

SOUTH AFRICA / JUDGMENT

**Industrius D.O.O v IDS Industry
Service and Plant Construction South
Africa (Pty) Ltd (15862/2020) [2021]
ZAGPJHC 528 (13 October 2021)
[2021] ZAGPJHC 528**

COURT

South Gauteng High Court, Johannesburg

BEFORE

Senyatsi

CASE / FILE NUMBER

15862/2020

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 15862/2020

REPORTABLE:

NO

OF

INTEREST TO OTHER JUDGES: NO

REVISED:

NO

13/10/2021

In

the matter between:

INDUSTRIUS

D.O.O

Applicant

and

IDS

INDUSTRY SERVICE AND PLANT CONSTRUCTION

Respondent

SOUTH

AFRICA (PTY) LTD

JUDGMENT**(LEAVE TO APPEAL)**

Delivered: By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered. The date for hand-down

is deemed to be 13 October 2021

SENYATSI J:

- [1] On 20 August 2021, I granted an order making an arbitrator's award an order of this court and dismissed the counterclaim of the applicant. I also refused to stay the execution of the order pendente lite.
- [2] Although the application for leave to appeal is sought against the whole judgement as well as orders inclusive of the dismissed counterclaim by the respondents which was granted by the court on 20 August 2021, there is no appeal against the order of this court making the arbitration award an order of court. This is conceded by the respondent when it states that during the hearing it did not dispute that the arbitration award was capable of being made an order of court.
- [3] The appeal is confined to the dismissal of prayer 3 that the execution of any order making the arbitration award dated 9 June 2020 delivered by Mr K Trisk SC an order of court be stayed alternatively that the applicant be interdicted pendente lite from executing the said order pending the final adjudication of the respondent's action under the case number 2020/191 56.
- [4] The test for leave to appeal is regulated by Section 17(1)(a) of the Superior Courts Act which provides as follows:
- "(1) Leave to appeal may only be given by the judge or judges concerned are of the opinion that:*
- (a)(i) appeal the appeal would have a reasonable prospect of success or
- (ii) there is some compelling reason why the appeal should be heard including conflicting judgements on the matter under consideration;"
- [5] The test for leave to appeal under section 17(1)(a) of the Superior Courts Act requires a measure of certainty that the appeal court will differ from the court whose judgment is sought to be appealed against.[1]
- [6] In the *Mont Chevaux Trust v Tina Goosen & 18 Others*[2] the court held as follows in commenting on the threshold for granting leave to appeal:

“It is clear that the threshold for granting leave to appeal against the judgement of the High Court has been raised in the new Act. the former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion.” See Van Heerden v Conwright and Others 1985

- (2) SA 342 (T) at 343H. The use of the word “would” In the new statute Indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.
- [7] The enforcement of International arbitral awards is governed exclusively by the International Arbitration Act and Model Law. Any other conclusion would clearly undermine the pro-enforcement bias that is required by the Model Law which has been adopted into our law by the Act. Any remedies that the applicant seeks in this leave to appeal could and should be sought in terms of the Act and the Model Law.
- [8] As stated in the judgment appealed against, IDS did not seek any remedies in terms of the Act and the Model Law.
- [9] I have also found that the counterclaim that IDS claims to have of EUR20.8 million alleged under case number 2020/19156, are most likely, res judicate in that the arbitrator, Mr Trisk, dealt with them in his arbitral award.
- [10] It therefore follows that the applicant has failed to show that another court would differ with the judgment sought to be appealed against.

ORDER

[11] The following order is made:

- (a) the application for leave to appeal is refused with costs.

SENYATSI ML

Judge of the High Court of South Africa

Gauteng Local Division, Johannesburg

REPRESENTATION

Date Judgment reserved: 18 September 2021

Date of Judgment: 13 October 2021

Applicants Counsel: Adv I Currie

Instructed by: Knowles Husain Lindsay

Respondents Counsel: Adv HJ Fischer

Instructed by: Spellas Lengert Kuebler Braun Inc.

- [1] See Acting National Director of Public Prosecutions and Others vs Democratic Alliance: In Re: democratic Alliance v ANDPP [2016] ZAGPPHC at [25] See also: National Union of Public Service and Allied Workers v The MEC: Health, Gauteng & Others Case 78454/2016 at para [6]
- [2] 2014 JDR 2325 (LCC) at para [6]
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