



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

CASE NO: 65023/2020

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

Date: 12 November 2024

In the matter between:

SCANIA FINANCE SOUTHERN AFRICA (PTY) LTD

APPLICANT

and

MATHAFENG INVESTMENT HOLDINGS (PTY) LTD

RESPONDENT

**JUDGMENT
LEAVE TO APPEAL**

ALLY AJ

INTRODUCTION

[1] This is an application for leave to appeal my judgment dated 14 November 2022. On this date an order was granted placing Respondent under provisional

winding up. The parties will be referred to as in the main application for convenience.

[2] The parties were represented as in the main application, namely, Adv. G. Jacobs for the Applicant for leave to appeal and Adv. C. Gibson for the Respondent in the application for leave to appeal.

[3] It is not clear why this application for leave to appeal has only now been set down for hearing but I indicated to Mr Jacobs that it would seem that this was water under the bridge and he should proceed with his submissions as there was no case of condonation, the application for leave to appeal having been timeously filed.

[4] The grounds for leave to appeal¹ are contained in the application and will not be repeated here.

[5] Mr Gibson raised the point that, in his view, was fatal to this application, namely, the appealability of the provisional order. In this regard Mr Gibson argued, that the order dated 14 November 2022 is a provisional order and in terms of Section 150 (5) of the Insolvency Act 24 of 1936, as amended, as read with Section 339 of the Companies Act 73 of 1971, cannot be appealed unless provision has been made for same in Section 150. Mr Gibson submits, that the applicant has not shown why Section 150 does not apply to them and accordingly the application must fail on this ground alone.

¹ Caselines: Section 035-1 – 035-2

[6] In relation to the issue regarding *lis alibi pendens*, I remain unconvinced that another Court would find differently. Furthermore, I align myself with the judgment in **Standard Bank of South Africa Limited v Tsheola Dinare Tour and Transport Brokers (Pty) Limited**², wherein it is made clear that a winding up application and an application for the return of a motor vehicle are two separate actions and a Court still has a discretion whether to grant a winding up order.

[7] The issue regarding the service on the employees was dealt with extensively in the main judgment and will not be repeated here save to state that I remain unconvinced that another would come to a different conclusion.

[8] It has now become trite that the test in applications for leave to appeal has changed to one which is heightened³. The Applicant is accordingly required to convince this Court that another Court 'would' come to another conclusion.

[9] I remain unconvinced that another court would come to a different conclusion and accordingly I am of the view that there are no reasonable prospects of success

² 2022 GPJHC

³ The Mont Chevaux Trust v Tina Goosen 3 November 2014 (unreported judgement LCC Case No: LCC14R/2014; The Acting National Director of Public Prosecution v Democratic Alliance (unreported case no: 19577/09 dated 24 June 2016); First Reality (Pty) Ltd v Mitchell & Others 2021 ZALCC 21 dated 23 August 2021 @ para 2

and there are no compelling reasons to grant this application for leave to appeal. Accordingly, the application must fail and costs must follow the result.

[10] **Accordingly**, the following Order shall issue:

- a). The application for leave to appeal by the Respondent is dismissed with costs.


GALLAGHER

**ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA**

Electronically submitted therefore unsigned

Delivered: This judgement 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 12 November 2024.

Date of virtual hearing: 5 November 2024

Date of judgment: 12 November 2024

Appearances:

Attorneys for the Applicant:

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Counsel for the Applicant:

Adv. C. Gibson

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Counsel for the Respondent:

Adv. G. Jacobs