

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

RULING *I.T.O.* PRACTICE DIRECTIVE 61

CASE NO. HC-MD-MOT-GEN-2018/00062

In the matter between:

**DAVID JOHN BRUNI *N.O.***

**FIRST APPLICANT**

**IAN ROBERT MCLAREN *N.O.***

**SECOND APPLICANT**

and

**METROPOLITAN BANK OF ZIMBABWE LTD**

**FIRST REpondent**

**WORLD EAGLE PROPERTIES (PTY) LTD**

**SECOND RESPONDENT**

**Neutral Citation:** *Bruni N.O. v Metropolitan Bank of Zimbabwe Ltd* (HC-MD-CIV-MOT-GEN-2018/00062) [2018] NAHCMD 377 (23 November 2018)

**Coram:** MASUKU, J

**Heard on:** 7 November 2018

**Delivered on:** 23 November 2018

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**ORDER**

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1. The application for leave to appeal the judgment of this Court dated 17 April 2018 is hereby granted.
2. Costs of the application are ordered to be costs in liquidation.

3. The matter is removed from the roll and is regarded as finalised.
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### REASONS FOR THE ORDER

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MASUKU J:

[1] The applicants, being liquidators of the Small and Medium Enterprise Bank, (SME Bank), in liquidation, and being dissatisfied with the order of this court, dated 17 April 2018, in terms of which the court granted an application for rescission of its previous order, in terms of rule 103, have filed an application for leave to appeal before this court.

[2] The grounds of appeal, raised in a kitchen sink approach, are based on a number of main contentions in respect of which it was alleged by the applicants for leave, that the court had erred. These include the contention that rule 103 was not a competent rule to apply in the circumstances; that the court erred in granting the amendment of the name of one of the respondents; that the court erred in finding that the respondents had *locus standi in judicio* to bring the application in question; that the court erred in rescinding the entire order granted *ex parte*, as the respondents only had a real issue with para 7 of the order which was set aside and lastly, the contention that some of the documents filed by the applicants were properly authenticated as required by law.

[3] It is trite learning that in an application for leave to appeal, the threshold that the applicant for leave has to meet is not raised too high. Otherwise, even if an applicant has some prospects of success, he or she may be non-suited. The applicant for leave, is not called upon to show that the decision sought to be appealed against is wrong and therefor insupportable. All that it has to show is on the ground(s) raised, there is a reasonable possibility that another court may reasonably hold and find differently from the

court whose judgment or order is sought to be appealed to the Supreme Court.

[4] Having listened and considered the argument advanced on behalf of both protagonists, I am of the view that the argument advanced by Mr. Bishop on behalf of the respondents was, on the balance compelling and convincing and that I would, generally speaking, be of the opinion that another court may not hold and find differently from this court regarding most of the grounds of appeal raised by the applicants.

[5] One issue that was raised on the applicants' behalf, as stated above, related to the issue of authentication of documents, which appears to be a matter of great moment and on which it would be desirable and prudent to have the Supreme Court speak the last word in order to settle this vexed question once and for all. I say so considering that this issue was raised and decided in the context of an urgent application, where time for considering at times vexed questions of law, may be inadequate.

[6] I am, accordingly, of the view that although I generally hold the view that the applicant has not, in my considered view, in relation to the other matters raised, shown that another court may reasonably hold differently, it is necessary that leave be granted to the applicants to appeal this court's judgment to the Supreme Court.

[7] For the avoidance of doubt, I point out that notwithstanding my views expressed above regarding majority of the grounds of appeal, leave will be granted on all the issues raised by the applicants. I will not, in the circumstances, allow leave in respect of some and disallow leave in respect of other grounds of appeal. The application for leave to appeal is, for the above reasons, accordingly granted, as prayed.

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TS Masuku  
Judge



## APPEARANCES

APPLICANTS: R Heathcote (with him J Schickerling)  
instructed by Francois Erasmus & Partners,  
Windhoek

RESPONDENTS: A Bishop  
instructed by Sisa Namandje & Co. Inc., Windhoek