



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG
(COMMERCIAL COURT)**

Case No: 20904/2020

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

8 December 2023

EJ Francis

In the matter between:

ATLAS COPCO COMPRESSOR TECHNIQUE,
A division of ATLAS COPCO SOUTH AFRICA
PROPRIETARY LIMITED

Plaintiff /Respondent

and

ILVA GENERAL ENGINEERING (PTY) LTD

Defendant/Applicant

Consolidated with the following matter between:

Case No: 27082/2020

LESEDI NUCLEAR SERVICES (PTY) LTD

Plaintiff/Interested Party

and

ATLAS COPCO INDUSTRIAL SA (PTY) LTD

Defendant/Interested Party

JUDGMENT

FRANCIS J

1. This is an application for leave to appeal by Atlas Copco Industrial SA (Pty) Ltd (Atlas) and Ilva General Engineering (Pty) Ltd (Ilva) for leave to appeal to the Full Court of this Division, alternatively to the Supreme Court of Appeal against the whole of my judgment and order, delivered on 15 June 2023 after I had dismissed their respective applications for separation in terms of rule 33(4) of the Uniform Rules of Court, with costs.
2. Ilva has raised 15 grounds for leave to appeal that are contained in their application leave to appeal. Atlas has raised 37 grounds for leave to appeal that are contained in their application for leave to appeal.
3. I do not deem it necessary to deal with the grounds for leave to appeal since I have dealt with all of the issues that they have raised in my comprehensive judgment on the separation of issues.
4. It is trite that leave to appeal may only be granted where the appeal would have a reasonable prospect of success when there is a sound, rational basis for the conclusion that there are prospects of success on appeal and/or there is some other compelling reason why the appeal should be heard including conflicting judgments on the matter under consideration.
5. It is trite that section 17(1)(a)(ii) of the Superior Courts Act 10 of 2013 (the Act) has raised the bar in applications for leave to appeal and such applications will only be granted if a judge is of the opinion that the appeal would have a reasonable prospect of success.

6. I have considered Atlas's and Ilva's grounds for leave to appeal and am not persuaded that there are reasonable prospects of success or that any compelling reasons exist why leave to appeal should be granted in this case. They are without merit and falls to be dismissed on the grounds that the decision dismissing an application for separation is not appealable.
7. The application for leave to appeal stands also to be dismissed due to the application of principles governing separation in the context of the Commercial Court Rules. The consolidated actions have been referred to the Commercial Court whose aim is to promote the efficient conduct of litigation in the High Court and to resolve disputes, quickly, cheaply, fairly and with legal acuity. This court had in a previous judgment refused Atlas's application for a separation of the issue of prescription in the Lesedi action on the basis that it was an important consideration that this Court was sitting as the Commercial Court.
8. I am not persuaded that Atlas and Ilva have placed any factors before me that in exercising my discretion to refuse the application that I improperly exercised that the discretion or it was exercised capriciously or without ground or upon a wrong principle or not for any substantial reasons. As the case managing judge in the matter I have a substantial discretion to ensure that the matter is dealt with in a just and expeditious fashion and give directions in this regard.

9. Atlas and Ilva have raised nothing new in their applications for leave to appeal. All the issues that they have raised were dealt with by me in my judgement and there are no prospects of success on appeal.

10. I am not persuaded that a proper case has been made out by Atlas and Ilva for leave to appeal.

11. In the circumstances the following order is made:
 - 11.1 The applications for leave to appeal are dismissed with costs including the costs of two counsel.

FRANCIS J

JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION,
JOHANNESBURG

APPEARANCES

FOR ATLAS : T PRINSLOO INSTRUCTED
BY WERKSMANS ATTORNEYS

FOR ILVA : MD COCHRANE SC INSTRUCTED
B YANDREW GARRAT INCORPORATED

FOR LESEDI : JPV McNALLY SC WITH SL MOHAPI
INSTRUCTED BY WEBBER WENTZEL

DATE OF HEARING : 7 NOVEMBER 2023

DATE OF JUDGMENT : 8 DECEMBER 2023

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 12h30 on 8 December 2023.