

CLOETE MURRAY AND ANOTHER v FIRSTRAND BANK LTD T/A WESBANK**[2015] ZASCA 39****M Laubscher*****OPSOMMING**

In die appèlsaak *Cloete Murray and another v FirstRand Bank Ltd* wat onlangs deur die Appèlhof beslis is, het die benadering tot die interpretasie van wetgewing weereens in die kollig beland. Die hof in hierdie aangeleentheid het benadruk dat die beginpunt as dit kom by die interpretasie van wetgewing, behoort altyd die taal van die spesifieke wetgewing, ordonnansie of bepaling wees. Dit moet gebruik word te same met die konteks waarbinne die wetgewing geskep en gevorm is, asook die doel van die bepaling en die agtergrond waarbinne die bepaling geskep is. Indien die taal van die spesifieke bepaling 'n onvermoë toon om die betekenis te ondersteun waarvoor geargumenteer word, behoort laasgenoemde nie aanvaar te word nie. Artikel 39(2) van die *Grondwet* kan ook net gebruik word om die waardes van die Grondwet te ondersteun gedurende wetsuitleg indien dit nie in die proses die taal van die spesifieke bepaling onnodig belas nie. Op grond hiervan het die hof die appellante se argumente vir 'n wyer interpretasie van artikel 133(1) van die *Maatskappywet* 71 van 2008 verwerp en beslis ten gunste van die Respondent.

SUMMARY

The approach to the interpretation of statutes once again received attention in the recent case *Cloete Murray and another v FirstRand Bank Ltd* which was decided in the Supreme Court of Appeal. The court, in this matter, emphasized the fact that when it comes to the interpretation of statutes, the starting point should always be the specific language of the statute, ordinance or section. This should be used together with the context within which the statute, ordinance or section has been created, as well as the purpose or objective of the statute, ordinance or section, and the background within which the statute, ordinance or section has been created.

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If the language of the specific statute, ordinance or section reflects an inability to support the specific meaning that is being argued, the latter should not be accepted. Section 39 (2) of the *Constitution* can also only be used to support and foster the values of the Constitution during interpretation if in the process of interpretation it does not unnecessarily burden the language of the specific statute or section. Based on this approach the court rejected the appellants' appeal for a wider interpretation of section 133 (1) of the *Companies Act* 71 of 2008 , and therefore found in favour of the Respondent.

KEYWORDS: language of provision as departure point in interpretation of statutes, together with context and purpose of provision; section 39(2) of *Constitution*; interpretation of section 133(1) of *Companies Act*; enforcement action and cancellation of an agreement; legal proceedings during business rescue practice.