

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case No: 1825/2013

In the matter between:-

CHARL COETZER

Applicant

and

MZONDASE INGRID MABASO

Respondent

JUDGMENT BY: MOENG, AJ

DELIVERED ON: 20 March 2015

- [1] This is an application for leave to appeal to the Full Bench of this division against the whole of my judgment delivered on 28 November 2014. The grounds of appeal are contained in the notice of appeal. I do not deem it necessary to repeat same. I ordered that heads of argument be filed and that the parties appear before me if they so wished. I was favoured with heads and I am indebted to both parties.
- [2] On the strength of the foregoing grounds of appeal, applicants submit that in the circumstances there is a reasonable prospect of success and that another Court may come to a different conclusion. The application is opposed. The respondent contends that none of the

grounds of appeal have any substance and that there is no reasonable likelihood that another Court will differ from me on the conclusions I reached on the issues raised.

- [3] It is trite that leave to appeal should not be granted unless the applicant satisfied the trial court concerned that he has a reasonable prospect of success on appeal. The issue at hand relates to whether I correctly dismissed the applicant's plea of prescription. I find what Centlivres JA stated in **Rex v Baloi** 1949 (1) SA 523 AD on p. 524 – 525, apposite:

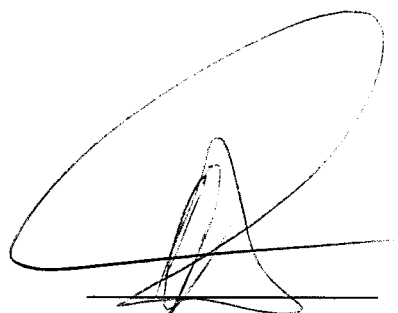
“We are aware that this Court is able to apply the proper test with greater ease than the trial Judge. For the trial Judge must, in the nature of things, find it somewhat difficult to look at the matter from a purely objective standpoint; he has a natural reluctance to say that his own judgment is so indubitably correct that the Judges of appeal will concur therein.”

- [4] I primarily made adverse credibility findings against the applicant and his witness, Ms. Skosana. I was faced with mutually irreconcilable accounts relating to the issues and I preferred the respondent's version. Having had regard to **Leketi v Tladi NO and others** [2010] 3 All SA 519 (SCA), I considered the adverse operation of section 12(3) of the Prescription Act. I concluded that the section is not dependent upon a creditor's subjective evaluation of the presence or absence of knowledge or minimum facts sufficient for the institution of a claim but the deemed knowledge imputed to the creditor required the

application of an objective standard rather than a subjective one. In order to determine whether the respondent exercised “reasonable care,” her conduct must have been tested by reference to the steps which a reasonable person in her position would have taken. Though satisfied with my credibility findings, I am satisfied that another Court, constituted differently may reach a different conclusion on the issues.

[5] I will therefore make the following order:

1. Leave to appeal to the Full Bench of this Division is granted.
2. Costs will be costs in the appeal.

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a more complex, stylized set of strokes.

L.B.J. MOENG, AJ

On behalf of the applicant:

Adv. J.F Grobler
Instructed by: Lovius Block
BLOEMFONTEIN

On behalf of the respondent:

Mr. K.M Rontgen
Instructed by: McIntyre & Van Der Post
BLOEMFONTEIN