

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 33078/2019

DATE: 2024-08-26

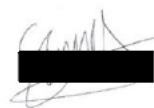
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(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 26 August 2024



SIGNATURE

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In the matter between

NCZ and Another

Applicants

and

KMN

Respondent

J U D G M E N T *EX TEMPORE*

LEAVE TO APPEAL

20 **WILSON, J:** The applicants, Mr and Mrs Z, who were the defendants *a quo*, seek leave to appeal against my decision dated 10 May 2024, in which I directed them to pay the sum of R430 000 plus interest and costs to the plaintiff, KMN.

My trial judgment was entirely factual in nature. To persuade me that there are prospects of success on appeal,

Mr and Mrs Z have to show that there is a reasonable prospect that a court of appeal would find the factual conclusions I reached were clearly wrong. That really boils down to the proposition that I drew my conclusions in the absence of evidence that supported them or that I ignored admissible evidence inconsistent with them.

Mr and Ms Z do not mount a case of that nature. What Mr and Mrs Z say is that a court of appeal might weigh up the facts proved at trial differently. On its own terms
10 that is not a basis on which I can grant leave to appeal.

At trial KMN and Mr and Mrs Z told two mutually destructive stories about why KMN transferred R430 000 to Mrs Z. KMN said it was for Mrs Z to buy her a house. Mr and Mrs Z said that it was a gift from KMN to Mrs Z.

I found in my trial judgment that if all I had were the competing versions of the parties before me, I could not choose between them and I would have to absolve Mr. and Mrs Z from the instance.

However, the parties' competing versions were not
20 the only admissible evidence at trial. I also had bank statements which everybody accepted showed that over a period of several years, after a house was in fact purchased with the money KMN gave to Mr and Mrs Z, Mrs Z transferred to KMN a series of amounts that were represented on the bank statements as payments for rent

made by tenants living at the house.

I found in my trial judgment that this corroborated KMN's version that the money was given to Mr and Ms Z to buy KMN a house.

I found that KMN's version was also corroborated by the fact that she appears on the bank statements to have made payments towards work done to improve the house purchased with the money she gave to Mrs Z, but which on Mr and Ms Z's version was never meant for her. These
10 payments also demonstrated that the true intention underlying the transfer of money to Mrs Z was that Mrs. Z would buy a house for KMN, not for herself.

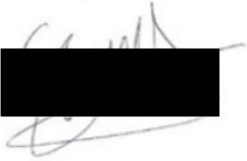
Those two material pieces of evidence – the payments to KMN marked as rent and the payments for building materials to improve the house – tipped the probabilities in favour of KMN's version. That is the conclusion I drew in my judgment on trial.

Mr and Mrs Z, despite diligent and able argument from Mr Ali who appeared on their behalf, have been unable
20 to convince me that there is a basis on which an appeal court might conclude that these factual findings were clearly wrong.

For all those reasons, I make the following order:

[1] The application for leave to appeal is dismissed.

[2] The applicants will pay the costs of the application.

A handwritten signature in dark ink, appearing to read 'J. Wilson', is written over a solid black rectangular redaction box.

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WILSON, J
JUDGE OF THE HIGH COURT
26 August 2024