

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)



Case number: 78757/2014

Heard on: 9 September 2019

Date of judgment: 19 September 2019

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED
19/9/19
DATE SIGNATURE

In the matter between:

TRUSTCO GROUP INTERNATIONAL (PTY) LTD First Applicant

TRUSTCO FINANCIAL SERVICES (PTY) LTD Second Applicant

TRUSTCO MOBILE MAURITIUS (PTY) LTD Third Applicant

TRUSTCO GROUP HOLDINGS LTD Fourth Applicant

and

HAHN & HAHN INC Respondent

JUDGMENT

SWANEPOEL AJ:

[1] This is an application for leave to appeal by respondent against my judgment in which I dismissed respondent's special plea.

[2] Respondent first raised an exception against the particulars of claim to the effect that this case is concerned with proceedings which relate to a matter under the Patents Act, 1978 ("the Act"), and that, due to the provisions of section 18 of the Act, the High Court does not have jurisdiction to hear the case. That exception was dismissed by De Vos J. Respondent raised the same point in a special plea. Applicants then sought to separate the special plea for determination in advance of the consideration of the merits of the matter, resulting in the application before me.

[3] Before me respondents argued two points in support of their contention that the special plea should be upheld:

3.1 Respondents contended that the judgment of De Vos J did not render the jurisdiction issue *res iudicata*, and that the point raised could be determined by this Court;

3.2 Respondents contended that De Vos J appropriated powers to himself which he did not have, rendering his judgment a nullity.

[4] Having found firstly, that the judgment of De Vos J was final in respect of the jurisdiction issue, which rendered it *res iudicata*, and secondly, that De Vos J had not appropriated powers to himself which flew in the face of the Patents Act, I dismissed the special plea. Both parties agreed during argument that the judgment of De Vos J was appealable.

[5] Respondents now seek leave to appeal, arguing that another court may come to a different finding on the aforesaid two issues. In addition, the applicants argue that the issue is of such importance that it should be considered by either a full court, or by the Supreme Court of Appeal.

[6] The Superior Court Act, 2010 brought a change to the test to be applied when considering an application for leave to appeal. Section 17 (1) reads as follows:

"17 *Leave to appeal*

(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration."

[7] The Supreme Court of Appeal has already reiterated that the wording of section 17 (1) raises the threshold at which leave to appeal may be granted.

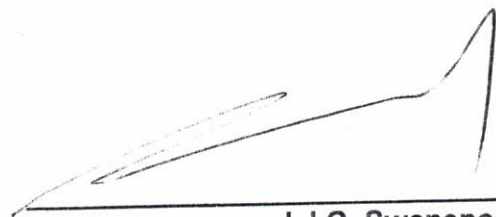
(See: **Notshokovu v S [2016] ZASCA 112**) A judge must be of the view that the appeal **would** have reasonable prospects of success.

[8] I dealt with both of the applicants' contentions in my judgment, and having heard counsel on the same issues again in this application, I do not believe that there are reasonable prospects that another Court would come to a different finding.

[9] Respondents contend in the alternative that the matter is of such importance that it should be reconsidered by another Court. No reason was advanced in support of that contention. If it is applicants' case that an important point of law is involved, then I must disagree. In my view, and that of De Vos J before me, this is a straightforward claim for damages, and although applicants' patent plays a peripheral role, at the core of the matter is whether respondent is liable to applicants for damages.

[10] In the premises I make the following order.

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



J.J.C. Swanepoel
Acting Judge of the High Court,
Gauteng Division, Pretoria