

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
8/8/2019	
DATE	SIGNATURE

Case No: 3745/2018

In the Rule 28(4) application between:

FINANCIAL SECTOR CONDUCT AUTHORITY

Applicant

And

HITJEVI OBAFEMI TJIROZE

Respondent

And in the Rule 30 application between:

HITJEVI OBAFEMI TJIROZE

Applicant

And

FINANCIAL SECTOR CONDUCT AUTHORITY

Respondent

In re the main application between:

HITJEVI OBAFEMI TJIROZE

Applicant

And

**APPEAL BOARD OF THE
FINANCIAL SERVICES BOARD**

First Respondent

FINANCIAL SECTOR CONDUCT AUTHORITY

Second Respondent

JUDGEMENT

SENYATSI AJ

- [1]. This is an application for leave to appeal against the order I made on 15 February 2019.
- [2]. At the hearing of the application the Applicant Mr. Tjiroze, was absent in Court before the matter was called I was informed in chambers by my clerk Ms Fridah Mafokwane that she made contact with the Applicant on 2 March 2019 telephonically informed him that the application for leave to appeal would be heard on 06 March 2019 at 09h00. The Court was also informed that an email was sent to all parties on 5 March 2019 confirming that the matter would be heard on 06 March 2019 at 09h00.

- [3]. On the 6 March 2019, the Court was informed that by the clerk, Ms Mafokwane that a text message was sent to Mr Tjiroze advising him on what the court number was, where the matter was going to be argued. This was done before 09h00 when Mr. Tjiroze did not show up.
- [4]. The matter was eventually heard at 09h45. Mr Motepe, counsel for the Second Respondent in the main application confirmed that the email was sent to all parties on 5 March 2019, clearly detailing the time hearing for leave to appeal. After the court had adjourned Ms Mafokwane informed in the chambers that the applicant sent her a text message that he can only be in Court at 14h00. This was unhelpful as the Court had reserved Judgement and adjourned.
- [5]. In his application for leave to appeal, the applicant raised various of grounds which, for the purpose of this judgement, I will not repeat. The file in this matter could not be traced and despite having a draft judgment done on 6 March 2019, the judgment never reached the parties. This is regrettable.
- [6]. The gist of the order appealed against is that the court ordered in granting leave to amend the pleading by correcting the typographical error on citation of the Second Respondent. Other grounds raised by the Applicant manifesting amount to re-argument on the finalized application.
- [7]. In order to proceed with leave to appeal the applicant must meet the standard set out in Section 17(1) of the Superior Court Act no: 10 of 2013 which provides as follows:

"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 judgements on the matter under consideration".*
- (b). The decision sought on appeal does not fall within the ambit of section 16(2) (9) and*
- (c). Where the decision sought to be appealed does not dispose all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."*

[8]. On proper reading of the grounds of appeal it is evident that leave is brought in terms of section 17(1) (a) (i).

[9]. The issue for the determination is whether or not the appeal would have prospect of success.

[10]. The law is settled on the application in term of section 17(1) (9)(i) of the Superior Courts Act (" the Act). The threshold for granting leave to appeal against the judgement of this Court had been raised. In the present section, the use of the word "would" indicates a measure of restraint that another court would differ from the court should judgment is sought to be appealed against (**See Van Heerden v Cronwright & others 1985 (2) SA 342 (T) at**

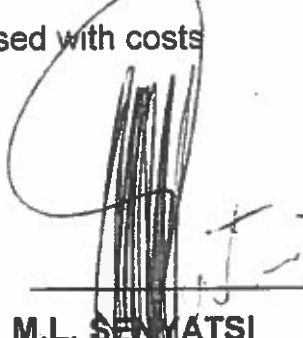
**343H and Mont Chevaux Trurt V Tina Goosen & Others LCC
14R/2014 dated 3 November 2014)**

- [11]. The order appealed against is not appealable as it is not a final judgement that disposes of the parties real issues. The order was a simple leave to amend.
- [12]. One of the grounds raised was that this Court was not entitled to correct or revise the judgement. The general rule is that once the court has pronounced on a judgement it has no authority to correct or after such judgement. In exception to this rule is that the court is permitted to correct clerical errors in its judgement or order, costs or interest on the judgement which the court far looked or inadvertency admitted to grant. (See *West Rand Estate Ltd v New Zealand Insurance Co Ltd* 1926 AD 173 *Wessels & Co v De Beer* 1919 AD 172 at 174; *Randfontein Estates v Robinson* 1921 AD 515 at 520). In substance of the Judgement was not revised and therefore this ground should fail.
- [13]. The appeal against the order will have not practical effect on the main application as this application still needs to be finalised by the parties.
- [14]. Having regard to the law and the grounds raised for leave to appeal, I am of the view that the Applicant has not succeeded in convincing this court that another court would differ with the order appealed against. As a consequence, the leave to appeal application would fail.

ORDER:

[15]. The following order is made;

- (a). The application for leave to appeal against the order made on 15 February 2019 is dismissed with costs



M.L. SENYATSI
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA

Appearances:

Date of hearing : 06 March 2019

Date of Judgement : 08 August 2019

For the Applicant : Mr. Tjiroze (Absent from Court)

For the Respondent : Advocate Motepe

Instructed by : Mothle Jooma Sabdia Inc, Pretoria