

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 035371/2023

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED |

20/02/2024
DATE


SIGNATURE

In the matter between:

**TEGETA EXPLORATION AND RESOURCES
(PTY) LTD**

First Applicant

KOORNFONTEIN MINES (PTY) LTD

Second Applicant

OPTIMUM COAL MINE (PTY) LTD

Third Applicant

OPTIMUM COAL TERMINAL (PTY) LTD

Fourth Applicant

RONICA RAGAVAN

Fifth Applicant

DHANASEGARAN ARCHERY

Sixth Applicant

and

KURT ROBERT KNOOP

First Respondent

JOHAN LOUIS KLOPPER

Second Respondent

JUANITO MARTIN DAMONS

Third Respondent

KGASHANE CHRISTOPHER MONYELA

Fourth Respondent

In re:

**TEGETA EXPLORATION AND RESOURCES
(PTY) LTD**

First Applicant

KOORNFONTEIN MINES (PTY) LTD

Second Applicant

OPTIMUM COAL MINE (PTY) LTD

Third Applicant

OPTIMUM COAL TERMINAL (PTY) LTD

Fourth Applicant

RONICA RAGAVAN

Fifth Applicant

DHANASEGARAN ARCHERY

Sixth Applicant

RAYMOND PETER VAN ROOYEN

Seventh Applicant

and

KURT ROBERT KNOOP

First Respondent

JOHAN LOUIS KLOPPER

Second Respondent

JUANITO MARTIN DAMONS

Third Respondent

KGASHANE CHRISTOPHER MONYELA

Fourth Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Fifth Respondent

**ALL AFFECTED PARTIES OF TEGETA
EXPLORATION AND RESOURCES (PTY) LTD
AS REFLECTED IN "A"**

Sixth Respondent

**ALL AFFECTED PARTIES OF KOORNFONTEIN
MINES (PTY) LTD AS REFLECTED IN "B"**

Seventh Respondent

**ALL AFFECTED PARTIES OF OPTIMUM COAL
MINE (PTY) LTD AS REFLECTED IN "C"**

Eighth Respondent

**ALL AFFECTED PARTIES OF OPTIMUM COAL
TERMINAL (PTY) LTD AS REFLECTED IN "D"**

Ninth Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 20 February 2024.

JUDGMENT : APPLICATION FOR LEAVE TO APPEAL

PHOOKO AJ

INTRODUCTION

[1] This is an application for leave to appeal to the Supreme Court of Appeal against my judgment granted on 20 November 2023.

[2] Section 17(1) of the Superior Courts Act, Act 10 of 2013 ("the Superior Courts Act"), regulates applications for leave to appeal and provides:

‘(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section

16(2)(a); and (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.’

[3] The test in an application for leave to appeal before the promulgation of the Superior Courts Act was whether there were reasonable prospects that another court may come to a different conclusion. However, this is no longer the position. Section 17(1)(1) of the Superior Courts Act has raised the bar. In The

*Mont Chevaux Trust v Tina Goosen & 18 Others*¹ it was held that:

'It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cornwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.'

- [4] Consequently, in considering the application for leave to appeal this Court must remain cognizant of the higher threshold that needs to be met before leave to appeal may be granted.² There must exist more than just a mere possibility that another court will, and/or not might, find differently on both facts and law.³
- [5] In so far as the leave to appeal against my judgment, I have carefully considered the written and oral submissions of the parties including the judgment of the Supreme Court of Appeal in *Islandsite Investments (Pty) Ltd v The National Director of Public Prosecutions and Others*⁴ ("*Islandsite*") which was delivered approximately two weeks post my judgment.
- [6] I am of the view that on one hand, the respondent rehashed its arguments as made in the court *a quo* to the effect that the directors have the requisite authority to appoint attorneys to litigate on behalf of the company. On the other hand, I have noted the applicant's submission in that the decision in *Islandsite* is clear in that the "distinction sought to be drawn between powers of management and governance of companies [is] unhelpful in the present enquiry"⁵, and that "there are remedies available to interested parties such as directors"⁶ where they seek to represent a company that is undergoing through the business rescue process.
- [7] In light of the above observation, I am of the view that another court will come to a different conclusion.

¹ 2014 JDR 2325 (LCC) at para 6.

² See *Fair-Trade Independent Tobacco Association v President of the Republic of South Africa and Another* [2020] ZAGPPHC at para 6.

³ *Ibid.*

⁴ [2023] ZASCA 166 (1 December 2023).

⁵ *Ibid* at para 21.

⁶ *Ibid* at para 22.

[8] Rule 42(1) provides that a court may *mero motu* or on application, rescind or vary;

- ‘(a) ...
- (b) An order or judgment in which there is an ambiguity, error or omission;
- (c) ...’

[9] Concerning the order about costs, it is important to reproduce the order I granted as is below:

- ‘(a) The application for condonation is refused.
- (b) The application in respect of prayers 1, 3, and 4 is dismissed with costs on party and party scale including the costs of two counsel, one being senior counsel.
- (c) It is declared that the authority of Van der Merwe and Van der Merwe attorneys have been established and that Van der Merwe and Van der Merwe attorneys are authorized to represent the Second Applicant in the removal application.
- (d) It is declared that the authority of Van der Merwe and Van der Merwe attorneys have been established and that Van der Merwe and Van der Merwe attorneys are authorized to represent the Fifth Applicant in the removal application.
- (e) It is declared that the authority of Van der Merwe and Van der Merwe attorneys have been established and that Van der Merwe and Van der Merwe attorneys are authorized to represent the Sixth Applicant in the removal application.
- (f) The First to Fourth Respondents are ordered to pay the applicant’s costs on party and party scale including the costs of two counsel’.⁷

[10] Although I struggled to follow the applicant’s submissions about the ambiguity of the cost order concerning paragraph (f) as outlined in paragraph 9 above, I have nonetheless noted that there exists a possibility of ambiguity depending on how one reads the aforesaid paragraph 9. I accordingly vary that portion of my judgment in terms of Rule 42 (1) (b) and rectify it to read to the effect that the costs referred to in paragraph (f) are in respect of the relief granted in paragraphs (c), (d), and (e) of the judgment of the court *a quo*.

⁷ Judgment of the court *a quo* at para 78.

[11] In the result:

- (a) Leave to appeal is granted to the Supreme Court of Appeal against paragraph 78(c) of the judgment and order handed down on 20 November 2023.
- (b) The order of the court *a quo* on costs is varied to read “The First to Fourth Respondents are ordered to pay the applicant’s costs on a party and party scale including the costs of two counsels, these being costs granted in paragraph (f) in respect of relief granted in paragraphs (c), (d), and (e)”.
- (c) Costs of the application for leave to appeal are costs in the appeal.



PHOOKO AJ
ACTING JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA

APPEARANCES:

Counsel for Fifth to Fourth: Adv GD Wickins SC and Adv LVR van Tonde
Applicants:

Instructed by: Smith Sewgoolam Incorporated

Counsel for the Respondents: Adv L Van Gass

Instructed by: Instructed by VDM Attorney

Date of Hearing: 8 February 2024

Date of Judgment: 20 February 2024