

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO



**IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY**

**Case No: 717/2016
Heard on: 08/12/2016
Delivered on: 13/01/2017**

In the matter between:

ABRINAH 7804 (PTY) LTD

APPLICANT

And

KAPA KONI INVESTMENT CC

RESPONDENT

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

MAMOSEBO J

[1] This is an application for leave to appeal, to the Full Bench of the Northern Cape Division, *alternatively* the Supreme Court of Appeal, against the whole of my judgment delivered on 14 October 2016, with the following order:

- 1.1 That the agreement between the Kapa Koni Investments CC and Abrinah 7804 (Pty) Ltd concluded on 04 August 2015 is still valid;

- 1.2 That the purported cancellation of the agreement by Abrinah 7804 (Pty) Ltd on 07 March 2016 was wrongful; and
- 1.3 That Abrinah 7804 (Pty) Ltd pays the costs of this application on the party and party scale.

- [2] The applicant's main argument revolved around the submission that I erred in not finding that the agreement between the parties was null and void as at 03 February 2016 and that it was not possible to extend the period within which the suspensive condition had not been fulfilled. Adv Van Tonder, appearing for the applicant, sought to convince me further that I erred in the interpretation of the contents of the letter dated 15 February 2016 and therefore that another Court may construe it differently.
- [3] Para 17 of the main judgment disposes of the submissions by Adv Van Tonder fully. Counsel has not dealt with the purpose of this letter both in his oral and written submissions. A point correctly taken by Adv Coetzee SC is that if the applicant regarded the agreement to be void there would not have been any need to write the letter in question and neither would the necessity to cancel the contract have arisen because there would have been nothing to cancel. Counsel expounded, correctly so in my view, that in any event Clause 2 is not a suspensive condition as submitted by Adv Van Tonder.
- [4] The applicant had afforded Kapa Koni Investment CC 14 days to comply with Clause 2 of the agreement which it did. Having heard counsel's submissions on both sides, it remains my view that the applicant has no reasonable prospects of success on appeal. See s 17 of the Superior Courts act, 10 of 2013.

[5] In the result the following order is made:

The application for leave to appeal is dismissed with costs.

Mamosebo

MAMOSEBO J

NORTHERN CAPE HIGH COURT

For the applicant:

Adv AG Van Tonder

Instructed by:

Van de Wall Inc

For the respondent:

Adv WJ Coetzee SC

Instructed by:

Towell Groenewaldt Attorneys