



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO.	
(2) OF INTEREST TO OTHER JUDGES: YES /NO.	
(3) REVISED.	
2024-09-02	
<u>DATE</u>	<u>SIGNATURE</u>

Case Number: 35356/2014

Heard on: 30 August 2024

Delivered on: 2 September 2024

In the matter between:

RUSTENBURG PLATINUM MINES LTD

Applicant/Defendant

and

EDCAR ENGINEERING CC t/a EDCAR

CORROSION PROTECTION

Respondent/Plaintiff

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 2 September 2024.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

STRIJDOM J

[1] In this matter the applicant applies for leave to appeal to the Full Court of the Gauteng Division, Johannesburg, alternatively to the Supreme Court of Appeal, against the whole of my judgment and costs order handed down on 27 June 2024.¹

[2] The application for leave to appeal is opposed by the respondent.

[3] The grounds of appeal are set out in the application for leave to appeal.² I do not intend to repeat same.

[4] Application for leave to appeal are governed by ss16 and 17 of the Superior Courts Act, 10 of 2013 (the Act). Section 17 makes provision for leave to appeal to be granted where the presiding judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success; or if there is some compelling reason why the appeal should be heard including conflicting judgments on the matter under consideration.

[5] With the enactment of s17 of the Act, the test has now obtained statutory force and is to be applied using the word “would” in deciding whether to grant leave. In other words, the test is: “Would another Court come to a different decision.”

[6] It is now trite that an appellant faces a higher and stringent threshold in terms of the Act. The use of the word “would” in the new statute indicates a measure of

¹ Caselines: 013-4-013-41 Judgment

² Caselines: 030-1-030-17 Grounds of appeal

certainty that another court will differ from the court whose judgment is sought to be appealed against.³

[7] In respect of all the grounds of appeal raised by the applicant, my judgment deals with the facts and the law as presented by the parties and how the Court arrived at each conclusion on the contentions raised by the parties.

[8] There is no indication in the grounds of appeal that this Court misdirected itself on the factual findings.

[9] It is trite that the powers of a court of appeal against factual findings are limited. There must be demonstrable and material misdirection by the trial court before a court of appeal will interfere.⁴

[10] When the facts and the law were examined, there is in my view no sound and rational basis for the conclusion that the appeal would have a reasonable prospect of success.

[11] I am also of the view that there are no compelling reasons why the appeal should be heard.

[12] In the result, the application for leave to appeal is dismissed with costs; such costs will include the costs of two counsel being payable on Scale C.

³ See: *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H

⁴ See: *S v Hadebe and Others* 1997 (2) SACR 641 (SCA) and *South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and Another* 022 (4) SA 1 (CC)



J.J. STRIJDOM

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 35356/2014

HEARD ON: 30 August 2024

FOR THE APPLICANT: ADV. M. SMIT

INSTRUCTED BY: Cliffe Dekker Hofmeyr Inc.

FOR THE RESPONDENT: ADV. B. LEECH SC
ADV. P. BELGER

INSTRUCTED BY: Persa Leoni Attorneys

DATE OF JUDGMENT: 2 September 2024