

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE PROVINCIAL DIVISION

Case No.: LTA 2433/2019

Reportable: YES/NO

Of interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

CHRISTO STRYDOM NUTRITION

Applicant¹

and

THE UNIVERSITY OF THE FREE STATE

Respondent²

Coram: Opperman, J

Date of hearing: 14 October 2022.

Judgment: 1 November 2022. The reasons for judgment were handed down electronically by circulation to the parties' legal representatives by email and release to

¹ "CSN"

² "UFS"

SAFLII on 1 November 2022. The date and time for hand-down is deemed to be on 1 November 2022 at 15h00.

Summary: Application for Leave to Appeal

JUDGMENT

[1] This is an application for leave to appeal against an order made on 18 July 2022. I ordered as follows:

[26] ORDER

1. The exception is upheld with costs on both defences.
2. The respondent/defendant³ is granted leave to amend the pleadings to remove the cause of complaint(s)/exception(s) within fifteen (15) days of the granting of this order, failing which, leave is granted to the excipient/plaintiff,⁴ after proper notice to the respondent/defendant, to apply for judgment on the claim in the main action.

[2] Counsel for the UFS set the scene for the application for leave to appeal when he conceded after due ponderance of the law that:

17. How difficult it may be and notwithstanding the Respondent's desire to retain the judgment and order granted in its favour in respect of the so-called "first defence", the Respondent can but concede that such an order is final and that an appeal, may lay against such an order.

³ CSN.

⁴ The University of the Free State.

[3] In paragraph 18 of his heads of argument he however maintains that the same does not apply to the so-called “second defence”. His conclusion in paragraph 22 is that:

...the Respondent contends that while the order and judgment in respect of the first defence is final and that the applicant is therefore entitled to move for leave to appeal (*and appeal such judgement and order*), this does not apply to the so-called second defence, such judgement and order not being final in effect and can the applicant therefore not move for leave to appeal at this stage in respect of such judgment and order as it wishes to do and should the present application for leave to appeal in respect of such order and judgment (*in relation to the second defence*), be refused and the applicant be ordered to pay the costs occasioned by the present application.

[4] Counsel for CSN in contrast maintains that, *in casu*, a defence was struck that was not an issue, nor was there any basis therefor. The defendant’s prejudice is clear – it cannot rely on any of the two defences in the event that the court order stands. It finally disposes of those defences.

[5] The interest of justice prompts a finding that there are compelling reasons that leave to appeal should be granted on the findings related to both defences. A piece-meal adjudication might disturb the administration of justice.

[6] Counsel for both parties were in agreement that the nature of the matter justifies that CSN be granted leave, as appellant, to the Full Bench of the High Court of this Division.

[7] Costs in the instance should follow the outcome of the appeal.

[8] **ORDER**

1. Leave to appeal is granted against the judgment and order dated 18 July 2022 (this to include the findings related to both defences) and to the Full Bench of this Division.
2. Costs to be in the appeal.

M OPPERMAN, J

APPEARANCES

FOR CSN

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