

SOUTH AFRICA / JUDGMENT

Altech Radio Holdings (Pty) Ltd v Aeonova360 Management Services (Pty) Ltd and Another [2023] ZAGPJHC 1096 (29 September 2023)

[2023] ZAGPJHC 1096

COURT

South Gauteng High Court, Johannesburg

BEFORE

Moorcroft AJ

CASE / FILE NUMBER

2023-032374

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IN THE HIGH COURT OF

SOUTH AFRICA,

GAUTENG DIVISION,

JOHANNESBURG

CASE NO: 2023-032374

NOT REPORTABLE

NOT OF INTEREST TO OTHER

JUDGES

In the matter between:

In the application by

ALTECH RADIO

HOLDINGS (PTY) LTD

Applicant

and

AEONOVA360

MANAGEMENT SERVICES (PTY) LTD

First Respondent

RETIRED JUSTICE BR

SOUTHWOOD

Second Respondent

JUDGMENT

MOORCROFT AJ:

Summary

Application for leave to appeal – section 17(1)(a)(i) and (ii) of the Superior Courts Act, 10 of 2013 – reasonable prospect of success or other compelling reason why appeal should be heard

Setting aside arbitral award on ground of gross irregularity - section 33(1)(a) of Arbitration Act, 42 of 1965 – submission of dispute to new arbitral tribunal – section 33(4)

Termination or setting aside of appointment of arbitrator – section 13(2) of Arbitration Act

[1] Altech Radio Holdings (Pty) Ltd v Aeonova360 Management Services (Pty) Ltd and another[2023] ZAGPJHC 475, 2023 JDR 1421 (GJ). The case number is 2023-001585.

[2] Altech Radio Holdings (Pty) Ltd v Aeonova360 Management Services (Pty) Ltd and another [2023] ZAGPJHC 631, 2023 JDR 1969 (GJ). The case number is 2023-032734.

[3] KwaZulu-Natal Law Society v Sharma

[2017] JOL 37724 (KZP) para 29. See also Shinga v The State and another (Society of Advocates (Pietermaritzburg Bar) intervening as Amicus Curiae); S v O'Connell and others 2007 (2) SACR 28 (CC).

[4] S v Smith 2012 (1) SACR 567 (SCA) para 7.

[5] Mont Chevaux Trust (IT 2012/28) v Tina Goosen 2014 JDR 2325 (LCC),

[2014] ZALCC 20 para 6.

[6] S v Notshokovu 2016 JDR 1647 (SCA),

[2016] ZASCA 112 para 2.

[7] Member of the Executive Council for Health, Eastern Cape v Mkhitha and another

[2016] JOL 36940 (SCA) para 16. See also See Van Loggerenberg Erasmus: Superior Court Practice A2-55; The Acting National Director of Public Prosecution v Democratic Alliance [2016] ZAGPPHC 489, JOL 36123

[8] Ramakatsa and others v African National Congress and another

[2021] JOL 49993 (SCA), also reported as Ramakatsa v ANC 2021 ZASCA 31.

[9] The reference in footnote 7 is to Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd 2020 (5) SA 35 (SCA), [2020] ZASCA 17.

- [10] Footnote 9 in the judgment reads as follows: “See *Smith v S* [2011] ZASCA 15; 2012 (1) SACR 567 (SCA); *MEC Health, Eastern Cape v Mkhitha* [2016] ZASCA 176 para 17.”
- [11] Judgment paras 28 and 29.
- [12] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18.
- [13] *Ibid* para 20.
- [14] *Telkom SA SOC Ltd v Commissioner, South African Revenue Service* 2020 (4) SA 480 (SCA) paras 10 to 17 and *Commissioner, South African Revenue Service v United Manganese of Kalahari (Pty) Ltd* 2020 (4) SA 428 (SCA) paras 16 to 17.
- [15] *Harvey NO and Others v Crawford NO and Others* 2019 (2) SA 153 (SCA).
- [16] *Strauss v Strauss and Others*
- [2023] ZAGPJHC 377, 2023 JDR 1302 (GJ), [2023] JOL 58905 (GJ).
- [17] *Commissioner, South African Revenue Service v United Manganese of Kalahari (Pty) Ltd* 2020
- (4) SA 428 (SCA) para 16.
- [18] No-one is above the law. See *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* 2021 (5) SA 327 (CC) para 98.
- [19] See the judgment by O’Regan ADCJ in *Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another* 2009 (4) SA 529 (CC) para 236. These observations by the Constitutional Court are equally applicable to applications for the setting aside of the appointment of an arbitrator under section 13(2) of the Arbitration Act: *Umgeni Water v Hollis NO and Another* 2012 (3) SA 475 (KZD) para 22. See also *Palabora Copper (Pty) Ltd v Motlokwa Transport & Construction (Pty) Ltd* 2018 (5) SA 462 (SCA) para 8 and *Umgeni* para 42.
- [20] Judgment para 84 and cases in footnote 45.
- [21] Judgment para 12.
- [22] Judgment paras 51 to 54.
- [23] *Umgeni Water v Hollis NO and Another* 2012 (3) SA 475 (KZD) paras 36 to 40 and section 13(1) of the Arbitration Act.>
- [24] Heads of argument in application for leave to appeal para 39.
- [25] Judgment para 38. Altech quoted and relied upon part of the response but not the whole response.
- [26] Judgment paras 30 to 44.
- [27] *Umgeni Water v Hollis NO and Another* 2012 (3) SA 475 (KZD) paras 42 to 44.

- [28] Ndlovu v Minister of Home Affairs and Another 2011 (2) SA 621 (KZD).
- [29] Umgeni Water v Hollis NO and Another 2012 (3) SA 475 (KZD) paras 42 to 44.
- [30] Judgment paras 48 to 49.
- [31] Judgment para 43.
- [32] Judgment paras 55 to 62.
- [33] Judgment paras 63 to 65.
- [34] Judgment paras 66 to 68.
- [35] Judgment paras 69 to 72.
- [36] Section 17(1)(a)(ii) of the Superior Courts Act.
- [38] Judgment para 82.5 and President of the Republic of South Africa and Others v South African Rugby Football Union and Others
- [1999] ZACC 9; 1999 (4) SA 147 (CC) para 48. The decision of often referred to as the Sarfu case.
- [39] Umgeni Water v Hollis NO and Another 2012 (3) SA 475 (KZD) paras 34 to 40.
- [40] Dohne Construction (Pty) Limited v Adv Lane SC and another 2022 JDR 3706 (GJ) para 21.
- [41] Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another 2009 (4) SA 529 (CC)
- [42] Ibid para 215.
- [43] Ibid para 213.
- [44] The parties may decide on a public hearing as they are autonomous, but as a rule this is not the case.
- [45] Ramakatsa and others v African National Congress and another
- [2021] JOL 49993 (SCA).

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