

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case no: 34321/10

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

SIGNATURE

DATE

In the matter between:

MINERAL-LOY (PTY) LTD

Plaintiff

(Applicant in the application for leave to appeal)

and

**HIGHVELD STEEL & VANADIUM CORPORATION
LTD STEEL AND VANADIUM LIMITED**

First Defendant

TRANSALLOYS (PTY) LTD

Second Defendant

(Respondent in the application for leave to appeal).

JUDGMENT

AC BASSON, J

[1] The plaintiff has applied for leave to appeal to the Supreme Court of Appeal, alternatively to the Full Court of this division against the judgment handed down in respect of claim 1.1 and claim 2 and the portion of the order dismissing claim 1.1. and granting absolution from the instance in respect of claim 2 and the costs order (should such be altered pursuant to the defendant's rule 34 tender) for the reasons set out in the application for leave to appeal.

[2] The application for a reconsideration of the costs order as provided for in rule 34 was argued simultaneous with the application for leave to appeal. I will, however, deal with the merits of that application in a separate judgment.

[3] The grounds for leave to appeal have been fully ventilated in the parties' heads of argument and during oral argument. The plaintiff has also supplemented the application for leave to appeal to raise a further ground in support of its application for leave to appeal, with particular reference to the plaintiff's contentions in respect of its claim 1.1 and the trial court's finding that said claim had prescribed. I do not intend repeating the grounds and the arguments submitted both in favour and against granting the application for leave to appeal. Suffice to point out that I have duly considered all the arguments.

[4] Section 17(1) of the Superior Courts Act ("the Act")¹ provides that leave to appeal may only be granted where the Judge or Judges concerned are of the opinion that —

¹ Act 10 of 2013.

“(a)

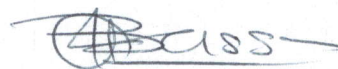
- (i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration”

[5] I am, after having considered all the submissions, persuaded that the applicant has satisfied the requirements of section 17(1)(a) of the Act regarding the prospects of success on appeal. Accordingly, the application for leave to appeal is granted. Costs are costs in the appeal.

[6] Although the parties have expressed a different opinion, I am not persuaded that leave should be granted to the Supreme Court of Appeal. The contested issues hinge mainly on the facts and not on a question of law of importance in respect of which the Supreme Court of Appeal should be called upon to decide.² It is also not, in my view, in the interest of justice that the matter should be considered by the Supreme Court of Appeal. Leave is therefore granted to the Full Court of this division.

[7] In the event the following order is made:

1. The application for leave to appeal is granted to the full court of this division.
2. Costs are costs in the appeal.



A.C. BASSON
JUDGE OF THE HIGH COURT

² Section 17(6) (a) of the Act reads as follow: “If leave is granted under subsection (2) (a) or (b) to appeal against a decision of a Division as a court of first instance consisting of a single judge, the judge or judges granting leave must direct that the appeal be heard by a full court of that Division, unless they consider-

(i) that the decision to be appealed involves a question of law of importance, whether because of its general application or otherwise, or in respect of which a decision of the Supreme Court of Appeal is required to resolve differences of opinion; or

(ii) that the administration of justice, either generally or in the particular case, requires consideration by the Supreme Court of Appeal of the decision, in which case they must direct that the appeal be heard by the Supreme Court of Appeal.”

AppearancesFor the plaintiff:

Adv G Kairinos SC

Adv A Schluep

Instructed by:

Andrew Duff Attorneys

For the defendants:

Adv J Daniels SC

Adv CT Vetter

Instructed by:

Mervyn Taback Inc