

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 1319/21

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

30 April 2025

Date

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Signature

In the matter between:

SENYATSI, BENNITA PHASHA

APPLICANT

AND

NISSAN SOUTH AFRICA (PROPRIETARY) LTD

RESPONDENT

JUDGMENT

**THIS JUDGEMENT HAS BEEN HANDED DOWN REMOTELY AND
SHALL BE CIRCULATED TO THE PARTIES BY WAY OF E- MAIL /
UPLOADING ON CASELINES. ITS DATE OF HAND DOWN SHALL BE
DEEMED TO BE 30 APRIL 2025**

NTANGA AJ:

1. This is an application for Leave to Appeal against the whole of judgment delivered on September 26, 2024 in terms of which judgment was granted in favour of the respondent for payment of the sum of R353 031.29.
2. The applicant contends that the appeal has reasonable prospects of success and the application is based on the grounds set out in the notice of application for leave to appeal.¹
3. In summary, the applicant's grounds of appeal are as follows:
 - 2.1 The court committed a gross irregularity when it proceeded to consider the application for absolution and deliver judgment thereon before the applicant had the opportunity to file her heads of argument.
 - 2.2 The honorable court erred in law when it refused absolution in circumstances when the court acknowledged applicant's reliance on the resolute clause 14 in the JICA agreement. The Plaintiff had not pleaded rectification, nor had it presented admissible evidence on the intention of the parties when concluding either the JICA agreement or the new agreement.
 - 2.3 The honourable court erred in law when it held that the testimony of Letsholo was admissible evidence. Letsholo's testimony was intended to amend, vary or contradict clause 14 of the JICA agreement, and as such was inadmissible in terms of the parole evidence rule. It could therefore never be included under section 3(1)(c) of the Hearsay Act as it is inadmissible by operation of section 3(2) of the Hearsay Act.

¹ Caselines at 0086-1 to 086-14.

2.4 The honourable court erred when it failed to hold that the fact that no evidence was presented by the individuals involved in the conclusion of the contract to support the plaintiff's contention that the true intention of the parties was not to conclude the resolutive clause in the JICA agreement at all; or that the true intention of the parties was to have clause 5.6 and clause 9.1 of the JICA agreement survive the effect of the fulfilment of the resolutive clause, was required in order for the plaintiff to succeed.

2.5 The honourable court in law and in fact erred in holding that clause 14 of the JICA agreement is not a resolutive clause.

2.6 The hounorable court erred in law when it held that the court is at liberty to interpret the JICA agreement in a manner preferred by the plaintiff, although that interpretation is directly contrary to the express terms of the contract. The court should have held that, in the absence of an application for rectification of the JICA agreement, its express terms are the only record of that agreement.

Legal Framework on Leave to Appeal

4. Section 17(1) of the Superior Courts Act No. 10 of 2013 provides that:

"17(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.

...”

5. In *Cook v Morrison*² the Supreme Court of Appeal stated that:

*“The existence of reasonable prospects of success is a necessary but insufficient precondition for the granting of special leave. Something more, by way of special circumstances, is needed. These may include that the appeal raises a substantial point of law; or that the prospects of success are so strong that a refusal of leave would result in a manifest denial of justice; or that the matter is of very great importance to the parties or to the public. This is not a closed list”.*³

6. In *MEC for Health, Eastern Cape v Mkhitha and Others*⁴, the Supreme Court of Appeal followed the decision of *S v Smith*⁵ and stated that:

² *Cook v Morrison* 2019 (5) SA 51 SCA.

³ See note 2 *supra* at para 8.

⁴ *MEC for Health, Eastern Cape v Mkhitha and Others* [2016] ZASCA 176 (25 November 2016).

“Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard”.⁶

7. In *Ramakatsa and Others v African National Congress and Another*⁷ the Supreme Court of Appeal stated that:

*“Turning the focus to the relevant provisions of the Superior Courts Act..., leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. This court in *Caratco*⁸, concerning the provisions of s 17(1)(a)(ii) of the SCA Act pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes...”.*

Submissions

⁵ S v Smith 2012 (1) SACR 567 (SCA).

⁶ See note 5 supra at paras 16-17.

⁷ *Ramakatsa and Others v African National Congress and Another* (Case No. 724/2019) [2021] ZASCA 31 (31 March 2021) at para 10.

⁸ See *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* [2020] 2020 (5) SA 35 (SCA).

