

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

Case No: 15860/2006
Date: 26/08/2008

UNREPORTABLE

In the matter between

IMPERIAL BANK LTD

Applicant

And

LANSERIA INTERNATIONAL AIRPORT (PTY) LTD

Respondent

In re:

LANSERIA INTERNATIONAL AIRPORT (PTY) LTD

Applicant

And

IMPERIAL BANK LTD

Respondent

Coram: EBERSOHN AJ
Date Heard 12 August 2008
Judgment Handed Down On 26 August 2008

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

EBERSOHN, AJ

- [1] The respondent in the main application filed an application for leave to appeal against the judgement in the matter.

[2] In the application for leave to appeal four main grounds, upon which the application is based, are set out as follows:

(a) That the court erred in finding that the applicant (in the main application) had the necessary *locus standi* to seek the relief sought, in other words that it was not the cessionary. This point was fully canvassed at the original hearing and the hearing of the application for leave to appeal and was decided in favour of the applicant in the main application taking in regard for instance:

(i) the contents of the affidavit by Rippon (record pp. 448-453);

(ii) annexures FA5 (record pp. 142-159) and FA10 (record pp. 172-188);

(iii) the affidavit by Henwood (annexure FA3) (record pp. 137-139);

(iv) the Head Lease (annexure FA2 record pp. 40-136) and especially paragraph 1.3 on page 43 thereof.

(b) That the Court erred in finding that the written deed of lease concluded on 10 October 1993 was the same lease as the

notarial deed of lease registered on 24 October 1994. The applicant is quoting the judgment out of context.

- (c) That the court erred in finding that the respondent did not know who its landlord was or that it studiously avoided stating who its landlord was whereas it denied that the applicant in the main application was the landlord. This is not a valid ground for appeal and this Court need not deal with it further.
- (d) That the court erred in finding that annexure D to the head lease supported the cession. The property involved is referred to on page 80 of the record being the one marked as follows "Legal 4 ANCOM (LEGAL)" with the data pertaining thereto in the fifth typed line in columns 3, 4, 5, 6 and 7 thereof. This document pertinently indicated the said property as one of those leased. It is not clear what the argument of the applicant for leave to appeal is with regard to this point.

[3] I have read the lengthy heads of argument filed on behalf of the respondent and have listened to Mr. Wepener, who appeared, with Mr. Botha, for the applicant and to Mr. Vorster who appeared for the respondent in this application.

[4] I am of the opinion that there are no reasonable prospects of success with an appeal in the matter on the proposed grounds.

[5] I accordingly make the following order:

"The application for leave to appeal is dismissed with costs."

P Z EBERSOHN
ACTING JUDGE OF THE HIGH COURT

Applicant's counsel: Adv. L. Wepener se
Applicant's attorneys: Adv. A.C. Botha
Schwellnus Spies
Haasbroek c/o Kruyshaar

Respondents' counsel: Adv. J.P. Vorster SC
Respondents' attorneys: Mageza Roux Vivier Attorneys