

SOUTH AFRICA / JUDGMENT

Collins Sebola Financial Services (Pty) Ltd v South African Forestry Company SOC (Ltd) and Others (21375/20) [2021] ZAGPPHC 204 (12 March 2021)

[2021] ZAGPPHC 204

COURT

North Gauteng High Court, Pretoria

BEFORE

A C Basson

CASE / FILE NUMBER

21375/20

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

No: 21375/20

REPORTABLE:NO

OF

INTEREST TO OTHER JUDGES:NO

REVISED

In

the matter between:

COLLINS
SEBOLA FINANCIAL SERVICES (PTY) LTD
APPLICANT
(1st
Respondent in the application for leave to appeal)
and
SOUTH
AFRICAN FORESTRY COMPANY SOC LTD
FIRST RESPONDENT
(Applicant
in the application for leave to appeal)
TSEPO
MOHANENG
SECOND RESPONDENT
CLEMENT
NHUVUNGA
THIRD RESPONDENT
THE
CHAIRPERSON OF THE BID SPECIFICATION
COMMITTEE
OF THE FIRST RESPONDENT IN
RESPECT
OF THE RFB 011/2019
FOURTH RESPONDENT
THE
CHAIRPERSON OF THE BID EVALUATION
RESPECT
OF THE RFB 011/2019
FIFTH RESPONDENT
THE
CHAIRPERSON OF THE BID ADJUDICATION
RESPECT
OF THE RFB 011/2019
SIXTH RESPONDENT
PHEPHA
MV SECURITY SERVICE
SEVENTH RESPONDENT
THE
CHAIRPERSON OF THE AUDIT COMMITTEE
OF
THE FIRST RESPONDENT
EIGHTH RESPONDENT
THE
CHAIRPERSON OF THE FINANCIAL
COMMITTEE
OF THE FIRST RESPONDENT
NINTH RESPONDENT
PHUTHADICHABA
TRADING ENTERPRISE CC
TENTH RESPONDENT

JUDGMENT

(APPLICATION FOR LEAVE TO APPEAL)

BASSON J

[1] This is an application for leave to appeal against the judgment of this court, handed down on 14 January 2021 in favour of the respondent (in the application for leave to appeal - Collins Sebola Financial Services (Pty) Ltd, Registration Number: [...]). Despite the fact that the matter has an element of urgency to it, it took the applicant (in the application for leave to appeal - South

African Forestry Company SOC Ltd) three weeks to file their heads of argument.

[2] The applicant has raised various grounds for leave to appeal all of which are dealt with by the respondent in its heads of argument. I do not intend repeating all the grounds for leave to appeal. My judgment speaks for itself. I have, however, considered all of the grounds raised in the application for leave to appeal and the response thereto by the respondent.

[3] The test for leave to appeal is now trite and the merits of the application for leave to appeal must be considered against the background of the test for leave to appeal. Section 17(1)(a)(i) of the Superior Courts Act[1] have raised the threshold for granting leave to appeal. Bertelsmann, J in *The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others*[2] explains:

"[6] It is clear that the threshold for granting leave to appeal against a judgment of a 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 Cronwright & 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."

[4] The Supreme Court of Appeal in *S v Smith*[3] also had occasion to consider what constituted reasonable prospects of success in terms of section 17(1)(a)(i):

"[7] What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal."

- [5] There must therefore exist more than just a mere possibility that another court will, not might, find differently on both facts and law.
- [6] I have considered my judgment against the grounds for leave to appeal. I am not persuaded that there are reasonable prospects of success on appeal. I am in particular not swayed by the submission that the applicant had reserved the right to appoint more than one service provider per region and therefore that this somehow affords the applicant the right to make a decision that militates against the provisions of the Preferential Procurement Policy Framework Act (“the PPPFA”).[4]
- [7] In the event the application for leave to appeal is dismissed. The respondent submitted that costs should be granted on a punitive scale in light of the applicant’s tardiness in filing its heads of argument. I am in agreement. It is clear from the papers and the order of this court that there existed a measure of urgency in finalizing this matter. The applicant filed their heads of argument more than three weeks after the delivery of the application for leave to appeal. A punitive costs order is therefore, in my view, warranted.
- [8] The respondent also urged this court to vary its order to impose a date for the handing over of the tender from the seventh respondent to the first respondent. I am not inclined to do so in the absence of full argument on this aspect from both parties. The order in paragraph 3 regarding the handover is clear:

“3. The first respondent is ordered to administer a reasonable and expeditious handover from the seventh respondent to the applicant.”

- [9] In the event the following order is made:

“The application for leave to appeal is dismissed with costs on an attorney and client scale, such costs to include the costs of senior counsel where so employed.”

AC BASSON

JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Electronically submitted therefore unsigned

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 12 March 2021.

Case number:

21375/2020

Matter considered on the papers:

APPEARANCES

For the Applicant:

VINCENT MALEKA SC

Instructed by:

AGRIPPA MPUNGOSE

AT MPUNGOSE AND DLAMINI INC

For the Respondent:

ADV Q PELSER

Instructed by:

HURTER SPIES INC

[1] Act 10 of 2013.

[2] 2014 JDR 2325 (LCC).

[3] 2012

(1) SACR 567 (SCA).

[4] Act 5 of 2005.

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