

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE Number: 19798/20

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES:
YES/NO
(3) REVISED: YES/NO

2024

In the matters between: -

INTERGRATED COMMODITIES COMPANY

APPLICANT

(PTY) LTD

And

KALINDA TRADING CC

DEFENDANT

(Registration Number 2002/01300/23)

JUDGMENT

BAQWA, J

Introduction

- [1] This as an application for leave to appeal against an order of this court granted on 13 February 2023 wherein the applicant was ordered to comply with the respondent's notice in terms of Rule 35 (3) dated 3 June 2021 save that the applicant was excused from providing the applicant's tax returns for the period March 2016 to April 2017 within a 10 (ten) day period.
- [2] The applicant for leave to requests that leave be granted to appeal this order to the full court of this division, alternatively to Supreme Court of Appeal.
- [3] Section 17 (1) of the Superior Court Act no 10 of 2013 (the Act) provide:
- “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 judgment on the matter under consideration.....”

Appealability

- [4] Prior to considering the merits of the application it is necessary to consider whether the order is appealable.
- [5] The applicant submits that it is appealable in that it is final in nature in that once the documents in question are handed over, that cannot be reversed. It submits that the order has a definitive affect on the rights of the parties and disposes of the matter in the main proceedings.
- [6] The applicant submits that a decision may be appealable if it is in the interests of justice to have the matter considered on appeal.
- [7] On the contrary the respondent submits re-appealability that the order is not appealable in that

7.1 It is an interlocutory order

7.2 Not final in nature

7.3 Does not have a definitive affect on the rights of the parties

7.4 And does not dispose of the matter in the main proceedings

[8] In the matter of *Zweni vs Minister of Law and Order*¹ the court identified three attributes of “a judgment or order” as follows:

“7. In determining the nature and effect of a judicial pronouncement, ‘not merely the form of the order must be considered but also, and predominantly, its effect...’

8. A “judgment or order” is a decision which, as a general principle has three attributes, first the decision must be final in the effect and not susceptible to alteration by the court of first instance; second it must be definitive of the rights of the parties; and third, it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings....”

[9] The authors *Herbstein vs Van Winsen*² explain the true nature of an interlocutory order:

“An interlocutory order is an order granted by a court at an intermediate stage in the course of litigation, settling or giving directions with regards to some preliminary or procedural question that has arisen in the dispute between the parties. Such an order may be either

¹ 1993 (1) SA 523 (A)

² 5th ed, 2009 chapter 39 at 1205

purely interlocutory or an interlocutory order having final or definitive effect. The distinction between a purely interlocutory order and an interlocutory order having final or definitive effect is of great importance in relation to appeals. The policy underlying statutory provisions prohibiting or limiting appeals against interlocutory orders is the discouragement of piecemeal appeals”.

[10] Having considered the authorities referred to above I am not persuaded that the applicant has met the test that the interlocutory order is a final order. Upon delivery of the documents the trial court will consider the contents thereof in the context of the rest of the issues contested by the parties in the main claim. The order is therefore not definitive in nature. It is merely compelling the delivery of certain documents. The order is therefore not final in nature and effect and is not susceptible to appeal.

[11] After listening to counsel for both parties in this application and considering the matter, and for the same reasons for the order furnished by this court to the parties on 14 June 2023, I am not persuaded that there is any reasonable prospect of success of an appeal as provided for in section 17 (1) (a) (i) of the Act.

See: (Minister of police v Zamani ECB case no 12/2019 dated 2 February 2021)³ and Nedbank v Weideman No⁴

Conclusion

[12] The application has no merit and there is no reasonable prospect of success on appeal. Further the order sought to be appealed against is not appealable.

Order

[13] In the result I make the following order:

The application for leave to appeal is dismissed with costs.

SELBY BAQWA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 14 February 2024

³ At para 4.

⁴ Unreported, FS case no 31/2020 dated 19 April 2021 at para 3 to 5.

Date of judgment: February 2024

Appearance

On behalf of the Applicants

Adv J H Sullivan

On behalf of the Respondents

Adv J Van Der Merwe