



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No: **083030/2023**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED

21 NOVEMBER 2024

SIGNATURE

DATE

In the matter between:

MARTIN KYLE JOUBERT

Applicant

and

BLACK RHINO GAME LODGE (PTY) LTD

First Respondent

MIKHAIL JOUBERT

Second Respondent

ODETTE OCTAVIA JOUBERT

Third Respondent

ODETTE OCTAVIA JOUBERT N.O.

Fourth Respondent

(In her capacity as the executrix in the estate late
Hendrik Petrus Joubert)

BIG NAME INVESTMENTS 1025

Fifth Respondent

CIPC

Sixth Respondent

MASTER OF THE HIGH COURT

Seventh Respondent

MARMICO FAMILY TRUST

Eighth Respondent

(IT 12757/96)

ODETTE OCTAVIA JOUBERT N.O.

Ninth Respondent

(Trustee of the Marmico Trust)

HENDRIK PETRUS JOUBERT N.O.

Tenth Respondent

This judgment is prepared and authored by the Judge whose name is reflected as such 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 21 November 2024.

LEAVE TO APPEAL: SHORT REASONS

RETIEF J

[1] The applicant applies for leave to the Full Court of this Division against the whole of the judgment and orders handed down on the 24 October 2024 in which, the applicants contempt application was dismissed and the first, second and respondents' [respondents] application to stay the execution of an order granted by Hassim AJ (as she then was), on the 29 August 2023 pending the finalisation of Part B in the main application [Hassim order]. The main application has been set down for adjudication in April 2025.

[2] The judgment and order dealt with the outcome of two applications. Such applications for ease of reference were, in the body of the judgment, referred to as

the contempt relief and the stay relief. Such reference will be persist herein. The nature of the stay relief was interim and was granted pending the outcome of Part B of the main application.

[3] The short reasons which follow are to be read with the judgment and are merely provided as further explanation, arising from oral argument. Of importance in considering the grounds raised and argued is that in the contempt relief, other than to declare the respondents in contempt of the Hassim order, the applicant sought a determination of a monetary claim. The call for committal flowing any default by the respondents to pay such monetary claim once awarded. The respondents were therefore not, at the time the contempt application was launched indebted to pay a specific amount to a specific creditor.

[4] It flows then, that at the time the stay relief was launched, there was nothing for the respondents to specifically obey and make right obliging this Court not to entertain and enforce the stay relief. The dignity of the Court undisturbed. The applicant, other than calling for the respondents to pay a prospect monetary claim to be determined, did not call for any other desistance and or action/s from the respondents which they could obey before they themselves requested the stay relief.

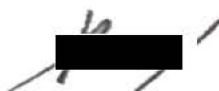
[5] If the contempt relief was successful, then in terms of prayer 8 of the Hassim order, “*-the party receiving the money shall make repayment to the First, Fifth or Eighth Respondent, as applicable.*” The Hassim order does not deal with the payment of a specific debt amount to a specific creditor, but merely appears to create an obligation to pay, if contempt established. This the applicant’s argue is an *ad factum praestandum*. This reasoning appears correct however, this is not the obligation which is relied on and what according to the applicant should trigger the committal. The applicant does not request committal for the failure to honour an obligation to pay a debt when called upon, when he launched the contempt relief. He could not have, such debt and failure to pay not established yet. The applicant specifically sought committal based only on the failure by the respondents to repay the specific awarded amounts to specific creditors within 48 hours of the granting of the contempt relief itself (*ad pecuniam solvendam*). Such committal following and

flowing from a possible future default of payment, such possible future default arising from the contempt order as a result of the contempt application. The dismissal of the contempt relief as dealt with in the judgment should stand.

[6] Therefore considering the above, considering the arguments raised, considering the submissions in support of the interest of justice advanced by the applicant's Counsel in respect of the stay relief and having reconsidered the reasoned judgment this Court is of the opinion that the appeal would not have a reasonable prospect of success and as such, the applicant has not met the threshold of Section 17 of the Superior Courts Act 10 of 2013.

[7] The following order:

1. The application for leave to appeal is dismissed with costs, including the costs of two Counsel, taxed on scale C.



L.A. RETIEF
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

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