

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Application No: 3032/2012

In the matter between:-

HENNIE LAMBRECHTS ARCHITECTS

Applicant

and

BOMBANEIRO INVESTMENTS (PTY) LTD

Respondent

In re:

BOMBANEIRO INVESTMENTS (PTY) LTD

Plaintiff

and

HENNIE LAMBRECHTS ARCHITECTS

Defendant

HEARD ON: 11 FEBRUARY 2013

JUDGMENT BY: THAMAGE, AJ

DELIVERED ON: 14 FEBRUARY 2013

- [1] This is an application for leave to appeal to either the Full Bench of the Free State High Court or the Supreme Court of Appeal.
- [2] Leave to appeal is on judgment delivered by this court on 15 November 2012 regarding the provision of security for costs by the plaintiff being an *incola* company.

- [3] *Inter alia* application is based on the following:
- 3.1 That the court erred in the consideration of vexatious litigation;
 - 3.2 That the court erred in not considering that the respondent is a man of straw and litigate in nominal capacity;
 - 3.3 That the court erred in not considering the principles laid down in the old section 13 of the Companies Act.
- [4] Respondent is opposing the application and indicated that the case of **SIEMENS TELECOMMUNICATIONS v DATAGENICS** 2013 (1) SA 65 (GNP) supports the decision of this court that the *incola* company does not have to provide security for costs.
- [5] Primary issues are that whether in the absence of section 13 of the Companies Act, common law should apply and if so to what extent.
- [6] I am of the view that the courts sitting on application for leave to appeal, should be careful not to refuse leave to appeal unless it is a hopeless case. In the circumstances a different court may, and not will, come to a different conclusion.
- [7] Having the principles laid down in **SHOPRITE CHECKERS (PTY) LTD v BUMPERS SCHWARMAS CC AND OTHERS** 2003 (5) SA 354 (SCA) in mind, I come to the conclusion that this matter be referred to the Full Bench of the Free State High Court.

[8] Consequently the following order is made:

8.1 Leave to appeal is granted to the Full Bench of the Free State High Court.

8.2 Costs of this application be costs in the appeal.

S.J. THAMAGE, AJ

On behalf of applicant:

Adv N. Snellenburg
Instructed by:
Lovius Block
BLOEMFONTEIN

On behalf of respondent:

Adv J. Els
Instructed by:
Neuhoff Attorneys
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