**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED

DATE: 12 November 2024

SIGNATURE: ........[redacted]

**CASE NUMBER: A357/2023**

In the matter between:

**SOUTH MEAD (PTY) (LTD) t/a MEISTER COLD STORE** **APPELLANT**

and

**ACROW LIMITED** **RESPONDENT**

---

***Coram:*** Lesufi AJ, Millar *et* Hassim JJ

***Heard on:*** 7 October 2024

***Delivered:*** 12 November 2024 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 11H30 on 11 November 2024.

---

**ORDER**

---

**It is Ordered**:

[1] The appeal is dismissed.

[2] The appellant is to pay the costs of the appeal, which costs include counsel's costs on scale B.

---

**JUDGMENT**

---

**LESUFI AJ (MILLAR *et* HASSIM JJ CONCURRING)**

**Introduction**

[1] This appeal is before us with the leave of the Supreme Court of Appeal. On 2 July 2023 Mbongwe J set aside the taxation by the Taxing Master of a bill of costs presented by the respondent consequent upon a costs order granted against the appellant in interlocutory proceedings. The bill of costs was taxed in the respondent's absence.

**Factual Background**

[2] The respondent, the defendant in the action, raised an exception to the appellant's particulars of claim which was dismissed with costs. Following on this the

appellant's attorneys served on the respondent's attorney a notice of intention to tax a bill of costs. The respondent's attorneys delivered a notice of intention to oppose the taxation of the bill of costs. Five (5) days later a further notice of intention to oppose the taxation was served. A copy of the bill of costs identifying the items on the bill of costs objected to was attached to the latter notice of intention to oppose the taxation of the bill of costs. The notice setting down the bill of costs for taxation was allegedly not received by the respondent's attorneys leading to the bill of costs being taxed in the respondent's absence on 17 November 2020.

[3] The Respondent applied to rescind and/or to review the taxation, alternatively to declare the taxation of the bill of costs in the respondent's absence invalid alternatively to set the taxation aside as an irregular step in terms of rule 30(1).

**The Issue In The Court *A Quo***

[4] The question before the court *a quo* was whether the notice setting the taxation was served on the respondent's attorney. The appellant contended the notice of set down was served on the respondent's attorney by transmitting it by electronic mail (e-mail). The respondent's attorney denied having received it. The central issue before the court was the meaning of especially section 23(a) and (b) of ECTA read with, and in the context of sections 21 to 26 thereof which deal with communication through transmission of data messages. The court *a quo* found that the provisions of section 23 (a) had not been satisfied. Consequently, finding that the notice of set down had not been served in terms of the court rules resulting in the taxation of the bill of costs constituting an irregularity contemplated in rule 30(2) and the taxation of the bill of costs being set aside.

## The Crisp Question on Appeal

[5] The appeal does not turn on the meaning of section 23 of the ECTA. A far simpler issue is dispositive of the appeal. The appeal hinges on the elementary principle that a decision which is not a 'judgment or order' is not appealable. [1] In *Zweni v Minister of Law and Order of the Republic of South Africa*[2] the Appellate Division discussed the appealability under section 20(1) of the Supreme Court Act, Act No 59 of 1959 ("the Supreme Court Act") of a 'judgment or order' and identified three features which an appealable 'judgment or order" possesses. In this regard Harms JA found:

> *"...first, the decision must be final in effect and not susceptible of alteration by the Court of first instance; second, it must be definitive of the rights of the parties; and third, it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings... The second is the same as the oft-stated requirement that a decision, in order to qualify as a judgment or order, must grant definite and distinct relief (Willis Farber Enthoven (Pty) Ltd v Receiver of Revenue and Another 1992 (4) SA 202 (A) at 214D-G)."* [3]

[6] The distinction between an 'order' contemplated in section 20(1) of the Supreme Court Act and a "ruling" is that a decision which lacks finality [4] or does not affect the relief sought in the main action [5] amounts to a non-appealable decision (i.e., a ruling) and not an 'order' contemplated in section 20(1). Harms JA concluded-

---

1 *Zweni v Minister of Law and Order of the Republic of South Africa* 1993 (1) SA 523 (A).
2 *Zweni v Minister of Law and Order of the Republic of South Africa* 1993 (1) SA 523 (A); [1993] All SA 365 (A).
3 532J- 533B.
4 *Op cit Zweni* 535G
5 *Op cit Zweni* 535I-J.

> *"...generally speaking, a non-appealable decision (ruling) is a decision which is not final (because the Court of first instance is entitled to alter it), nor definitive of the rights of the parties nor has the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings."* [6]

[7] Notwithstanding the repeal of the Supreme Court Act, the principles enunciated in *Zweni* remain valid in determining whether a 'decision' is appealable under section 16(1)(a) of the Superior Courts Act, Act No 10 of 2013. [7]

[8] The consequence of the court a quo's decision is that the appellant can set the bill of costs down for taxation and present the bill of costs for taxation after due notice to the respondent. The Taxing Master will then tax the bill of costs afresh. The decision to set aside the taxation of the bill of costs is not definitive of the parties' rights in the main proceedings, it does not affect the relief sought in the main proceedings and it does not dispose of any portion of the relief claimed in the main proceedings and is not final.

[9] In the result the court *a quo's* decision is not appealable and the appeal falls to be dismissed. There is no reason why the costs should not follow the event.

[10] In the result, I propose the following order:

[10.1] The appeal is dismissed.

[10.2] The appellant is to pay the costs of the appeal, which costs include counsel's costs on scale B.

---

6 *Op cit. Zweni* 536B-C.
7 *DRD Gold Ltd v Nkala* 2023 (3) SA 461 (SCA) at para [18].

[redacted]

B LESUFI AJ

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE AND IT IS SO ORDERED.

[redacted]

A MILLAR

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE.

[redacted]

SK HASSIM

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

| | |
|---|---|
| HEARD ON: | 7 OCTOBER 2024. |
| JUDGMENT DELIVERED ON: | 12 NOVEMBER 2024. |
| | |
| COUNSEL FOR THE APPELLANT: | ADV. A GRANOVA |
| INSTRUCTED BY: | MACGREGOR ERASMUS INC. |
| REFERENCE: | MR. J KLINGBIEL |
| | |
| COUNSEL FOR THE RESPONDENT: | ADV. C ROUX |
| INSTRUCTED BY: | KISCH AFRICA INC. |
| REFERENCE: | MR. K DAM |