



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

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

Case number: **592/2019**

In the matter between:

CHARL DANIEL WILKE N.O.

1st Applicant

THERESA WILKE N.O.

2nd Applicant

T. ROOS INDEPENDENT TRUSTEE (EDMS) BPK
(Registration no: 2017/119408/07)

3rd Applicant

and

GRIEKWALAND WES KORPORATIEF LTD

Respondent

CORAM: JP DAFFUE, ADJP

HEARD ON: 4 OCTOBER 2019

JUDGMENT BY: JP DAFFUE, ADJP

DELIVERED ON: 7 NOVEMBER 2019

- [1] This is an application by the applicants for leave to appeal to the Supreme Court of Appeal against the judgment and order delivered on 20 June 2019.
- [2] The applicants as trustees of the Wilke Boerdery Trust unsuccessfully sought relief in terms whereof respondent be ordered to take all steps to cancel a surety bond passed by them over the trust's immovable property in favour of respondent.
- [3] Neither the recent unanimous judgment of the Supreme Court of Appeal in *Aon*,¹ nor the earlier judgment of the Supreme Court of Appeal in *Caesarstone*² was brought to my attention and argued before me during the main application. Mr Grobler, who appeared for the applicants, relied for the first time on these judgments during the application for leave to appeal.
- [4] I quote from *Aon*³:
- “I do not think that this involves any significant development of the law in this regard. *Res judicata* has always been available as a defence against the privies of parties to earlier litigation. Voet's description of those who are the same parties for the purposes of *res judicata* goes well beyond those who are privies in the strict sense of deriving their rights from a party to the original litigation.”
- [5] In paragraph 18 of my judgment of 20 June 2019 I stated the following:
- “The principles pertaining to *res iudicata* are trite. The dispute must have been finally adjudicated in proceedings between (1) the same parties for (2) the same relief on the (3) same ground or same cause of action. Neither the Trust, nor Henque was a party to the proceedings in the 2009 action,

¹ *Aon South Africa (Pty) Ltd v Van den Heever NO & others* 2018 (6) SA 38 (SCA)

² *Caesarstone SDOT – YAM Ltd v World of Marble & Granite* 2000 CC & others 2013 (6) SA 499 (SCA) at para 42

³ *Aon* at para 27

obviously no cause of action was pleaded against them and no relief was sought from them. Therefore, *cadit quaestio*.”

- [6] Mr Lourens on behalf of respondent submitted that Aon dealt with only one element of *res judicata* and that the judgment is irrelevant in respect of the other elements, to wit the same relief and same cause of action.
- [7] Mr Grobler’s submission, based on the Boshoff and Janse van Rensburg judgments,⁴ that the term “cause of action” must not be interpreted narrowly may well find favour in another forum.
- [8] Notwithstanding the fact that the threshold for granting leave to appeal has been raised by the legislature, I am satisfied that leave to appeal should be granted to the Supreme Court of Appeal as requested by the applicants who also relied on the importance of the matter and the complexity of the issues involved.
- [9] Therefore the following orders are made:
1. Leave is granted to applicants to appeal to the Supreme Court of Appeal against the judgment delivered on 20 June 2019.
 2. Costs of this application shall be costs in the appeal.

J P DAFFUE, ADJP

On behalf of Applicants : Adv S Grobler SC
 Instructed by : McIntyre & van der Post
 BLOEMFONTEIN

⁴ Boshoff v Union Government 1932 TPD 345 at 349 and Janse van Rensburg NO and others v Steenkamp and another; Janse van Rensburg and others v Myburgh and others [2009] 1 All SA 539 (SCA) at para 25

On behalf of Respondent : Adv P Lourens
Instructed by : Symington & De Kok
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