

5/5/09

VERHAAL PRE TOETSEN

TOEGANG TOT DE TOEPASSING IS NIE

(1) RAPPORTEERBAAR: JANEE

(2) VAN BELANG VIR ANDER REGTERS: JANEE

(3) HERSIEN. OK

4/5/09

[Signature]

DATUM **HANDTEKENING**

Applicant (Respondent in

(1) RAPPOORTEERBAAR: ~~J~~ NEE.

(2) VAN BELANG VIR ANDER REGTERS: ~~J~~ NEE.

(3) HERSIEN. OIK

4/5/09

DATUM _____ HÅNDTEKENING _____
Applicant (Respondent in _____)

~~Applicant (Respondent in
application for leave to appeal)~~

First Respondent

Second Respondent

Third Respondent

Fourth Respondent (Applicant
in application for leave to
appeal)

First Respondent

Second Respondent

Third Respondent

Fourth Respondent (Applicant in application for leave to appeal)

JUDGMENT

Coram: RABIE J

[1] This is an application for leave to appeal. In the main application before this Court the applicant, a registered pension fund, applied for the reviewing and setting aside of the decision dated 13 April 2007 of the Financial Services Board of Appeal, which consisted of the first, second and third respondents. In that

decision of the Financial Services Board of Appeal it dismissed an appeal by the applicant against an earlier decision of the fourth respondent.

[2] In the judgment delivered by myself in the main application I granted the relief claimed by the applicant and made a further order substituting the aforesaid decision of the Financial Services Board of Appeal.

[3] The fourth respondent in the main application subsequently filed an application for leave to appeal against the whole of my judgment and order including the order for costs. For purposes of this application I shall continue to refer to the parties as they were referred to in the main application.

[4] The fourth respondent based its present application on some 18 grounds set out in a Notice for Application for Leave to Appeal. The grounds relate to almost every finding I made contrary to the initial submissions on behalf of the fourth respondent.

[5] In my view, and mainly as a result of the decision I have arrived at, it is not necessary to refer to each of these grounds. The main application primarily entailed the interpretation of certain of the provisions of the Pension Funds Act, 24 of 1956, and more particularly section 15F thereof. In addition this court had to make certain factual findings on the evidence presented to it as well as to apply those facts to the relevant legislative provisions.

[6] The interpretation of the legislation was fundamental to the adjudication of the respective rights and obligations of the parties. Similarly, the relevant facts were in dispute as well as the import of whatever factual findings were to be made.

[7] The criterion which should be adopted in an application of this nature is whether there is a reasonable prospect of success on appeal. (Cf. **Van Heerden v Cronwright and Others 1985 (2) SA 342 (T); Janit V Van Den Heever and Another NNO (No 2) 2001 (1) SA 1062 (W)**). In considering whether there are reasonable prospects that the appeal might succeed I must consider whether there is a reasonable prospect that another Court might hold that this Court erred in respect of its findings.

[8] In matters of interpretation, especially where no legal precedent exists, and where involved and intricate issues of law are at stake, it would, in my view, generally be wrong to suggest that there is no reasonable prospect that another Court might find differently. In my view this is such a case and leave to appeal should be granted. Furthermore, the relevant events occurred over a long period of time and were not properly and comprehensively documented. As such the drawing of inferences from such facts is not in all instances a simple matter. The facts are inextricably linked to the interpretation to be given to the aforesaid legislation. In the result I am of the view that leave to appeal should be granted.

[9] In the light of the complexity of the matter, the far-reaching consequences of any order and the fact that this had probably been the first time that the particular legislation had been interpreted by a court, I deem it necessary to refer the matter to the Supreme Court of Appeal.

In the result the following order is made:

1. Leave is granted to appeal against the whole of the judgment and order of this court.
2. The aforesaid leave is to appeal to the Supreme Court of Appeal.
3. The costs of the application for leave to appeal shall be costs in the appeal.

CASE NO: 44886/07

FOR THE APPLICANT (RESPONDENT IN
THE APPLICATION FOR LEAVE TO APPEAL):
INSTRUCTED BY:

ADV WATT-PRINGLE SC
THYNE HUNTER STERHUIZEN INC
C/O FRIEDLAND HART
REF.: T VAN STRAATEN

FOR THE 4TH RESPONDENT (APPLICANT
IN THE APPLICATION FOR LEAVE TO APPEAL):
INSTRUCTED BY:

ADV PILLAY
ROOTH WESSELS MALULEKE
REF.: F. ASMAL/B24632

DATE OF JUDGMENT: 5 MAY 2009