

**IN THE COURT OF SOUT AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 27605/2015

12/6/2015

In the matter between:

THE PERSONS LISTED IN ANNEXURE A

TO THE NOTICE OF MOTION

1st Applicant

(In the Application for Leave to Appeal)

NATIONAL UNION OF METAL WORKERS

2nd Applicant

OF SOUTH AFRICA (NUMSA)

(In the application for Leave to Appeal)

and

ESKOM HOLDINGS SOC LIMITED

Respondent

(In the Application for Leave to Appeal)

JUDGMENT

A.C BASSON, J

- [1] This is an application for leave to appeal against an order and judgment (including the order as to costs) pursuant to an urgent application instituted on 5 May 2015.
- [2] The order was handed down on 15 May 2015. In terms of the order the court granted the respondent's (ESKOM Holdings SOC Limited) application for an eviction order against the individual respondents (listed in Annexure A to the Notice of Motion) until such time as the respondent granted them permission to return. In doing so the court was of the view that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act¹ ("PIE") is not applicable to the facts of this particular case. The reasons for this finding are contained in the judgement and I do not intend repeating what is stated in the judgement. Suffice to point out that the court held that the accommodation premises provided for by the respondent did not constitute a "home" for the purpose of PIE.
- [3] Only the National Union of Metal Workers of South Africa ("NUMSA") – the second respondent in the main application – filed a Notice of Application for Leave to Appeal and a Supplementary Notice of Application for Leave to Appeal on behalf of the individual respondents.
- [4] The test to be applied in applications for leave to appeal is regulated by section 17(1) of the Supreme Courts Act 10 of 2013:

"17 Leave to appeal

(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

¹ Act 19 of 1998.

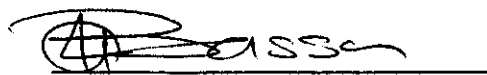
- (a) (i) *the appeal would have a reasonable prospect of success; or*
- (ii) *there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;*
- (b) *the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and*
- (c) *where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."*

- [5] The test for leave to appeal is twofold: Firstly, is there is reasonable prospect of the appeal succeeding² and, secondly, is this a case of substantial importance not only to the parties, but also to the public at large?³
- [6] In essence it was submitted on behalf of the applicant that the court erred in finding that the PIE Act was not applicable the circumstances of this case. In support of this point the applicant - in a lengthy argument - submitted that this court ought to have interpreted the "home" differently and ought to have done so in terms of the PIE Act as well as in terms of section 26(3) of the Constitution. I do not intend repeating all the submissions. Suffice to point out that I have carefully evaluated all the submissions presented to the court. I have also again considered the submissions that were presented to the court at the hearing of the main application. I have also considered the submissions in respect of the cost order that was granted against the applicant.
- [7] I am not persuaded that applicant has reasonable prospects and I am not persuaded that there is a reasonable prospect that another court may come to a different conclusion.
- [8] In the event I make the following order:

² *Janit v Van den Heever NNO (No 2) 2001 (1) SA 1064 (W) at 1062F.*

³ *Westinghouse Brake and Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd 1986 (2) SA 555 (A) at 560I.*

The application for leave to appeal is dismissed with costs.

A handwritten signature in black ink, appearing to read 'AC Basson', is written over a horizontal line.

AC BASSON

JUDGE OF THE HIGH COURT