

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: 2024-026439

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
..... SIGNATURE 4 Oct 2024 DATE	

In the matter between

BONTLE CORNELIA KHUNOU	Applicant
and	
LIFE PATTERNS HOLDINGS (PTY) LIMITED	First Respondent
ONICA KHUNOU	Second Respondent
TSHEPO ABRAM PHIRI	Third Respondent

JUDGMENT (LEAVE TO APPEAL)

WANLESS J

Introduction

[1] In this application the Applicant, namely Bontle Cornelia Khunou, seeks leave to appeal, either to the Supreme Court of Appeal (*“the SCA”*) or the Full Court of this Division, against the order of this Court granted (*on an urgent basis*) on 20 March 2024. The application is opposed by Life Patterns Holdings (Pty) Limited (*“the First Respondent”*); Onica Khunou (*“the Second Respondent”*) and Tshepo Abram Phiri (*“the Third Respondent”*). The three respondents in this application for leave to appeal by the Applicant will be referred to herein collectively as *“the Respondents”*.

[2] The Respondent’s urgent application before this Court was successful on the basis that this Court granted certain interim relief against the Applicant, together with an order for costs.

[3] The principles of law to be applied in such an application in terms of section 17 of the *Superior Court Act 10 of 2013* (*“the Act”*) are trite. This brief judgment (*as necessitated by the very nature of the application itself*) will not be burdened unnecessarily by setting out same and referring to the authorities dealing therewith. Leave to appeal should *only* be granted if this Court is satisfied that an appeal court would (*not could*) come to a different finding than it did and would grant a different order.

Grounds of appeal

[4] These grounds are *“set out”* in the Applicant’s *“Application for Leave to Appeal”*. Regrettably, the grounds of appeal relied upon by the Applicant are confusing and difficult to understand. In order not to burden this judgment unnecessarily, those grounds will not be set out *verbatim* herein. To do so would serve little or no purpose. Rather, these grounds will be dealt with (*broadly*) when considering the merits of this application.

Discussion

[5] In the first instance, it is common cause that the order of this Court is interim only. It is fairly trite that where an order is not final and not dispositive of the rights of

the parties (*as is the case in the present matter*), then that order is *not* appealable. In the premises, this application must be dismissed.

[6] However, in the (*highly unlikely*) event that this Court is incorrect with regard to the foregoing the remaining grounds for leave to appeal are dealt with hereunder.

[7] A considerable amount of the application by the Applicant focuses on the ruling by this Court that the application by the Respondents was urgent. It is fairly trite that no appeal lies against a ruling in respect of urgency. Further, a court has a wide discretion in respect thereof. Arising therefrom, this ground does not assist the Applicant in this application for leave to appeal.

[8] An appeal lies against the order of a court and *not* that court's reasoning for granting that order. In the premises, the leave to appeal sought arising from the request made by the Respondents and how long it generally takes the CIPC to provide certain information, does not, in itself, give rise to a right of appeal by the Applicant.

[9] The Applicant takes issue with an earlier order made in respect of discovery. This order was made by Weiderman AJ under case number 2023-005497. That order had no relevance to the issues which this Court had to determine. That order bound the relevant parties and stands until varied or set aside. Arising therefrom, it cannot give rise to a valid ground of appeal in the present matter.

[10] As to the reliance by the Applicant on the fact that this Court granted an order for costs, it is also trite that a court has a wide discretion in respect thereof. Leave to appeal in respect of a costs order is rarely granted by our courts. There are no grounds therefor in the present matter.

[11] The Applicant complains that the Respondents have failed to take any action to obtain the determination of PART B of the order (*final relief*). Once again, this "*ground*" does not assist the Applicant in the present application. If any delays are indeed as a result of inaction on the part of the Respondents the Applicant has ample remedies in terms of, *inter alia*, the Rules of this Court.

[12] Finally, the Applicant contends that there were insufficient facts placed before this Court to determine that there was a real threat that eviction of tenants would continue. This is incorrect. It is clear from the application papers that this is not the case. In any event, it is also trite that a court has a fairly wide discretion whether or not to grant an interim interdict (*the relief granted in this matter*). It is noted that the Applicant has not dealt, in this application for leave to appeal, in any material manner whatsoever, with why an appeal court would come to a different decision on the basis that the Respondents did not prove one or more of the requisites for an interim interdict.

Conclusion

[13] Having carefully considered the submissions made by both the Applicant and the Respondents in this application for leave to appeal, it is the finding of this Court that the Applicant has clearly failed to show that another court would come to a different decision and that the Applicant should be granted leave to appeal. In the premises, this application by the Applicants for leave to appeal should be dismissed.

[14] The foregoing is applicable not only insofar as the application for leave to appeal is based upon subsections 17(1)(a)(i) and (ii) of the Act but also in terms of subsection 17(1)(c) thereof.

[15] This Court should also add that in making such an order, it further bears in mind the oft repeated narrative of the courts of appeal that the court *a quo* should be slow to grant applications for leave to appeal in matters where the prospects of success are not good. This avoids the unnecessary burdening of the rolls of the appeal courts.

Costs

[16] As to the issue of costs, there are no unusual circumstances pertaining to this matter that would cause this Court, in the exercise of its general discretion pertaining to the issue of costs, to deviate from the trite principle that costs should

normally follow the result. In the premises, the Applicant should be ordered to pay the costs of the application for leave to appeal.

[17] Regarding the scale of those costs, Counsel for the Respondents submitted that a similar order for costs, as was made by this Court in respect of the urgent application, should follow in the present application. In other words, it was submitted that the costs of this application should be paid on the scale of attorney and client, as was ordered in the urgent application. Arising therefrom and in the exercise of this Court's general discretion in respect of the issue of costs, it is the opinion of this Court that the Applicant should, once again, pay the costs of this application for leave to appeal, on a punitive scale.

Order

[18] This Court makes the following order:

1. The application for leave to appeal against the order of this Court under case number 2024-026439, granted (*on an urgent basis*) on 20 March 2024, is dismissed..
2. The Applicant (*Bontle Cornelia Khunou*) in the application for leave to appeal, is to pay the costs of this application on the scale of attorney and client.

B. C. WANLESS
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION
JOHANNESBURG

Date of Hearing: 14 May 2024
Date of Judgment: 4 October 2024

Appearances

On behalf of the Applicant: Adv. T. E. M Seola

Instructed by: Mark Anthony Beyl Attorneys

On behalf of the Respondents: Adv. C. Van der Merwe

Instructed by: Lauren Le Grange Inc.