8. On whether the absolution judgment is appealable, applicant argued that the costs order makes it appealable. The absolution judgment by its very nature is not appealable. Defendant had opportunity to state her defense in the trial proceedings. The absolution judgment made no ruling on the merits of the matter. I therefore do not agree with the applicant's argument that the absolution judgment is appealable.
9. The argument that the court acted irregular is incorrect as applicant creates a misrepresentation that the absolution judgment was delivered without her having opportunity to submit heads of argument. Both the applicant and respondent argued for and against absolution judgment. It was at the end of the arguments that the court directed parties to submit their short heads. After the date of argument parties were requested in writing to submit their heads on a specific date and the applicant failed to submit the heads on the date that they were directed in writing to submit their heads. The respondent complied with this directive, and it was only two days later and after applicant's counsel was telephonically contacted by the Registrar requesting delivery of heads that were two days late as per written directive that judgment on absolution was delivered.
10. The applicant argued that the court made an error in law by venturing into interpreting the meaning and purpose of the JICA agreement and failing to make a ruling that parole evidence rule is part of our law and that it is applicable.
11. The applicant further argued that the court made an error in accepting the evidence of Mr Letsholo and failing to make a negative inference against respondent for failing to call as witnesses parties who were directly involved in negotiating and drafting the JICA agreement. The applicant further argued that Mr

Letsolo's evidence should have been dismissed as hearsay evidence and that the court ought not to have admitted his evidence as he interpreted the terms of JICA agreement that he was not involved in its negotiation and signing.

12. In the main judgment I stated that the discretion to admit hearsay evidence should be exercised with due consideration of factors set out in the Law of Evidence Amendment Act No. 45 of 1988 and that arbitrary rejection of hearsay evidence may constitute a material error in law.⁹ Respondent argued that Mr Letsholo's evidence was not about interpretation of the contract, instead, his evidence was about implementation of the contract. I do not agree with the applicant's submission that Mr Letsholo's evidence should be dismissed as hearsay, I have stated in the main judgment the purpose of Mr Letsholo's evidence.¹⁰
13. In the main judgment I referred to the purpose of the JICA agreement which is to enhance respondent's objective of contributing towards its long-term strategy and viability including inferencing that can be drawn therefrom. Mr Letsholo's evidence related to his involvement in implementing the contract, he never adduced any evidence about interpretation of the contract. His evidence is therefore not hearsay as alleged by the applicant.
14. The respondent argued that the issues revolved around proper interpretation of contractual clauses and that the court was correct in concluding that the JICA agreement was binding after applicant had concluded the training programme. Respondent argued that the court was correct in its interpretation of clause 14 of the JICA

⁹ See para 41 of the main judgment.

¹⁰ See para 40 of the main judgment.

agreement, based on the trite principles of interpretation of contracts and documents.

15. The respondent further argued that clause 14 of the JICA agreement is not a resolutive clause. It argued that it is a clause bringing to an end its obligation to pay stipend and flight tickets. Respondent argued that the intention is clear from the contract as a whole and not from one clause and does not require extrinsic evidence.

Conclusion

16. The applicant in an application for leave to appeal must demonstrate the existence of prospects of success and compelling reasons for the appeal to be heard. I am satisfied that the applicant has met the threshold for the Leave to Appeal to be granted. I am persuaded that another court upon consideration of the issues raised in the application for leave to appeal may come to a different conclusion.
17. In the main judgment I made a finding that the issue of whether the JICA agreement has become *null and void* on signature of a new contract of employment is a matter of interpretation which should consider factors indicated therein.¹¹ After due consideration of the grounds of appeal and arguments by both the applicant and respondent, I conclude that there are compelling reasons that the appeal should be heard and that it will be in the interest of justice for the leave to appeal to be granted. There are reasonable prospects that another court may come to a different conclusion.

¹¹ See para 42 of the main judgment.

1. I therefore make the following order:

1. Application for Leave to Appeal is granted to the Full Court of Gauteng Provincial Division.
2. Costs of the application for Leave to Appeal be costs in the Appeal.



M NTANGA
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION

Date of Hearing: 15 April 2025

Date of Judgement: 30 April 2025

Appearances:

Applicant's counsel: Adv LSA De Haan
Instructed by: Maenetja Attorneys

Respondent's counsel: Adv M R Maphutha
Instructed by: Kamfer Attorneys Incorporated