

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 03339/2011

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED
27/4/14	
DATE	SIGNATURE

In the matter between:

BHAMBATHA INVESTMENTS (PTY) LTD

Applicant

and

ALBERT NDELENI DUPREE VILAKAZI

First Respondent

CYNTHIA LINDIWE MATHE

Second Respondent

EDWARD NATHAN

Third Respondent

SONNENBERGS (PTY) LTD

JUDGMENT

VICTOR J:

[1] The applicant seeks leave to appeal against the judgment handed down on 22 January 2012.

[2] An important point was raised in relation to the applicant of the three year delay in finalising this application for leave to appeal. It is astonishing that such a delay has occurred. Whilst it is correct I was on circuit court for a term it certainly was not for 3 years. This dilatoriness ought not to be condoned especially in the light of an absence of condonation or at least an explanation on affidavit. See *Universal Product Network v Mabaso* [2006] 3 BLLR 274 (LAC).

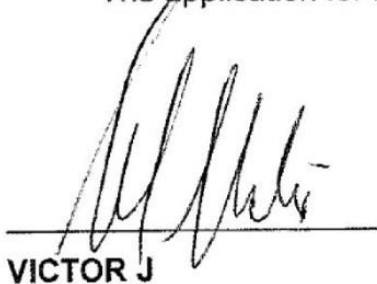
[3] In order to bring finality to this matter in my court I will nonetheless consider the merits of the application for leave to appeal.

[4] The main area of appeal is this court's failure to make a finding that the first respondent acted fraudulently. Other issues were raised in argument. For example, the first respondent's breach of his fiduciary duty as director of the company and that it had to be implied from the papers that Prince Zulu had not been paid. Unfortunately none of this was raised in the founding affidavit and Prince Zulu did not depose to an affidavit about the loss.

[3] In my view there is no reasonable possibility that another court will come to a different conclusion.

The order that I make is:

The application for leave to appeal is dismissed with costs.



VICTOR J