



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

**Case No: 44773/2016**

**DELETE WHICHEVER IS NOT APPLICABLE**

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

10/1/2017  
DATE

SIGNATURE

In the matter between:

**LAND AND AGRICULTURAL DEVELOPMENT  
BANK OF SOUTH AFRICA**

Plaintiff

and

**MARCUS M FARMING CC**

1<sup>st</sup> Defendant

**KGABO VIRGINIA MASENYA**

2<sup>nd</sup> Defendant

**MATOOTTO LYDIA MASENYA**

3<sup>rd</sup> Defendant

**PAULINE MPHEFO NGOETSANA**

4<sup>th</sup> Defendant

**CORNELIUS LESIBA KENNETH NGOETSANA**

5<sup>th</sup> Defendant

**LESETJA SOLOMON MASENYA**

6<sup>th</sup> Defendant

**TLOU JULIA MASENYA**

7<sup>th</sup> Defendant

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**JUDGMENT**

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**HF JACOBS, AJ:**

[1] This is an application for leave to appeal. In their notice of application for leave to appeal the seven defendants aver that I have erred in finding that the

defendants did not show a *bona fide* defence to successfully resist the summary judgment proceedings and that the decision appealed against involves questions of law that are novel and of importance to the extent that it requires the attention of the Supreme Court of Appeal. In the alternative leave to appeal is sought to the Full Court of this Division.

[2] The defendants list the eight grounds of appeal they rely on in their notice. Those include the defences dealt with in the main judgment to which they added a seventh ground pertaining to the costs order made in the summary judgment proceedings and the eighth ground of appeal that there exist conflicting decisions in our Courts on points of law that shows that I should exercise my discretion in their favour by granting them leave to appeal.

[3] The principles that find application when considering an application for leave to appeal have been set out in *Hunter*.<sup>1</sup> To those principles should, in my view, be added, having regard to the fact that leave to appeal is sought against summary judgment, the principle set out in *Majola*.<sup>2</sup> During argument I have been referred to a number of judgments the defendants rely on to show that there exist conflicting decisions on the points of law they mention in their notice. The decisions are in my view not conflicting. I have considered the judgment and the costs order. I have not been shown any misdirection of fact or law and none of the well-established grounds of appeal against a costs order have been convincingly raised by the defendants.

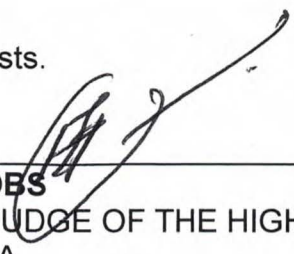
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<sup>1</sup> *Hunter v Financial Services Board* 2017 JDR 0941 (GP).

<sup>2</sup> *Majola v Nitro Securitisation 1 (Pty) Ltd* 2012 (1) SA 226 (SCA) at [25].

[4] In my view the appeal has no reasonable prospect of success and there is no other compelling reason to grant the defendants leave to appeal.

[5] Leave to appeal is refused with costs.



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**H F JACOBS**  
ACTING JUDGE OF THE HIGH COURT  
PRETORIA  
10 JANUARY 2018