



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

2024-11-07

DATE

SIGNATURE

Case Number: 2023-126938

In the matter between:

THE SOUTH AFRICAN RESERVE BANK

First Applicant

NOMFUNDO TSHAZIBANA N.O.

Second Applicant

TSUMBEDZO CHARLES NEVHUTANDA N.O.

Third Applicant

DION NANNOOLAL N.O.

Fourth Applicant

THE MINISTER OF FINANCE

Fifth Applicant

And

IBEX RSA HOLDCO LIMITED

First Respondent

IBEX INVESTMENT HOLDINGS LIMITED

Second Respondent

SIHPL PROPRIETARY LIMITED

Third Respondent

SAHPL PROPRIETARY LIMITED

Fourth Respondent

NEWSHELF 1093 PROPRIETARY LIMITED

Fifth Respondent

SILVER POINT CAPITAL, L.P.

Intervening Party

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 7 November 2024.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

POTTERILL J

[1] The applicants are seeking leave to appeal against the judgment and orders granted on 7 October 2024. The intervening party and the respondents oppose the application.

[2] In terms of section 17(1)(a) leave to appeal “may only be given where the judge or judges concerned are of the opinion that –

- (a)(i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration ...
- (b) ...
- (c) ...”

[3] Neither in the application for leave to appeal, nor in argument, was reliance placed on section 17(a)(ii). Leave was sought due to prospects of success in another court.

Is this order appealable?

[4] An intervention order is an interlocutory order, but *in casu* this order does not have final effect because it does not dispose of a substantial portion of the relief claimed in the review proceedings and is most certainly not definitive of any issue in the main action.

[5] In argument it was submitted that it would be in the interests of justice to grant leave to appeal. Nowhere in the notice was this the basis sought for leave to appeal. In this application for leave to appeal the interest of justice raised revolves around why the order should not have been granted; as was argued in the intervention application.

[6] On behalf of the intervening party and the respondents it was argued that the order is not appealable and reliance was placed on the matter of *Cyril and Another v The Commissioner for the South African Revenue Service* (Case no 186/2023) [2024] ZASCA 32 (28 March 2024) wherein the Supreme Court of Appeal found that it had no jurisdiction to entertain the appeal on intervention as it was not a final order and it was not in the interests of justice to do so.

[7] As stated previously no ground is raised in the application for leave to appeal as to why not granting leave will not be in the interests of justice. However, in oral argument it was raised that the effect of this judgment would be that the floodgates would open and every financial creditor could now approach a court when the applicant issues a blocking order. In the application for leave to appeal, the finding in the judgment, that led to the order, that the floodgates and the increased cost litigation is not a factor to consider is not attacked. But, in any event, each matter is fact specific,

this order in this matter does not *per se* give every creditor a right to intervene and be joined as an applicant. The interests of justice is an absolute requirement for leave to be granted in the Constitutional Court and in the Supreme Court of Appeal. Section 17 does not set out such a ground for leave to appeal, but if it is implied then this argument is rejected.

[8] I accordingly find that the order is not appealable.

Prospects of success

[9] If I should be wrong that the matter is appealable, then there are no prospects of success that another court could come to another finding. I am satisfied that the intervening party did not only have a financial interest.

Condonation

[10] I simply do not entertain the new argument raised that there are no facts in the affidavit to support the prayer for condonation. Condonation was not addressed at all during the hearing and can and should, if relevant, be addressed in the review application.

Costs

[11] I stand by my costs finding.

[12] The application for leave to appeal is dismissed with costs, costs to be on scale C.



S. POTTERILL
JUDGE OF THE HIGH COURT

CASE NO: 2023-126938

HEARD ON: 6 November 2024

FOR THE 1ST TO 4TH APPLICANTS: ADV. T. GOVENDER

INSTRUCTED BY: Bowman Gilfillan Inc.

FOR THE INTERVENING PARTY: ADV. J. WASSERMAN SC

INSTRUCTED BY: Cliffe Dekker Hofmeyr Inc.

FOR THE APPLICANTS: ADV. D. WILD

ADV. T. NGAKANE

ADV. E.A. VAN HEERDEN

INSTRUCTED BY: Webber Wentzel

DATE OF JUDGMENT: 7 November 2024