IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 22696/2024

In the matter between:

CURRO HEIGHTS PROPERTIES (PTY)LTD	Applicant
and	
NOMIC 151 (PTY) LTD	First Respondent
CHAVONNES BADENHORST ST CLAIR COOPER N.O	Second Respondent
SUMIYA ABDOOL GAFAAE KHAMMISSA N.O	Third Respondent
COMPANIES & INTELLECTUAL PROPERTY COMMISSION	Fourth Respondent
MASTER OF THE HIGH COURT, CAPE TOWN	Fifth Respondent
ABSA BANK LTD	Sixth Respondent

Heard: 12 March 2025

Delivered: 17 March 2025

This Order was handed down electronically.

JUDGMENT
Leave to Appeal Application

PARKER AJ

[1] This is an application for a leave to appeal the judgment delivered on 21 November 2024, in which the matter was struck from the roll with costs on an attorney and client scale.

[2] The grounds for the appeal are that the court erred in finding:

2.1 That the applicant violated the judgment issued against him by Justice Cloete on 12 November 2014, which applicant contends was made against Mr Molyneux in his personal capacity as a self-litigant on behalf of applicant.

2.2 That the applicant was not properly before the court given clause 2 of Justice Cloete judgment. Applicant contends that he was properly before court as there is a separate legal persona between the company and its director Mr Molyneux. That it was not Mr Molyneux who was litigating, rather it was the applicant represented by Mr Molyneux in a business rescue application against the respondents.

2.3 That Mr Molyneux needs to apply for leave to litigate. Applicant contends that such finding is unsustainable as the Justice Cloete judgment was against Mr Molyneux in his personal capacity and therefore applicant does not require the permission to litigate in its own name.

2.4 That the second and third respondents are not required to wait in order to proceed with the winding up process. In Applicant's view the finding is not supported by legal authority, as the issuing of a business rescue application automatically suspends the winding up process. To this end the applicant seeks to revive the operation of the first respondent so as to rescue the first respondent from a winding up.

2.5 That Mr Molyneux was aware that he was in breach of the Justice Cloete order. He argued that this is an incorrect assertion for the same reasons set out in para 2. 3 and 2.4 above.

[3] In the furtherance of applicant's argument that the court failed to give sufficient

weight to the principle of separate legal persona, that there is a difference in the legal personality between a company and its directors is a ground for appeal. The corporate veil can only be pierced if there are allegations of fraud, dishonesty or improper conduct when acting on behalf of a company. In the absence thereof Mr Molyneux says he is only pursuing what he believes is in the best interest of applicant.

[4] The applicant relied on the decision by Justice Allie J[1], in terms of a judgment granted where an application was dismissed where the learned judge found that declaring the applicant a vexatious litigant does not prohibit him from litigating in a representative capacity.

[5] In this regard applicant's submission is that the current judgment is in conflict with the ruling made by Justice Allie, due to the applicant being a juristic person in its own right and enjoys a separate legal personality, therefore applicant does not require the leave of the court.

[6] The applicant also relied on a Constitutional Court judgment that judgments of courts declaring persons vexatious litigants are limited to the persons against whom the orders are issued and therefore the applicant cannot be treated as a vexatious litigant in these proceedings even where it is represented by Mr Molyneux.[2] For these reasons the applicant argues that it has a reasonable prospect of success and that it should be in the interest of justice for leave to appeal to be granted.

[7] The first, second, third and sixth respondents (referred to as "the respondents') relied on its heads of argument raised in the main hearing and the only point of departure from those heads of argument relates to the issue that the applicant has not overcome the late filing of its application for leave to appeal. The judgment was delivered on 21

[1] In re: Rhett Justin Christopher Molyneux Case No 18956/2015 dated 8 October 2015
[2] Beinash and Another v Ernst & Young and Others 1999 (2) SA 116 (CC)

November 2024, whilst the application for leave to appeal would have been due and delivered on or before 12 December 2024 and not as late as 30 January 2025. The absence of an application for condonation for the late filing of the leave to appeal renders the application dismissible. The applicant did not deal with condonation at all and in reply raised the argument that the judgment was only served on the applicant on 5 December 2024.

[8] Furthermore, in respondent's view, applicant has not proven by way of admissible evidence that it is a creditor of the first respondent which affects the applicant's *locus standi*.

[9] It was also argued by the respondents that the judgment of Justice Allie does not furnish reasons for the judgment. This much was conceded by the applicant in argument. Nor are the circumstances known under which the judgment was granted.

[10] Respondents reiterate that applicant is vexatious and abusing the court processes and the business rescue process in order to avoid the proper finalization of the winding up of the first respondent which has been in final liquidation and which business has not traded since 2012. In drawing attention to the SCA decision, where a warning was sounded that business rescue processes should not be used as a mechanism for delay[3], found the applicant "nonsuited".

[11] The respondents remain of the view that Mr Molyneux as sole director of the applicant contravened the Cloete J order which provided that no proceedings may be instituted without the leave of the court. The whole intention of the Vexatious

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[3] Van Staden NO v Pro- Wiz Group (Pty) Ltd 2019(4) SA 532(SCA)9[2019] ZASCA 7) para 22

Proceedings Act, 3 of 1956 and the order of Judge Cloete was to prevent Mr Molyneux from instituting meritless applications against other parties thereby preventing the costs having to be incurred by respondents in meritless applications and reducing wasted court time.

[12] The applicants have not successfully overcome the hurdle of the late filing of the application for leave to appeal and on this ground alone the leave to appeal is refused.

[13] However, it is necessary for me to deal with the remainder of the grounds raised in the application for the leave to appeal.

[14] At hearing of the main application, the court specifically enquired from the applicant whether he was aware of the existence of the Justice Cloete judgment to which he answered in the positive. This was reflected in paragraph [12] of my judgment. His gripe was that he was not acting in his personal capacity. I remain of the view, and I am with the respondents, that applicant required the leave of the Court to institute the application which was also reflected upon in paragraph [15] of my judgment.

[15] Instead, applicant has incorrectly sought to appeal the judgment instead of seeking the court's permission for leave to institute any legal proceedings.

[16] Accordingly, for the reasons stated above and the case law provided and relied upon by the applicant, applicant has not met the stringent threshold for bringing a leave to appeal in terms of section 17(1) of the Superior Courts Act 10 of 2013. An applicant must convince the court that there truly is a reasonable prospect of success *"a mere possibility of success, an arguable case or one that is hopeless is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."*[4]

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[4] MEC for health, Eastern Cape v Mkitha and Another [2016] ZASCA 176 (25 November 2016) paragraphs [16] - [18]

[17] There are no reasons to depart from the usual costs order that costs follow the result and in keeping with the costs order granted in the judgment, the same costs order follows.

[18] Accordingly it is ordered that:

18.1 the application for leave to appeal is refused

18.2 the applicant is liable to first, second, third and sixth respondent's legal costs on an attorney and client scale.

R PARKER
ACTING JUDGE OF THE HIGH COURT

Appearances

For the Applicant:	Mr R J C Molyneux
Instructed by:	In Person
Counsel for the Second, Third & Sixth Respondents:	Adv L Wessels
Instructed by:	Sandenbergh Nel Haggard Ms E Loubser

This judgment was handed down electronically by circulation to the parties' representatives by email.