeal dated 28 January 2021.

LEGAL PRINCIPLES

[3] Section 17 of the Superior Court's Act provides as follows:¹

(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard,

including conflicting judgments on the matter under consideration;

(b) the decision sought to appeal does not fall within the ambit of section 16(2)(a);

and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.

[4] As to the test to be applied by a court in considering an application for leave to appeal, Bertelsmann J in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para 6 stated the following:

'It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at

¹ Act 10 of 2013

343H. The use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.’

[5] ‘In order to succeed, therefore, the appellant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other word, be a sound, rational basis for the conclusion that there are prospects of success on appeal.’²

[6] The applicant and the respondent on request by this court had filed written Heads of Argument in order to facilitate the virtual hearing of the application for leave to appeal.

[7] Having read the papers and having carefully heard counsel I come to the conclusion that there is a reasonable prospect that another court would come to a different conclusion on the order of the court.

ORDER

² S v Smith 2012 (1) SACR 567 (SCA) at para 7

[8] Consequently I make the following order:

8.1 The application for leave to appeal is granted to the Full Court of
this Division, with costs to be costs in the appeal.

JUDGE OF THE HIGH COURT

GAUTENG DIVISION PRETORIA

APPEARANCES:

FOR APPLICANT

(In the leave to appeal application): ADV. B. G. SAVVAS

INSTRUCTED BY: VENNE & MULLER INC

FOR RESPONDENT

(In the leave to appeal application): ADV. J. LUBBE

INSTRUCTED BY: SCHULLER HEERSCHOP PIENAAR

DATE OF HEARING: 26 FEBRUARY 2021

DATE OF JUDGMENT: 01 MARCH 2021

Judgment electronically transmitted.