



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

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case No: 5778/2023

In the matter between:

HELTA BOERDERY (PTY) LTD

1st Applicant

AL MABROOR AGRI (PTY) LTD

2nd Applicant

and

DE VOS LANDGOED (PTY) LTD

1st Respondent

DOORBULT BEDRYWIGHHEDE (PTY) LTD

2nd Respondent

HEARD ON: Matter disposed of without oral hearing in terms of section 19(a) of the Superior Court Act 10 of 2013.

JUDGMENT BY: MHLAMBI, J

DELIVERED ON: 20 AUGUST 2024

APPLICATION FOR LEAVE TO APPEAL

[1] This is an application for leave to appeal against the whole of the judgment I granted on 03 November 2023, in which the applicants' application for, amongst other things, interdictory relief was dismissed with costs.

[2] The grounds of appeal were stated as follows:

- "1. The learned Judge erred in finding that the matter is not urgent;*
- 2. The learned Judge erred in finding that the applicants failed to prove the requirements necessary for a spoliation order;*
- 3. The learned Judge erred in finding that the requirements for the granting of an interim interdict were not met.*
- 4. The learned Judge erred in granting costs of the application in favour of the respondent.*
- 5. It is thus in the interests of justice that an appeal is allowed, as contemplated in section 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013."*

[3] It is trite that leave to appeal may only be given where the judge or judges concerned are of the opinion that an appeal would have reasonable prospects of success or that there is some other compelling reason why the appeal should be heard including conflicting judgments on the matter under consideration.

[4] In their heads of argument, the applicants submitted that the court, in dismissing the application, erred in making the findings contained in paragraphs 6, 17, 18, 19, 20, and 22 in that:

1. The objective common cause evidence before the court did not support a finding that the second respondent was in peaceful and undisturbed possession of the Nelsgift property on 20 October 2023 because the first applicant had been conducting farming activities on behalf of the second respondent since the inception of the project until 20 October 2023.
2. The first respondent acknowledged and submitted that the second respondent's income was generated by the first applicant's farming activities.
3. The applicants, the second respondent's majority shareholders, appointed the first applicant to conduct the farming activities on behalf of the second respondent.

4. According to the first respondent's version, the second respondent was no longer active or operational and was to be deregistered or wound up by 16 August 2023.
5. The second respondent never conducted any farming activities and was only established to provide a vehicle for its shareholders to conduct farming activities together and share in the profits.
6. By the time the application was launched, the second respondent was dormant and inoperative and could, therefore, not have been in peaceful and undisturbed possession of Nelsgift by 20 October 2023.¹

[5] The first applicant contended that it could have been the only entity that could have been in peaceful and undisturbed control of Nelsgift on 20 October 2023 because the first respondent's principal place of business was situated in Colesburg, some 320 km away. The first respondent arrived and entered Nelsgift only on 20 October 2023 and could, therefore, not have been in peaceful and undisturbed possession of Nelsgift prior to this date. The first applicant was the only party whose representatives lived and conducted farming activities in the Bultfontein area where Nelsgift was situated. That left the first applicant as the only party who could, on any version and, practically speaking, have been in peaceful and undisturbed possession of Nelsgift as submitted in the founding affidavit.²

[6] The applicants contended, furthermore, that the relief sought for an interim interdict flowed from the first applicant's right to its peaceful and undisturbed control and possession of the Nelsgift property and that the status quo be maintained until such time as the application launched in the Kimberly High Court under case no: 1567/2023 was finalised. The relief was necessitated by the nature of the relief sought in the Kimberly application, as there was a dispute relating to the rights and interests of the applicants and the first respondent,

¹ Para 4.1 of the applicant's heads of argument

² Para 4.2.

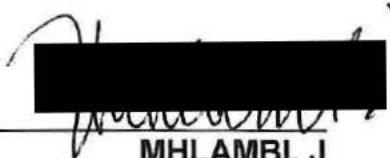
including but not limited to the first respondent's rights to ownership of the Nelsgift property.³

- [7] Prayer 2 of the notice of motion sought the restoration of the first applicant's peaceful and undisturbed control over the farm Nelsgift by ordering the first respondent to remove any and all vehicles and equipment from the premises as well as any employees and/or representatives. The first applicant did not complain in its papers that this prayer was not complied with after it received the first respondent's undertaking as per the letter dated 24 October 2023. This aspect was fully dealt with in the judgment. The third prayer in the notice of motion was dependent on the second, and a finding that the first applicant was not in peaceful and undisturbed possession of Nelsgift would affect the third prayer adversely.
- [8] The applicants submitted in their heads of argument that the appeal would have reasonable prospects of success and that the application for leave to appeal should be granted. It is trite that the test for reasonable prospects of success postulated a dispassionate decision, based on the facts and law that a court of appeal could reasonably arrive at a conclusion different from that of the trial court. In other words, the appellants needed to convince the court on proper grounds that they had prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.
- [9] The applicants failed to discharge the onus that reasonable prospects of success existed that they would succeed on appeal. The application for leave to appeal must, therefore, fail.
- [10] The following order issues.

³ Para 5.

Order:

The application for leave to appeal is dismissed with costs.


MHLAMBI, J

On behalf of the applicant: Adv W Roos

Instructed by McIntyre Van Der Post Attorney
12 Banes Street
Westdene
Bloemfontein

On behalf of the respondent: Adv LK Van Der Merwe

Instructed by: EDJ Attorney Inc
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