



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

CASE NO: 32488/2012

20/4/2015

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

IN THE MATTER BETWEEN:

BEDROCK DRILLING BK

APPLICANT

AND

JOHAN NICOLAAS DU PREEZ

RESPONDENT

IN RE:

JOHAN NICOLAAS DU PREEZ

PLAINTIFF

AND

BEDROCK DRILLING BK

DEFENDANT

J U D G M E N T

KUBUSHI, J

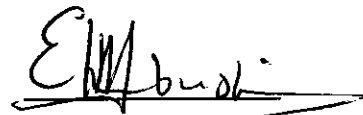
1. The applicant seeks an order for leave to appeal, to the full court of this division, against the whole of my judgment and order handed down on 19 December 2014.
2. The issues which stood to be determined at the hearing of this matter were – whether a partnership as alleged by the respondent was entered into by the parties; and if so, what was the nature of the partnership.
3. In my judgment, I found that a partnership agreement was entered into between the applicant and the respondent, and as such I ordered the applicant to provide the respondent with the statement of account of the transactions and business carried out by the applicant from 30 April 2010 to date of judgment duly supported by documentation to prove such transactions, within two months, coupled with a cost order.
4. The applicant's contention is that I erred in finding that the partnership agreement was common cause between the parties. A further assertion by the applicant is that having found that the agreement was a partnership I ought to have considered the nature of the agreement, and, in not doing so, I misdirected myself.
5. At the hearing of the application the applicant applied for the amendment of the application for leave to appeal for further insertion of another ground of appeal. The new ground to be inserted was that I erred in granting an order directing the applicant to provide the respondent with the statement of account of the transactions and business carried out by the applicant from 30 April 2010 to date of judgment, duly supported by documentation to prove such transactions.
6. The respondent's counsel had no difficulty with the amendment and conceded that the respondent did not seek all the information pertaining to the business of the applicant but only in respect of the business of the yellow drill. I granted the application.
7. According to the applicant's counsel, the evidence of the applicant is that there was joint ownership in respect of the yellow drill and not a partnership and if the court found that there was a partnership, as it did, it should have considered the nature of the partnership, which it failed to do. Throughout his evidence, the respondent contended for a 25% share in the drill. The evidence also shows ownership of the

drill to be that of Mr Meintjies, so the argument went. And, on that basis, it was contended that there were prospects of success that another court might come to a different conclusion.

8. I am also of the view that there are prospects of success that another court may come to a different conclusion as to whether there was joint ownership of the yellow drill or a partnership entered between the parties. The error in the order, even though the submission by the respondent's counsel is that it can be corrected in terms of uniform rule 42, is another reason why there are prospects of another court arriving at a different conclusion.

9. Consequently, I make the following order:

- (a) The applicant is granted leave to appeal, to the full court of this division, against the whole of my judgment and order handed down on 19 December 2014.
- (b) The costs of the application are costs in the appeal.



E. M. KUBUSHI

JUDGE OF THE HIGH COURT

APPEARANCES

HEARD ON THE

: 17 APRIL 2015

DATE OF JUDGMENT

: 20 APRIL 2015

APPLICANT'S COUNSEL

: S.J MYBURGH

APPLICANT'S ATTORNEY

: COMBRINK&JAMNECK ATTORNEYS

RESPONDENT'S ATTORNEY

: B. MC DONALD

RESPONDENT'S ATTORNEY

: BEN MC DONALD ATTORNEYS