

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

Application for Leave to Appeal

<b>Case Title:</b>  Felix Ndara Likuwa  and  Letshego Micro Financial Services Namibia (Pty) Ltd  Letshego Bank Namibia Ltd  Entrepo Financial Services (Pty) Ltd	<b>Case No:</b> HC-MD-CIV-MOT-GEN-2022/00295 INT-HC-OTH-2023/00424  <b>Division of Court:</b> Main Division, Windhoek  <b>Heard on:</b> 7 November 2024
<b>Applicant/Appellant</b>	<b>1<sup>st</sup> Respondent</b>
<b>2<sup>nd</sup> Respondent</b>	<b>3<sup>rd</sup> Respondent</b>
<b>Heard before:</b> Coleman AJ	<b>Delivered on:</b> 18 November 2024
<b>Neutral citation:</b> <i>Likuwa v Letshego Micro Financial Services Namibia (Pty) Ltd</i> (HC-MD-CIV-MOT-GEN-2022-00295) [2024] NAHCMD 701 (18 November 2024)	
<b>Order:</b>	
<ol style="list-style-type: none"><li>1. The application for leave to appeal is dismissed.</li><li>2. The applicant is ordered to pay respondents' costs for this application to include one instructing and two instructed counsel, capped as contemplated in Rule 32(11).</li><li>3. The matter is removed from the roll as finalized.</li></ol>	

**Reasons for order:**

COLEMAN AJ:

Introduction

[1] This is an application for leave to appeal against the whole of the judgment and order as well as the costs order delivered by Oosthuizen J on 6 September 2024. This application follows on a ruling under Rule 59(1) that applicant was impecunious, a man of straw and set up as a front in the main application. His leave to appeal was refused, but he was successful in his petition to the Supreme Court and granted leave to appeal to the Supreme Court. As a result, he was faced with the obligation to put up security for the respondents' costs of the appeal, since he did not ask to be released in his petition.

[2] Oosthuizen J heard applicant's application to be wholly released from entering into security for the respondents' cost of appeal on 23 May 2024 and delivered a judgment dismissing the application on 6 September 2024. Applicant now seeks leave to appeal from that judgment and orders from me. It appears that the main consideration in dismissing the application was that applicant is a man of straw and he serves as a front for another interested party who pays applicants legal costs. Applicant's counsel contends that the learned judge misdirected himself on this score, amongst others.

[3] Some time had been spent on the issue if judge Oosthuizen misdirected himself. Both counsel for the respondents argued that the facts bear out that Oosthuizen J is correct in his characterization of applicant for the purposes of security for costs.

[4] In my view, I do not see the need to delf into this debate. Third respondent's counsel submits that the grant or refusal of an order requiring the applicant to give security for costs is purely procedural and not appealable, even with leave. Supposedly, by parity of reasoning, the order refusing the release from prescribed security for costs on appeal would also be purely procedural and not appealable. I agree with counsel for third respondent.

Conclusion

[5] In conclusion, I am not convinced that Oosthuizen J exercised his discretion capriciously under the circumstances. In any event, I agree with respondents' counsels that this order is purely procedural and not appealable, even with leave.

[6] I consequently make the following order:

- 1 The application for leave to appeal is dismissed.
- 2 The applicant is ordered to pay respondents' costs for this application to include one instructing and two instructed counsel, capped as contemplated in Rule 32(11).
- 3 The matter is removed from the roll as finalized.

<b>Judge's signature</b>	<b>Note to the parties:</b>
G Coleman Acting Judge	Not applicable
<b>Legal Practitioners:</b>	
<b>Applicant</b>	<b>First and Second Respondents</b>
Adv Strydom instructed by Biermann Attorney	Mr Luvindao, assisted by Mr Martin, Of Dr Weder Kauta and Hoveka Inc.  <b>Third Respondent</b> Adv Heathcote SC, assisted by Adv Jacobs, Instructed by Van der Merwe-Greeff Andima Inc.