



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO.	
(2) OF INTEREST TO OTHER JUDGES: YES / NO.	
(3) REVISED. ✓	
22/10/2020.	
<u>DATE</u>	<u>SIGNATURE</u>

Case Number: 18952/2007

In the matter between:

IZAK BOSHOF FOSTER

First Plaintiff

GUILLAUME HENRI BOSHOF FOSTER

Second Plaintiff

and

MEMBER OF THE EXECUTIVE COMMITTEE,

EDUCATION, NORTH WEST PROVINCE

First Defendant

THE LEOPARD RUGBY UNION

Second Defendant

KOSH SPORT & TRAUMA SERVICES

Third Defendant

and

THE LEOPARD RUGBY UNION

First Third Party

JUDGMENT

POTTERILL J

- [1] At the same time as this application for leave to appeal was argued an application for variation of the order in terms of Uniform Rule 42 was argued. Three of the prayers for variation was granted. The order was varied to read as follows:

"[54]1 The first defendant is liable for 100% of proven or agreed damages suffered by the first plaintiff as a result of the manner in which first plaintiff was carried off the field on 6 May 2006, which aggravated an existing cervical spine injury with neurological fallout at C7, to become an effective C5 motor deficit.

[54]2 The first defendant is directed to pay the plaintiffs' costs on a punitive scale as between attorney and client which costs shall include:

2.(1) Costs of procuring medico-legal reports, consultations, attending meetings and procuring joint minutes.

2.(2) Costs of all expert witnesses called by the plaintiffs;

2.(3) All costs of the action including costs consequent upon the employment of two counsel."

[2] In terms of s17 of the Superior Court Act, 10 of 2013, a Judge may only grant leave to appeal if the appeal would have reasonable prospects of success. An applicant faces a higher and stringent threshold in terms of this Act¹ and the bar has been raised for the test to be successful in such application.

[2] In view of the variation granted, many of the points raised in this application falls away. The paragraphs that need no attention of this Court in considering this application are:

Par 2.1

Par 2.3

Par 2.4

Par 2.5

Par 2.6

Par 3 in totality.

Par 4 in totality.

These paragraphs are not only not relevant due to the variation, but constitute the same ground of appeal over and over. There are simply no prospects of success on this ground before a Court of Appeal. The Neurosurgeons agreed, rendering it common cause before the Court, that the second incident, the removal from the field caused further damage and what damage the first defendant is then liable for. In the quantum hearing the effect and extent of the damage will be canvassed to determine the quantum. The only submission made in the short heads of argument on the entire application for leave to appeal is that a Court will not be able to determine the quantum. A Court will be able to determine the quantum because the nature of the injury is established. But, in

¹ *Notshokavu v S SCA* case no 157/15 dated 7 September 2016

any event, if the plaintiff cannot prove the quantum, the first defendant cannot be held liable for any amount and will in effect be successful.

AD PAR 2.2

- [3] The order was not varied to include the claims of the second plaintiff as the Court astonishingly does not deal with this claim at all in the judgment or order. Upon a reading of the record, evidence was presented in support of such claims. Only a Court of Appeal can analyse that evidence and correct the judgment by either granting or dismissing such claims.

Leave to appeal is thus granted on par 2.2 of the application for leave to appeal.

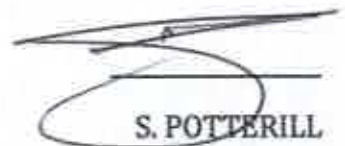
- [4] AD PAR 5

There are no reasonable prospects of success that another court would come to another conclusion and leave to appeal on the entire par 5 is dismissed.

- [5] AD PAR 6

There are no reasonable prospects of success that another court would come to another conclusion on the costs issue and leave to appeal is dismissed.

- [6] No order as to costs is made.



S. POTTERILL

ACTING DEPUTY JUDGE-PRESIDENT OF THE HIGH COURT

CASE NO: 18952/2009

HEARD ON: 16 October 2020

FOR THE APPLICANT/FIRST DEFENDANT: ADV. J.C. KLOPPER

INSTRUCTED BY: State Attorney, Pretoria

FOR THE RESPONDENTS/-PLAINTIFFS: ADV. J.D. MARITZ SC

INSTRUCTED BY: Gildenhuys Malatji Inc.

DATE OF JUDGMENT: 22 October 2020