



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

|                              |        |
|------------------------------|--------|
| Reportable:                  | YES/NO |
| Of Interest to other Judges: | YES/NO |
| Circulate to Magistrates:    | YES/NO |

Case No: 433/ 2016

In the matter between:

**JERSEY ADVERTISING**

**1<sup>st</sup> Applicant/Respondent**

**HELEN TERRY REES**

**2<sup>nd</sup> Applicant/ Respondent**

and

**NEDBANK**

**Respondent/Applicant**

---

**JUDGMENT BY:**

**MOLITSOANE, J**

---

**HEARD ON:**

**17 MAY 2024**

---

**DELIVERED ON:**

**27 MAY 2024**

---

- [1] This is an application for leave to appeal the whole judgment and order of Khooe AJ granted on 18 November 2022. The acting stint of Khooe, AJ having come to an end, I am now seized with this application. The application seeks leave to appeal to the Full Bench of this Division, alternatively to the Supreme Court of Appeal. For convenience the parties will be referred to as in the main application. For convenience the parties will be referred to as in the main application.

- [2] The legislative framework as set out in Section 17 of the Superior Courts Act 10 of 2013 and the trite applicable case law for granting leave to appeal the judgment and order need not be repeated as they are settled.
- [3] The applicant launched an application against the Respondents for contempt of court. At the hearing of the main application the applicant abandoned the contempt of court aspect of the application and pursued the specific performance in terms of the settlement agreement.
- [4] The essence of the application in the court a quo centred around the correct interpretation of the order of Snellenburg AJ where he made the settlement agreement signed by the parties concerned an order of the court.
- [5] Pursuant to the application for specific performance application before Khooe AJ, she made certain orders which the respondents submit were not in line with the prayers sought in the Notice of Motion.
- [6] On the other hand, the applicant contends that the order of Khooe AJ is still an interim order. It refers to the settlement agreement and the order of court which stipulates that:

*"The parties agree that the above matters will be pended until all the properties have been sold as listed above, whereafter a reconciliation will be done of all bond and loan accounts of the Defendants, to calculate that amount remains outstanding by the Defendant or Defendants towards the Plaintiff."*

- [7] The applicant ultimately contends that the order of Khooe AJ constitutes an interim order where the interest of justice dictates that the order should not be appealable.
- [8] It is convenient to refer to the recent decision of the SCA in *Heidi Joubert v Pierre Joubert* (285/2023) [2024] ZASCZA 55 (19 April 2024) where the following is said with regard to the appealability of an interim order:

*"In advancing 'the interest of justice' in this appeal as a basis for the high court proceeding with the merits of this matter, the respondent's counsel overlooked this Court's recent decision in TWK v Hoogveld Boederybeleggings (TWK). In TWK, this Court interrogated the notion thoroughly after carefully analysing several decisions of this Court which had been willing to part from the Zweni v Minister of Law and Order (Zweni) judgment and said the following:*

*'Even if this is so as a matter of principle, as the defendant's counsel reminded us, a number of decisions of this Court have been willing, with different degrees of separation, to part from Zweni, or subsume Zweni under the capacious remit of interest of justice. I do not here essay a general account of appealability. I do affirm, though, that the doctrine of finality must figure as the central principle of consideration when deciding whether a matter is appealable to this Court. Different types of matters arising from the high court may (I put it no higher normatively) warrant some measure of appreciation that goes beyond Zweni or may require an exception to its precepts. Any deviation should be clearly defined and justified to provide ascertainable standards consistent with the rule of law. Recent decisions of this Court that may have been tempted into the general orbit of the interest of justice should now be approached with the gravitational pull of Zweni.*

[10] *In the same judgment, this Court warned courts other than the Constitutional Court in adopting the standard of the interest of justice as the foundational basis upon which they decide whether the matter is appealable or not. It remarked:*

*"I recognise that there is thought to be a compelling basis to render this Court's approach to appealability consistent with that of the Constitutional Court. And hence to recognise the interests of justice as the ultimate criterion by reference to which appealability is decided. I consider this to be a misreading of the Constitution. Section 167 of the Constitution constituted the Constitutional Court as the highest court. Section 167(3) sets out matters that the Constitutional Court may, and is thus competent, to decide.... The Constitutional Court grants leave to appeal on the grounds that the matter raises an arguable point of law of general public importance which ought to be considered by that Court. The Constitution thereby states a principle of appealability in respect of the Constitutional Court. The Constitution does so also to allow a person to bring a matter directly to the Constitutional Court or by way of direct appeal (s 167(6) of the Constitution). National legislation or the rules of the Constitutional Court must allow a person to do so in the interest of justice and with the leave to Constitutional Court."*

- [9] The respondents did not deal with the issue of appealability of the order of Khooe AJ as raised by the applicant in this application for leave to appeal. The essence of the attack of the judgment and order of the court a quo is that the



said court granted orders which do not correspond with the relief sought. Simply put, the court a quo granted orders which were not asked for in the Notice of motion.

- [10] It is undisputed that the order granted is interim in nature<sup>1</sup>. In my view, there is a reason however to depart from Zweni. It is settled that the pleadings serve as a vehicle to inform the parties about the issues between them and also to warn them of the case they are required to meet<sup>2</sup>. Closer scrutiny of the orders granted by the court a quo reveals that some of the orders the court granted do not correspond with the relief sought in the Notice of Motion. The court also granted orders which were not prayed for. This in my view is reason enough to depart from Zweni. Notwithstanding this, it has to be borne in mind that the respondents do not actually take issue with the reasoning of the court a quo in the interpretation of Snellenburg AJ order. I am accordingly satisfied that the respondents have made out a proper case and there are prospects of success on appeal. I accordingly order as follows:

## ORDER

1. The applicant is granted leave to appeal the judgment and order granted herein to the Full Bench of this Division;
2. The costs of this application will be costs in the appeal.



P. E. MOLITSOANE, J

---

<sup>1</sup> See para 20.3.3 of the Respondents Heads of Argument.

<sup>22</sup> Prince v President Cape Law Society and Others [2000] ZASCA 28: 2001(2) SA 388(CC) 2001(2) BCLR 133(CC).

**Appearances:**

For the Plaintiff : ADV T NGUBENI

Instructed by: SPANGENBERG ZIETSMAN & BLOEM  
BLOEMFONTEIN

For the Defendant: ADV S REINDERS

Instructed by: MCINTYRE VAN DER POST  
BLOEMFONTEIN