

REPUBLIC OF SOUTH AFRICA



IN THE COURT OF THE COMMISSIONER OF PATENTS

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
	<div style="display: flex; justify-content: space-between;"> <div>2014.03.14 DATE</div> <div><i>Fatu</i> SIGNATURE</div> </div>

21/2/14
Patent Case No: 1998/7391P

In the matter between

MANTELLA TRADING 310 (PTY) LTD

Applicant

and

KUSILE MINING (PTY) LTD

Respondent

J U D G M E N T - Leave to Appeal

MAKGOKA, J:

[1] This is an application for leave to appeal against a part of the judgment of this court and its consequential order, made on 17 December 2013, in terms of which the plaintiff's patent infringement action against the defendant was dismissed, and the defendant's counterclaim for revocation of the plaintiff's South African Patent No. 1998/7391 was granted. The application is opposed by the defendant.

[2] The test applicable whether or not to grant leave to appeal, is trite and well settled. It is whether there are reasonable prospects that another court, given the same set of facts, might arrive to a different conclusion. This common law test has now been codified in s 17 of the Superior Courts Act, 10 of 2013.

[3] Having had careful and detached regard to the judgment, the notice of application for leave to appeal, as well as the oral arguments, I am satisfied that indeed there are reasonable prospects that another court might come to a different conclusion. I am therefore inclined to grant leave to appeal.

[4] As to the forum to which the appeal should lie, counsel are *ad idem* that the Supreme Court of Appeal should be seized of the matter. I agree. Matters such as the present, always involve difficult questions of interpretation and the law. I am therefore satisfied that the matter warrants the attention of the Supreme Court of Appeal.

[5] In the result the following order is made:

1. The applicant (plaintiff) is granted leave to appeal to the Supreme Court of Appeal;
2. The costs of this application are costs in the appeal.



TM MAKGOKA
JUDGE OF THE HIGH COURT
AND COMMISSIONER OF PATENTS