

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, EAST LONDON**

**Case no: EL556/2012
ECD 1256/2012
Date heard: 13.4.2015
Date delivered: 14.5.2015**

In the matter between:

**KEVIN GLYNN ROUX and
ELIZABETH JOHANNA VAN NIEROP**

Plaintiff/Respondent

Vs

MAGNOLIA RIDGE PROPERTIES 197 (PTY) LTD

Defendant/Applicant

ZAMBLI 216 (PTY) LTD

Third Party

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

TSHIKI J:

[1] On the 3rd February 2015, as a Court of first instance, I delivered my judgment in this matter and made an order in the following terms:

- “[34.1] Judgment is hereby granted in favour of the plaintiff for the payment of:
- [34.1.1] A sum of R1 000 000.00 (one million rand) plus Value Added Tax together with interest thereon calculated at the legal rate per annum from the 11th May 2012 (that being the date of transfer of defendant’s property to Zambli and receipt by Zambli of the purchase price of R52 000 000.00) to date of payment.
- [34.1.2] Defendant is ordered to pay plaintiff’s costs of suit together with interest thereon calculated at the legal rate of interest per annum from allocatur to date of payment such costs to include the preparation of the heads of argument by plaintiff’s counsel.”

[2] In my evaluation of the evidence led at the trial, I came to the conclusion that it was *Roux’s* introduction of *Zambli* to the property of *Magnolia* that resulted in the

effective sale of the property by *Magnolia* to *Zambli*. I based my judgment on not only the *viva voce* evidence by the witnesses, but on also the probabilities of the case as well. See in this regard, *inter alia*, paragraphs [15] to [18] of the judgment.

[3] In the present proceedings applicant has submitted that a few errors made by the Court on the evidence referred to by the applicant could have the effect of the appeal Court finding in favour of the applicant. I do not agree. The conspectus of the evidence part of which should not be evaluated in isolation from the rest of the evidence, shows that the respondents' case herein was proved on a balance of probabilities. In my view, the insignificant errors on the judgment as pointed out by the applicant referring to incorrect reference to the evidence cannot, in my view, turn to a balance of probability in favour of the defendant/applicant.

[4] Consequently, in my view, there are no reasonable prospects that another Court could find in favour of the applicant/defendant.

[5] Therefore, the application for leave to appeal is hereby dismissed with costs.

P.W. TSHIKI
JUDGE OF THE HIGH COURT

Counsel for the applicant/defendant	:	Adv S Cole
Instructed by	:	Cooper Conroy Bell & Richards Inc EAST LONDON
Counsel for the plaintiff/respondent	:	Adv D De La Harpe
Instructed by	:	Bax Kaplan Inc EAST LONDON