

**IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)**

CASE NO: 9190/2005

In the matter between:

SHAUN VERNON LOMBARD	1st Applicant
THE REGISTRAR OF DEEDS	2nd Applicant

and

SALIEM SOLOMON	1st Respondent
AYASHA SOLOMON	2nd Respondent

JUDGMENT

(Application for Leave to Appeal)

MEER, J

Applicant applies for leave to appeal against my judgment of 29 August 2008.

[1] The grounds upon which leave is sought pertain on the whole to issues which were fully canvassed in the judgment, and to the extent that they do, I shall not traverse these here.

[2] In respect of the ground specified at paragraph 2 of the application, I note that it is so that during cross-examination the second plaintiff, (second respondent in this application), stated she did not regard the handwritten portion of the lease agreement to contain an option. Mr Patrick on behalf of respondents argued that as the parties had concluded a written agreement, about which there was no ambiguity the second plaintiff's evidence was not admissible. Mr Albertus on behalf of first applicant acknowledged the applicability of the parol evidence rule but argued that the mindset of the second plaintiff was that there was no option. I do not accept this. From the evidence it is clear that the mindset of second plaintiff was that there was an option which could be exercised two months before the termination of the lease.

[3] I note in passing that second plaintiff's evidence as to whether there was an option, was that because the word "will" appeared in the handwritten portion of the lease, it did not constitute an option. In testifying as such she was not responding to a question pertaining to the legal definition of an option which was not explained to her.

[4] The judgment at paragraph 31, finds that the word "will" signifies the desire to sell at the termination of the lease, as was also contended on behalf of first applicant. The judgment concluded that the handwritten offer of sale satisfied the legal requirements for an option. The evidence of second plaintiff cannot be relied on for a finding in law as to whether the contested portion of the lease was an option.

[5] On a careful conspectus of the arguments I do not believe that another Court would come to a conclusion different to mine. This being so, the application for leave to appeal is refused with costs.

A handwritten signature in black ink, appearing to be 'J. Meer', written in a cursive style.

MEER, J