

**HIGH COURT  
(BISHO)**

**CASE No. 65/2001**

In the matter between:

**JONGISILE FONJANA**

Plaintiff

and

**MULTILATERAL MOTOR VEHICLE ACCIDENT FUND**

First Defendant

**ROAD ACCIDENT FUND**

Second Defendant

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**JUDGMENT  
(on Application for Leave to Appeal)**

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**EBRAHIM J:**

1. The applicant (plaintiff) seeks leave to appeal to the Supreme Court of Appeal against the whole of the judgment delivered, and the order made, by me on 10 June 2002. The application is opposed only by the second respondent (second defendant) since the first respondent (first defendant) is no longer in existence.
2. Our Courts have held, in numerous decisions, that one of the requirements for leave to appeal is that there should be a reasonable prospect of success on appeal. A further consideration is whether the case is of substantial importance to the applicant or to both him and the respondents. It needs to

be noted though that the latter requirement is not necessarily of over-riding importance in regard to whether leave should be granted or not.

3. In the instant case the interpretation to be placed on the provisions of Article 46 of the Agreement referred to in section 2 of the Multilateral Motor Vehicle Accidents Fund Act 93 of 1989 is one of substantial importance not merely to the parties but also to other potential litigants. It was brought to my attention today, when the application for leave to appeal was argued, that the same issue, albeit in respect of s 18(1) of the Road Accident Fund Act 56 of 1996, also arose for consideration in another Court. In this regard I was referred to *Du Preez v Road Accident Fund and Another* 2002 (4) SA 209 (D & CLD) in which McLaren J, in a judgment delivered on 22 February 2002, reached a conclusion contrary to that expressed in my judgment of 10 June 2002. At the time that the matter *in casu* was heard neither counsel nor I were aware of the *Du Preez* judgment and it is only since its appearance in the law reports that it has come to our attention. It is clear from this judgment that the conclusion arrived at by McLaren J is contrary to the one reached by me.
4. After due consideration of the arguments presented by both counsel I am satisfied that there is a reasonable likelihood that a Court of Appeal may arrive at a conclusion which is different to that of mine. Moreover, there are now two contrary decisions in respect of the same issue and the need for

certainty in regard to the proper interpretation to be placed on the relevant provisions in Article 46 as it appears in Act 93 of 1989 is desirable. I am persuaded therefore that I should grant the applicant leave to appeal.

5. A further question is whether leave to appeal should be granted to the Supreme Court of Appeal or to the full court. In view of what I have said above I consider that the issue which is to be determined is one which merits the attention of the Supreme Court of Appeal. Even if this matter were to be considered by a full court a definitive decision from the Supreme Court of Appeal might still prove necessary. It seems to me that such a situation would only result in unnecessary costs being incurred. Moreover, counsel for the respondent has conceded that should leave to appeal be granted that such leave should be to the Supreme Court of Appeal.

6. In regard to costs the parties are in agreement, and I consider it proper, that costs be costs in the appeal.

7. In the result I make the following order:

- (a) The applicant is granted leave to appeal against the whole of the judgment delivered, and the order made, by this Court on 10 June 2002.

- (b) In terms of s 20(2)(a) of the Supreme Court Act 59 of 1959 I direct

that the appeal be heard by the Supreme Court of Appeal.

- (c) The costs of this application shall be costs in the appeal.



Y EBRAHIM

JUDGE OF THE HIGH COURT (BISHO)

Date: 5 NOVEMBER 2002

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|--------------------------|---|--|
| Heard on                 | : | 5 November 2002  |
| Judgment delivered on    | : | 5 November 2002  |
| Counsel for plaintiff    | : | V Notshe   |
| Attorneys for plaintiff  | : | Tini & Partners<br>c/o L R Lesele<br>KING WILLIAM'S TOWN         |
| Counsel for defendants   | : | G Bloem  |
| Attorneys for defendants | : | Ntsebeza Inc.<br>c/o Dambuza Mngandi Inc.<br>KING WILLIAM'S TOWN |