

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NO: 36429/2016**

(1)	REPORTABLE: <del>YES</del> /NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> /NO
(3)	REVISED
<u>02/03/21</u> .....	
Date	ML TWALA

In the matter between:

**LEDJADJACOALPROPRIETARYLIMITED**  
(Registration number 2006/010257/07)

**PLAINTIFF**

**And**

**CONSTANTIAINSUREANCECOMPANYLIMITED**  
(Registration Number 1952/001514/066)

**DEFENDANT**

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## JUDGMENT

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**Delivered:** This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on the 2<sup>nd</sup> of March 2021.

### TWALA J

- [1] For the sake of convenience, in this judgment I shall refer to the parties as in convention.
- [2] This is an application for leave to appeal against the whole of the judgment and order of this Court handed down electronically on the 20th of November 2020 granting the plaintiff the relief sought in terms of the separated issues as agreed upon between the parties and the costs of the action.
- [3] It is a trite principle of our law that leave to appeal may only be given where the Judge or Judges concerned are of the opinion that the appeal would have a reasonable prospect of success or where there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration. (*See section 17 (1)(a)(i) and (ii) of the Superior Courts Act, 10 of 2013*).
- [4] The grounds for the leave to appeal are succinctly stated in the notice of application for leave to appeal and I do not intend to repeat them in this judgment. Furthermore, I would like to extend my gratitude and appreciation to both counsel for the heads of argument and the submissions made during the hearing of this application for leave to appeal.

[5] I am satisfied that I have covered and considered all the issues raised in the application for leave to appeal in my judgment. I am therefore of the view that there are no reasonable prospects of success in this appeal. Put differently, I am of the view that there is no prospect that another Court may come to a different conclusion in this case. Therefore, the application for leave to appeal the judgment falls to be dismissed.

[6] Furthermore, I do not agree with counsel for the defendant that since this matter raises novel points of law or points that are setting a precedent in our law, it therefore deserves the attention of the Supreme Court of Appeal (SCA). I disagree that novelty of the matter should be considered as a ground for appeal. Furthermore, the respondents have not demonstrated to this Court any special circumstances that this matter warrants to be referred to the SCA except to say that the matter will impact on the construction agreements as they are in the construction industry and the cases that may arise therefrom. It is not sufficient to submit that the plaintiff will be compensated with a costs order should it be successful in the SCA. It is my respectful view that the plaintiff need not be exposed to incur unnecessary expenses and to delay the execution of its judgment by being dragged to the SCA for the sake of developing the law.

[7] In the circumstances, I make the following order:

The application for leave to appeal is dismissed with costs.



TWALA M L

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG LOCAL DIVISION**

**Date of hearing:** 26<sup>th</sup> of February 2021

**Date of Judgment:** 2<sup>nd</sup> of March 2021

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