

SOUTH AFRICA / JUDGMENT

Women in Capital Growth (Pty) Ltd and Another v Scott and Others (11178/2019) [2019] ZAGPJHC 354 (9 August 2019)

[2019] ZAGPJHC 354

COURT

South Gauteng High Court, Johannesburg

BEFORE

E F Dippenaar

CASE / FILE NUMBER

11178/2019

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REPUBLIC OF SOUTH

AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NUMBER: 11178/2019

In

the matter between:

WOMEN

IN CAPITAL GROWTH (PTY)

LTD

Applicant

AKHONA

TRADE AND INVESTMENTS (PTY) LTD

Second Applicant

and

MPHO

INNOCENT

SCOTT

First Respondent

ABDOOLRAWOOF

AHMED

Second Respondent

AFRICAN

LEGEND INVESTMENT (PTY) LTD

Third

Respondent

In
re: MPHO
INNOCENT
SCOTT
First Applicant
ABDOOLRAWOOF
AHMED
Second Applicant
AFRICAN
LEGEND INVESTMENT (PTY) LTD
Third Applicant
And
WOMEN
IN CAPITAL GROWTH (PTY) LTD
First Respondent
AKHONA
TRADE AND INVESTMENTS (PTY) LTD
Second
Respondent
MASHUDU
ELIAS RAMANO
Third
Respondent
OFF
THE SHELF INVESTMENTS
Fourth Respondent
FIFTY-SIX
(RF) (PTY)
LTD

JUDGMENT

DIPPENAAR J:

[1.] The first and second applicants seek leave to appeal the judgment and order in terms of which I granted certain declaratory relief sought by the respondents in the urgent court on 3 April 2019. The respondents oppose the application.

[2.] The first applicant's contentions are based both on factual and legal grounds. These are premised on the contention that the irrevocable undertakings are in conflict with and contravene section 58(8)(c) of the Companies Act 71 of 2008 ("the Act") and, in respect of clause 3.1.1.5 of the undertakings, contravene section 71(2)(b) of the Act. The second applicant adopts these contentions and argues further that the proxy provisions are not severable from the undertakings contained in the written undertakings here in issue for purposes of the contravention of section 58(8)(c) of the Act.

[3.] It is argued by the applicants that in terms of section 17(1)(a)(i) of the Superior Courts Act 10 of 2013, the appeal would have a reasonable prospect of success and that another court would find that the irrevocable undertakings indeed contravene the Act in the respects contended for. In the alternative, it is argued that there are compelling reasons why the appeal should be heard, as envisaged by section 17(1)(a)(ii) of the Act.

[4.] The respondents oppose the application on the basis that neither of the thresholds set by section 17(1)(a) of the Act have been met.

[5.] After careful consideration of the arguments advanced by the respective parties, I am persuaded that the threshold criteria of section 17(1)(a) of the Superior Courts Act have been met by the applicants and, that at the very least, there are compelling reasons to grant leave to appeal in the exercise of the discretion afforded.

[6.] It is undisputed that the application is of great importance to the parties, which relate to a large commercial transaction worth billions of rands and involve irrevocable undertakings with an extended duration. The issues relate to the interpretation of certain statutory provisions of the Act and the contractual provisions of the written undertakings provided by the applicants[1], which may have important consequences for the parties. Moreover, there is a dearth of authority on the proper interpretation of these provisions in the context of the present facts. I am persuaded that these constitute compelling reasons to grant the application.

[7.] The parties are in agreement that if leave to appeal is granted, the matter should be referred to the Supreme Court of Appeal, considering the interpretational issues which arise in the application.

I grant the following order:

- [1] Leave to appeal is granted to the Supreme Court of Appeal.
- [2] The costs of the application are costs in the appeal.

_____EF DIPPENAARJUDGE OF THE HIGH COURT

Appearances

Counsel for the First Applicant

: Adv. GY Benson &

Adv. K Pillay

Instructing Attorneys

: MVMT INCORPORATED

Counsel for the Second Applicant : Adv. I Veerasamy

Instructing Attorneys

: PATHER & PATHER ATTORNEYS

Counsel for the Respondents

: Adv: J Dickerson SC &

Adv. JD Mackenzie

Instructing Attorneys

: CLIFFE DEKKER HOFMEYR INC

Date of hearing

: 08 October 2019

Date of judgment

: 09 October 2019

[1] South African Breweries (Pty) Ltd v The Commissioner of the South African Revenue Services (3234/15)[2017] ZAGPPHC 340 para 9 and 10

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Prepared on 13 October 2026 · Esheria