

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

9/7/15

CASE NUMBER: 36877 / 2014

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED.
<u>09 / 07 / 2015</u> DATE  SIGNATURE	

In the matter between:

DAVID SCOTT LAUGHLAND

APPELLANT

And

MARTIN GOUWS

FIRST RESPONDENT

And

TERESA GOUWS

SECOND RESPONDENT

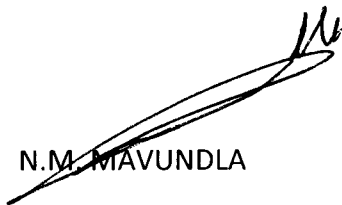
JUDGMENT

MAVUNDLA, J.

- [1] On the 7 October 2014 this Court dismissed with costs the application for leave to appeal against its judgment delivered on 3 October 2014. The Court did not furnish the reasons for the said dismissal. The reasons are therefore set herein below.
- [2] It is trite that the consideration in an application for leave to appeal is whether another Court would come to a different judgment or order as to that arrived at by the Court *a quo*. It is not the reasons but the judgment or order which is decisive in this consideration.
- [3] The judgment in respect of which leave to appeal is sought, provided, *inter alia*, that:
“[8] *In casu*, the relevant farm has since been leased to a third party who has since moved into the premises. Counsel for the applicant conceded that in such circumstances, restoration of possession is impossible. The applicant in respect of restoration of possession of the farm must fail for that reason.”...
- “[11] I am of the view that the applicant has not acquitted himself of the *onus* resting upon him to prove that at the time when he approached the court, he had any possessory right which demanded any protection through *mandament van spolie*. Consequently his application stands to be dismissed with costs.” which indeed was dismissed with costs.”
- [4] Where the lessee has parted with detention of the property allegedly despoiled, spoliation order in such circumstances is incompetent; *vide Bank van Die Oranje Vrystaat v Rossouw* 1984 (2) SA 644 (CPA).

[5] In the matter of *Beyers v Eleven Judges of the Constitutional Court* 2002 (6) SA 630 (CC) at 635 H it was held that giving of reasons by the court of final instance for refusal of application for leave to appeal was unnecessary and undesirable. In the premises I deem it not necessary to traverse all the points canvassed by the appellant. It suffices to state that granting leave to appeal, in my view, would be an exercise in futility as there are no prospects that the order granted would be reversed.

[6] I therefore hand down the reasons for the order granted against the first and second respondents.



N.M. MAVUNDLA

JUDGE OF THE HIGH COURT

DATE OF JUDGMENT: 09 JULY 2015

APPLICANT'S ADV: ADV L KOK

INSTRUCTED BY CHRISTO BOTHA ATTORNEYS

RESPONDENTS' ADV: J P SWANEPOEL

INSTRUCTED BY S J ROUX INCORPORATED