



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

Case No: **65357/2020**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED

.....
SIGNATURE

..... 12 FEBRUARY 2024

DATE

In the matter between:

YONELA AMANDA XULABA

Applicant

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Respondent

These reasons are prepared and authored by the Judge whose name is reflected as such, and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 12 February 2024.

JUDGMENT

[1]The Applicant applies for leave to appeal the whole judgment and order handed down on 26 October 2023 to the Supreme Court of Appeal [SCA] alternatively, the Full Court of this Division.

[2]The Applicant in its leave to appeal relies on six (6) grounds of appeal [grounds]. However, in argument, the Applicant's Counsel abandoned most of them and confirmed that the Applicant only persists with ground 1.1 and ground 3. The Applicant's new contended position and waiver, was repeatedly read into the record to eliminate any misunderstandings. Non was raised and therefore, these reasons are confined to grounds 1 and 3.

[3]The waiver of ground 2 results in no ground before this Court alleging a misdirection regarding the credibility finding of the Applicant. The credibility finding of the Applicant stands undisturbed.

[4]In consequence, the remaining grounds 1 and 3 lose their potency. This too, would have applied to the remaining grounds 4-6 in the event, they were to be relied on.

[5]The Applicant's Counsel conceded in argument, that ground 1, which deals with the Applicant being in possession of ticket, was raised, premised on the Applicant's reliance of its *ex contractu* claim only.

[6]The thrust of the Applicant's contractual claim, as dealt with in paragraph [41] of the judgment is to be seen against the pleadings in which, the Applicant alleges that her safe transportation without any harm to her destination arises against her payment of reasonable remuneration.

[7]The Applicant failed to plead nor prove that she paid any, let alone reasonable remuneration for her trip, triggering the Respondent's contractual duty. Any further argument pertaining to wrongfulness, in context then, misplaced.

[8]The Applicant's Counsel's apology for the state of the pleadings does not change the issues which were before the Court, nor the evaluation of the evidence

nor, the Applicant's onus at that time. In the premises, and having regard to the waiver of ground 2, this ground as raised and then argued before me must fail.

[9] In respect of ground 3, the Applicant contends that the Court materially misdirected itself in accepting, on the pleadings, that the Applicant's possession of a train ticket was even a disputed issue. This the Applicant raised notwithstanding this issue was thoroughly canvassed in cross-examination and the Respondent's Counsel dealing with it in closing argument. No material misdirection appears apparent.

[10] Having regard to the ambit of the leave to appeal argued before me, the submissions by the respective Counsel, including their heads of argument, in so far as they relate to the grounds relied upon, and having reconsidered my reasons for my judgment, I am unpersuaded that the Applicant has met the threshold envisaged in terms of Section 17(1)(a)(i) and/or Section 17(1)(a)(ii) of the Superior Courts Act 2013.

In the premises the following order is made:

1. Leave to appeal is dismissed with costs.

L.A. RETIEF
Judge of the High Court
Gauteng Division

Appearances:

For the Applicant:

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Date of argument: 06 February 2024

Date of judgment: 12 February 2024