



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

2024-05-17

DATE

SIGNATURE

Case Number: 54095/2013 & 90165/2015

In the matter between:

CATHOROS COMMODITIES (PTY) LTD

Applicant

and

ANGLO OPERATIONS (PTY) LTD

Respondent

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 handing down is deemed to be 17 May 2024.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

POTTERILL J

[1] I have re-read the judgment, the application for leave to appeal and the heads of argument on behalf of both parties. I also listened to the argument on behalf of both parties.

[2] Condonation for the late filing of the application for leave to appeal is granted.

Claim 1

[3] The nub of the appeal is that the court did not interpret the contract correctly. If only the source, Landau, was relevant then the coal would not have been specified as "Kromdraai ROM."

[4] I am satisfied that if regard is had to the particulars of claim, the contract, the evidence setting out the circumstances attendant upon the contract coming into existence; the fact that Cathoros was an existing client, where the trucks had to pick up the coal; no other court would reasonably come to another conclusion.

[5] The argument that the coal that was delivered was of a better quality is of no consequence, is simply contrived, because no evidence was led as to how receiving better coal materially breached the contract. The argument that even if the applicant received a Mercedes, it asked for a Toyota, is rejected because the applicant received a Toyota; just a better and bigger model.

Claim 2

[6] It is quite clear the price was fixed *ex post facto* the request for the coal to be delivered due to the common cause urgency of the request by the applicant.

The evidence of Mr. Shaw regarding deliveries, invoices and prices were not placed in dispute and was correctly accepted.

[7] I am satisfied that the refusal to pay claims 1 and 2 is business lawfare which a court cannot sanction and the application for leave to appeal is dismissed with costs, with costs of senior counsel; scale C.



S. POTTERILL
JUDGE OF THE HIGH COURT

CASE NO: 54095/2013 & 90165/2015

HEARD ON: 16 May 2024

FOR THE APPLICANT: ADV. S.J. VAN RENSBURG SC

INSTRUCTED BY: Van Rensburg Kruger Rakwena Inc. c/o VZLR Inc.

FOR THE RESPONDENT: ADV. E.C. LABUSCHAGNE SC

INSTRUCTED BY: Savage Jooste & Adams

DATE OF JUDGMENT: 17 May 2024