



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

Case Number: 64891/2015

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED
DATE: 11 July 2019	
SIGNATURE:	

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LTD

Plaintiff

And

PIETER HENDRIK STRYDOM N.O.

First Defendant

DEON MARIUS BOTHA N.O.

CAROLINE MMAKGOKOLO LEDWABA N.O.

[In their capacities as joint provisional trustees of the Insolvent
Estate Frederick Barend Christoffel Kirsten]

SUIDWES LANDBOU (PTY) LTD

Second Defendant

SILOSTRAT (PTY) LTD

Third Defendant

THE LAND AND AGRICULTURAL DEVELOPMENT BANK OF

Fourth Defendant

SOUTH AFRICA

TECHNICHEM OESBESKERMING (PTY) LTD

Fifth Defendant

JUDGMENT – LEAVE TO APPEAL

JANSE VAN NIEUWENHUIZEN J

- [1] In this judgment, for ease of reference, I propose to refer to the names of parties.
- [2] Three parties apply for leave to appeal against the judgment and orders handed down by this court on 9 May 2019, to wit:
- [2.1] Standard Bank;
- [2.2] Silostrat; and
- [2.3] Suidwes.

Standard Bank

- [3] Standard Bank's application pertains to my findings in respect of the interpretation of clause 1 of the deed of cession dated 22 November 2011, the claim for rectification, the finding on rectification post *concursum creditorem* and costs.

- [4] In respect of the finding on rectification post *concursum creditorem*, Standard Bank submits that leave should be granted to the Supreme Court of Appeal due to existing academic and other criticism levied against the judgment in *Nedbank v Chance and Others* 2008 (4) SA 209 D&CLD and the precedent created by the decision.
- [5] Having had regard to the grounds relied upon in its application for leave to appeal against the findings pertaining to the interpretation of clause 1 of the deed of cession dated 22 November 2011 and the rectification claim, I am of the view that Standard Bank has failed to establish that it would have a reasonable prospect of success in the appeal.
- [6] In view of the aforesaid, the question whether the legal principles pertaining to rectification post *concursum creditorem* becomes academic.
- [7] I am, however, of the view that Silostrat, for the reasons referred to *infra*, would have a reasonable prospect of success in an appeal. The nature of Silostrat's claim does, in my view, not justify the attention of the Supreme Court of Appeal.
- [8] Should Standard Bank, however, on an application for leave to appeal to the Supreme Court of Appeal, be granted leave, a situation might arise in which the matter is dealt with in a piecemeal fashion.

- [9] In order to avoid this untenable position, I am inclined to grant leave to appeal to Standard Bank in order for the matter to be dealt with in one appeal.

Silostrat

- [10] In respect of Silostrat's conditional counterclaim against Standard Bank, Silostrat contends that this court erred in applying a narrow interpretation of the term "*valid and enforceable*".
- [11] According to Silostrat there is a reasonable prospect that, should another court apply a wide interpretation of the term, its claim against Standard Bank would succeed.
- [12] The remainder of the requirements on which its claim is premised appears, according to Silostrat, from the evidence presented during the trial and could be dealt with on appeal. I agree.
- [13] In respect of Silostrat's claim against Suidwes, Silostrat avers that this court erred in not finding that Africum is a mere extension of Suidwes. A finding that Africum is part and parcel of Suidwes will lead to a reasonable prospect that another court may find that Suidwes appropriated and or disposed of 22 619, 52 tons of Mr Frederick Barend Christoffel Kirsten's 2015 maize crop.
- [14] Once again and according to Silostrat, the remainder of the requirements it has to meet in order to obtain relief against Suidwes appears from the record and is capable of being dealt with on appeal.

- [15] I agree that a reasonable prospect exists that Silostrat would be successful on appeal and such an order will follow.

Suidwes

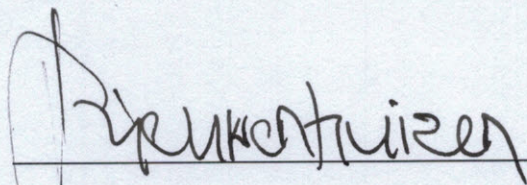
- [16] Suidwes applies for leave to appeal against the cost order granted in favour of Technichem.
- [17] Suidwes more specifically avers that this court erred in ordering Suidwes to pay Technichem's cost of suit.
- [18] Suidwes points out that Technichem was joined as a defendant by Standard Bank. Technichem successfully opposed Standard Bank's claim against it and the appropriate costs order should have been against Standard Bank.
- [19] Technichem, by way of a conditional third-party notice claimed payment of a portion of the 2015 maize crop proceeds from Suidwes and an order that its cession ranked above that of Suidwes.
- [20] Technichem abandoned its claim for payment against Suidwes at the end of the trial and only succeeded with the order in respect of the ranking of its claim.
- [21] Bearing in mind that the dispute between Technichem and Suidwes only took up half a day of the 15-day trial, Suidwes submits that a reasonable prospect exists that

another court would order Suidwes to pay only the costs incidental to Technichem's third party proceedings and only to the extent that Technichem was successful.

[22] Although a court very seldom grants leave to appeal a cost order, I am of the view that the present circumstances, warrants an exception. Consequently, leave is granted to Suidwes to appeal the cost order.

ORDER

1. Leave is granted to Standard Bank, Silostrat and Suidwes to appeal to the Supreme Court of Appeal against the judgment and order of this court handed down on 9 May 2019.
2. The costs of the applications for leave to appeal will be costs in the appeal.

A handwritten signature in dark ink, appearing to read 'N. Janse van Nieuwenhuizen', is written over a horizontal line.

N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE HEARD

28 June 2019

JUDGMENT DELIVERED

11 July 2019

APPEARANCES

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