

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number 092411/2024

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
22/10/2024	
DATE	SIGNATURE

In the matter between:

KELU & FAMILY WHOLESALERS & RETAIL CC

Applicant

And

AFHCO HOLDINGS (PTY) LIMITED

Respondent

JUDGMENT- LEAVE TO APPEAL

MAHOMED AJ

[1] At the hearing of this matter for leave, I referred counsel to paragraph 12 of the judgment I handed down on 9 September 2024 in the urgent court. I am of the view that the

applicant failed to demonstrate that it would not enjoy substantial redress at a hearing in due course, it accordingly failed on urgency. I however made the error of dismissing the application, rather than to have struck it for lack of urgency.

[2] Rule 42 of the Rules of Court permits a court to correct its errors without impacting on the sense and substance of the judgment. Counsel for the applicant, Adv Khumalo, was of the view that, for as long his application for leave is filed, the court cannot resort to Rule 42 as the judgment is final. Counsel for the respondent, Adv Fine, contended that the respondent agreed to the rescission, due to the heavy court rolls, it was in the interest of both parties to expedite matters. Counsel held the view that the court could amend the order to read "struck for lack of urgency" and the applicant needed simply to withdraw the application for leave.

[3] Adv Khumalo submitted that the court was incorrect on the law, the facts and the evidence, his client was ordered to pay the costs, based on the court's findings. He submitted that a stay of a warrant by its nature was urgent, the applicant ought to have succeeded on urgency. Counsel submitted that the test of a stay of execution required a court to consider only if the underlying causa was in dispute, the applicant satisfied the requirement for a stay of a writ, the underlying cause was disputed, "the scales tip in favour of the applicant". It was further contended that the applicant has prospects of success and meets the requirements for leave as set out in s17 of the Superior Courts Act 10 of 2023.

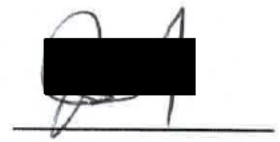
[4] Adv Khumalo contended that the dismissal was a final order and therefor the applicant should be granted leave to appeal.

[5] It is in the interest of justice that the applicant be permitted a hearing regarding the issue of both urgency and costs, I ordered costs on the basis of my findings at paragraphs 8, 11 and 12 of the judgment, and I held the view that the applicant would be enjoy substantial redress at a hearing in due course, it had failed to prove the matter was urgent.

Order

[6] Accordingly, I make the following order:

1. The applicant is granted leave to appeal to the Full Court of this Division.
2. Costs of the application for leave to appeal are reserved, given that the rescission application is to be heard.



MAHOMED AJ

Date of Hearing: 21 October 2024

Date of Judgment: 22 October 2024.

Appearances

For applicant: Adv Khumalo

Instructed by: Dlamini Legal Inc.

For Respondent: Adv V. Fine

Instructed by: Mervyn Joel Smith
Attorneys