

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 015224/2024

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
26/2/2025	[Redacted Signature]
DATE	SIGNATURE

In the matter between:

REXUS TRADING (PTY) LTD (Registration No. 2010/019257/07)

Appellant

In re:

GROUPAIR (SA) (PTY) LTD

Applicant

and

REXUS TRADING (PTY) LTD (Registration No. 2010/019257/07)

Respondent

JUDGMENT – LEAVE TO APPEAL

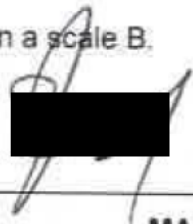
Mahomed J

- [1] This is an application for leave to appeal a judgment I handed down on 11 November 2024 in which I ordered that the Respondent company as the consignee of cargo, is to do all that is necessary to release goods at the port in Durban, which it had agreed to receive from a company in Saudi Arabia. The Appellant in this application, is to empty the container and return it to Maersk South Africa Pty Ltd. I granted the order on an urgent basis, in that the Applicant's counsel demonstrated that the charges were being levied at R2 000 per day and I accepted her submissions that if the Applicant were to await a hearing in due course, the charges would far exceed the value of the goods, which had little commercial value in any event, both buyer and seller agreed that the goods were not fit for purpose. In my view if the lengthy delays in securing court dates, results in serious hardships for a party, as in casu, this can be a factor to consider for matter to be treated as urgent.
- [2] The Appellant's counsel again disputed urgency, Ms. Brenner for the Respondent, contended the delay not an inordinate delay in bringing the application in October 2024, her clients learnt only in September 2024, that the container had not been returned to Maersk, as the Appellants had failed to not remove the goods. Ms. Brenner again reminded the court that her client allowed her opponents sufficient time to prepare for the hearing of this matter, the Appellants could not have suffered any significant prejudice.
- [3] Mr. Levine for the Applicant conflated two matters, a court in the future is to decide on the issue of liability for transport costs, however, before me was the issue of the release of the goods, the clearing of goods and return of the container to Maersk. It is common cause that the appellant is the consignee on the sea waybill. Only the Applicant can release the goods, Mr. Levine persisted with his argument to the contrary.
- [4] The writers van Niekerk and Schulze in relation to a sea waybill explained¹,
"... in such cases a bill of lading may be replaced by a non negotiable receipt, sometimes known as a sea waybill. ... Apart from the fact that it is not a transferable document of title representing the goods, a waybill fulfils the same

¹ JP van Niekerk, and WG Schulze, The SA Law of International Trade Selected Topics, 4th ed, p159 at 5.2

functions- of a receipt of the good shipped and evidence of the contract of carriage- as does a bill of lading."

- [5] The document before me is marked a sea way bill, with the Appellant is cited as the consignee.² In my judgment³ I stated that the document is not negotiable and for the named consignee to receive goods, the document is not marked "to order", it may possibly then be negotiable. The Respondents can do nothing to empty that container to return to Maersk, it is for the Appellants to release it.
- [6] Accordingly, I am not persuaded that the Appellant has satisfied the test for leave to appeal as set out in s17(1) of the Superior Courts Act 10 of 2013, where the threshold set is higher and properly construed means that the prospects of success are almost a certainty.⁴ I remain of the view that the consignee is the only party to release the goods and that another court will not arrive at a different decision, there are no prospects of success on appeal.
- [7] Mr. Levine argued that in my judgment I recognised that there was a dispute of fact and contended that the Appellant's version should have been accepted. I found no genuine bona fide dispute of fact and therefore I disagree with Mr. Levine, the respondents, Group Air Pty Ltd, properly relied on the sea waybill for the consignee only.
- [8] For the reasons set out above, leave to appeal is refused.
- [9] Accordingly, I make the following order:
1. The application for leave to appeal is refused.
 2. The Appellant shall pay the costs of this application on a scale B.


MAHOMED J
JUDGE OF THE HIGH COURT

² Cl 02-52

³ CL 22-8 par 10

⁴ 2024 JDR 2325 LCC PARA 6

Date of hearing: 24 January 2025

Date of Judgment: 26 February 2025

For the Applicant: Adv. Levine instructed by Penny Griffiths Attorneys

For the Appellant/Respondent: Adv. Brenner instructed by JVK Webb Inc.