

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

Case No: 4793/2012

In the matter between:-

INVESTIC BANK LIMITED
ROUTLEDGE MODISE INC

1st Applicant
2nd Applicant

and

ANDRIES NICOLAAS EVERHARDUS LOUW N.O.
RUSTU GUVEN ATALA N.O.
CARL BOTHMA N.O.
LEON WESSELS N.O.

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent

JUDGMENT BY: VAN DER MERWE, J

HEARD ON: 7 NOVEMBER 2014

DELIVERED ON: 13 NOVEMBER 2014

[1] These are applications for leave to appeal against the judgment delivered in this matter on 21 July 2014. It is convenient to refer to the relevant parties as in the judgment and to make use of the same terminology. The applications are made by Investec and Routledges. The question is whether Investec and/or Routledges have shown a reasonable prospect of success on appeal.

[2] Only two points were argued in respect of the applications for leave to appeal. Both Investec and Routledges submit that there is a

reasonable possibility that another court may conclude that non-compliance with section 118(3) of Act 61 of 1973 should be visited with nullity. The contention that there is a reasonable prospect of a finding on appeal that the debenture bond is invalid for lack of authority to have it registered, is only advanced by Routledges.

- [3] I do not think that there is a reasonable prospect of success on appeal on the issue of authority to execute the debenture bond. It is common cause that the name of Mr Van Blerk had been inserted in the power of attorney to register the debenture bond in terms of a practice followed in the deeds registries at the time. The gist of the present argument is that this practice was “legally incorrect” and had for that reason subsequently been revoked. But as I see it, this question is irrelevant. The acceptability or otherwise of this practice was not raised in Routledges’ answering affidavit. What was raised, in the answering affidavit of Investec, was something completely different, namely the possibility that Mr Van Blerk was not authorised to execute the debenture bond at all. This possibility was however ruled out by the undisputed evidence of Ms De Lange that in terms of the power of substitution granted to him, Mr Goosen as a fact nominated Mr Van Blerk, amongst others to execute the debenture bond.
- [4] In the final analysis the argument that section 118(3) is peremptory, is based thereon that non-compliance will inconvenience interested parties. But the indications to the contrary so outweigh this consideration that I am not persuaded that there is a reasonable prospect of success on this point.

- [5] In the result the applications must be dismissed with costs. It was not argued that the employment of two counsel was unjustified.
- [6] The applications for leave to appeal of the first and second applicants are dismissed with costs, including the costs of two counsel.

C. H. G. VAN DER MERWE, J

On behalf of the 1st applicant: Adv. G. W. Woodland SC
Instructed by:
Matsepes Inc.
BLOEMFONTEIN

On behalf of the 2nd applicant: Adv. G. B. Rome
Instructed by:
Lovius Block
BLOEMFONTEIN

On behalf of respondents: Adv. A. P. Joubert SC
With him: Adv. G. P. van Rhyn
Instructed by:
McIntyre & Van der Post
BLOEMFONTEIN