

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
RULING

Case Title: GREYHORSE MINING SAUL TAREE KAHUIKA v MAERUA MALL (PTY) LTD	Case No: HC-MD-CIV-ACT-OTH-2021/04060
	Division of Court: HIGH COURT(MAIN DIVISION)
Heard before: Honourable Lady Justice Prinsloo	Date of hearing: 31 October 2022
	Date of order: 11 November 2022
Neutral citation: <i>Greyhorse Mining v Maerua Mall (Pty) Ltd</i> (HC-MD-CIV-ACT-OTH-2021/04060) [2022] NAHCMD 613 (11 November 2022)	
Results on merits: As set out below.	
The order: 1. The Applicants / Defendants are hereby granted leave to appeal to the Supreme Court of Namibia against the orders made on 24 August 2022; 2. No order as to costs. Further conduct of the matter: 3. The case is postponed to 9 March 2023 at 15:00 for Status hearing.	

4. Joint status report must be filed on or before 6 March 2023.

Reasons for orders:

PRINSLOO J:

Background

[1] This court heard the exception raised by the respondent/plaintiff against the plea and special plea of the applicants/defendants and issued the following order on 24 August 2022:

‘1. The exceptions in respect of the special plea and the first claim are upheld with costs. Such costs to include the costs of one instructing and one instructed counsel.

2. The defendant's special plea and the plea in respect of claim 1 is struck.

3. The defendants may amend their pleadings as set out in paragraph 1, within 20 days from date of judgment, if so advised.

4. The matter is postponed until 6 October 2022 at 15h00 for a status hearing.’

[2] The applicants (defendants in the main action) seek leave to appeal to the Supreme court against the judgement and the orders, including costs, made on 24 August 2022.

[3] The application for leave to appeal is not opposed by the respondent herein.

The applicable law and application thereof

[4] The threshold enquiry in an application for leave to appeal was set out by our Supreme Court in *Knouwds NO (In his capacity as Provisional Liquidator of Avid Investment Corporation (Pty) Ltd v Josea and Another*¹ as follows:

‘Generally speaking, the attributes to constitute an appealable judgment or order are threefold, namely, the decisions must be final, be definitive of the rights of parties or must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceeding. In terms of s 18(3) of the High Court Act interlocutory orders are not appealable as of right and need the leave of that court or, if

¹ *Knouwds NO (In his capacity as Provisional Liquidator of Avid Investment Corporation (Pty) Ltd v Josea and Another* 2010 (2) NR 754 (SC) para 10.

that was refused, the leave of the Chief Justice, given by him on petition to be able to come on appeal.’

[5] At the core of the matter lies the exceptions raised by the respondent against the pleadings of the applicants and the question of whether the court was correct in finding that applicant's pleadings are excipiable and the striking of the applicants' pleadings as a result.

[6] Having considered the arguments advanced on behalf of the applicants this court agrees that another court might come to a different conclusion, and therefore in light of the provisions of section 18 (3) of the High Court Act of Namibia 16 of 1990 leave is hereby granted.

[7] The order is as above.

Judge's signature	Note to the parties:
Prinsloo Judge	Not applicable.
Counsel:	
Applicant	Respondent
L Murorua of Murorua Kurtz Kasper Incorporated Windhoek	K Morland of Lubbe & Saaiman Incorporated Windhoek