

IN THE HIGH COURT OF SOUTH AFRICA



(GAUTENG DIVISION, PRETORIA)

Case no. 42355\2015

| | |
|--|---------------------------------|
| DELETE WHICHEVER IS NOT APPLICABLE | |
| 1. REPORTABLE : YES/ NO | |
| 2. OF INTEREST TO OTHER JUDGES: YES/NO | |
| 3. REVISED | |
| 04/08/16 DATE | <i>[Signature]</i> SIGNATURE |
| GAUTENG DIVISION, PRETORIA | |

5/8/2016

IN THE MATTER BETWEEN:

JOHAN PIETER HENDRIK PRETORIUS

1st Plaintiff

MONTANA DAVID KWAPA

2nd Plaintiff

and

TRANSPORT PENSION FUND

1st Defendant

TRANSNET SECOND DEFINED BENEFIT FUND

2nd Defendant

TRANSNET LIMITED

3RD Defendant

JUDGMENT ON LEAVE TO APPEAL

LEGODI J:

HEARD ON: 21 June 2016

JUDGMENT HANDED DOWN ON: 4 August 2016

[Signature]

[1] The parties herein will be referred to as in the main Judgment. Judgment in this application for leave to appeal was reserved on 21 June 2016. It is an appeal against the orders in paragraphs 54.1.1, 54.1.2, 54.1.3 and 54.5 of the judgment handed down on 18 May 2015 against the first plaintiff (Johan Pieter Pretorius) and the second plaintiff (Mr Montana David Kwapa).

[2] The orders appealed against read as follows:

“54.1.1 The exception to what is referred to in this judgment as “failure to identify the terms of the promise,” and dealt with from paragraph 22 above, is hereby upheld.

54.1.2 The exception to what is referred to as “unlawful state conduct” by the plaintiffs in their amended particulars of claim, and dealt with from paragraph [28] of this judgment is hereby upheld.

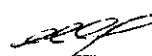
54.1.3 The exception to what is referred to as “unlawful labour practice” by the plaintiffs in their amended particulars of claim, is hereby upheld in part for reasons mentioned from paragraph 47 of this judgement.

54..5 Each party to pay his or her own costs.”

[3] As it would appear from the orders quoted above, this was an application for leave to appeal against an order upholding the defendants’ exception noted against the plaintiffs’ particulars of claim.

[4] It is not my intention to deal with the present application as if one is rewriting the main judgment. In the main judgment, I dealt with the terms of ‘the state promise’ and found that the terms as pleaded lack sufficient particularities and that they are vague and embarrassing. Reasons for the conclusion are stated in the main judgment and in my view there are no reasonable prospects of success on appeal. I also do not think that the order made in this regard is appealable.

[5] The other challenge to this court’s finding in the main judgment was the findings on the ‘unlawful state conduct’ *vis-a-vis* ‘administrative action’. This court is said to have erred in paragraphs 32 to 42 of the main judgment. It is not my intention to restate what was said therein. It suffices to mention that I am not satisfied that there are reasonable prospect of success on appeal.



[6] More time was spent in arguing the grounds of appeal with regard to "unlawful state conduct". When this judgment was reserved, I had initially thought that there was a need to deal with the grounds of appeal in some detail. In hindsight, I do not think is necessary to do so. In the main judgment I dealt with several case law authorities relied upon for the contention on behalf of the plaintiffs. I am not persuaded that there are prospects of success on appeal.

[7] A swipe was also taken against the findings by this court regarding 'unfair labour practice' in particular paragraphs 47 to 57 of the main judgment. I am satisfied that there are no merits to the grounds of appeal. The plaintiffs can do better by clarifying what they now say is pleaded in paragraphs 14 to 17 of the amended particulars of claim. Similarly, I am not satisfied that there are prospects of success on appeal with regard to the 'unfair labour practice'.

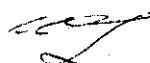
[8] Regarding the grounds of appeal against a cost order, the contention was that the entire exception by the defendants should have been dismissed. As I said, there are no prospects of success on appeal and the appeal in this regard is destined to fail.

[9] Before I conclude, it is important to mention that the first and second defendants filed conditional application for leave to appeal. I do not intend to deal with the merits or otherwise of such conditional application. My finding with regards to the plaintiffs' application for leave to appeal makes it unnecessary to deal with the conditional application for leave to appeal so filed.

[10] Consequently an application by the plaintiffs for leave to appeal is hereby dismissed with costs, such costs to include costs of two counsel for the first and second defendants.



M F LEGODI



JUDGE OF THE HIGH COURT

For the 1st & 2nd Plaintiffs:

Adv Wim Trengove SC

Adv Jaap Cilliers SC

Adv J Bleazard

Instructed by:

GEYSER & COETZEE ATTORNEYS

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Adv A Cockrell SC

Adv I Goodman

Adv N Luthuli

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